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Parts 700 to 1699

Revised as of April 1, 2005

Housing and Urban Development

Containing a codification of documents of general applicability and future effect

As of April 1, 2005

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To cite the regulations in this volume use title, part and section number. Thus, 24 CFR 700.100 *refers to title 24, part 700, section 100.*

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The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
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RAYMOND A. MOSLEY,
Director,
Office of the Federal Register.

April 1, 2005.

THIS TITLE

Title 24—HOUSING AND URBAN DEVELOPMENT is composed of five volumes. The first four volumes containing parts 0–199, parts 200–499, parts 500–699, parts 700–1699, represent the regulations of the Department of Housing and Urban Development. The fifth volume, containing part 1700 to end continues with regulations of the Department of Housing and Urban Development and also includes regulations of the Neighborhood Reinvestment Corporation. The contents of these volumes represent all current regulations codified under this title of the CFR as of April 1, 2005.

For this volume, Bonnie Fritts was Chief Editor. The Code of Federal Regulations publication program is under the direction of Frances D. McDonald, assisted by Alomha S. Morris.

Title 24—Housing and Urban Development

(This book contains parts 700 to 1699)

Part

SUBTITLE B—REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT (CONTINUED)

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EDITORIAL NOTE: Nomenclature changes to chapter VII appear at 59 FR 14090, Mar. 25, 1994.

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PART 700—CONGREGATE HOUSING SERVICES PROGRAM

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AUTHORITY: 42 U.S.C. 3535(d) and 8011.

SOURCE: 61 FR 42943, 42949, Aug. 19, 1996, unless otherwise noted.

§ 700.100 Purpose.

The requirements of this part augment the requirements of section 802 of the National Affordable Housing Act of 1990 (approved November 28, 1990, Public Law 101–625) (42 U.S.C. 8011), (hereinafter, section 802), as amended by the Housing and Community Development Act of 1992 (Public Law 102–550, approved October 28, 1992), which authorizes the Congregate Housing Services Program (hereinafter, CHSP or Program).

§ 700.105 Definitions.

In addition to the definitions in section 802(k), the following definitions apply to CHSP:

Activity of Daily Living (ADL) means an activity regularly necessary for personal care.

(1) The minimum requirements of ADLs include:

(i) Eating (may need assistance with cooking, preparing or serving food, but must be able to feed self);

(ii) Dressing (must be able to dress self, but may need occasional assistance);

(iii) Bathing (may need assistance in getting in and out of the shower or tub, but must be able to wash self);

(iv) Grooming (may need assistance in washing hair, but must be able to take care of personal appearance);

(v) Getting in and out of bed and chairs, walking, going outdoors, using the toilet; and

(vi) Household management activities (may need assistance in doing housework, grocery shopping or laundry, or getting to and from one location to another for activities such as going to the doctor and shopping, but must be mobile. The mobility requirement does not exclude persons in wheelchairs or those requiring mobility devices.)

(2) Each of the Activities of Daily Living noted in paragraph (1) of this definition includes a requirement that a person must be able to perform at a specified minimal level (*e.g.,* to satisfy the eating ADL, the person must be able to feed himself or herself). The determination of whether a person meets this minimal level of performance must include consideration of those services that will be performed by a person's spouse, relatives or other attendants to be provided by the individual. For example, if a person requires assistance with cooking, preparing or serving food plus assistance in feeding himself or herself, the individual would meet the minimal performance level and thus satisfy the eating ADL, if a spouse, relative or attendant provides assistance with feeding the person. Should such assistance become unavailable at any time, the owner is not obligated at any time to provide individualized services beyond those offered to the resident population in general. The Activities of Daily Living analysis is relevant only with regard to determination of a person's eligibility to receive *supportive services* paid for by CHSP and is not a determination of eligibility for occupancy;

Adjusted income means adjusted income as defined in 24 CFR parts 813 or 913.

Applicant means a State, Indian tribe, unit of general local government, public housing authority (PHA), Indian housing authority (IHA) or local nonprofit housing sponsor. A State, Indian tribe, or unit of general local government may apply on behalf of a local

nonprofit housing sponsor or a for-profit owner of eligible housing for the elderly.

Area agency on aging means the single agency designated by the State Agency on Aging to administer the program described in Title III of the Older Americans Act of 1965 (45 CFR chapter 13).

Assistant Secretary means the HUD Assistant Secretary for Housing-Federal Housing Commissioner or the HUD Assistant Secretary for Public and Indian Housing.

Case management means implementing the processes of: establishing linkages with appropriate agencies and service providers in the general community in order to tailor the needed services to the program participant; linking program participants to providers of services that the participant needs; making decisions about the way resources are allocated to an individual on the basis of needs; developing and monitoring of case plans in coordination with a formal assessment of services needed; and educating participants on issues, including, but not limited to, supportive service availability, application procedures and client rights.

Eligible housing for the elderly means any eligible project including any building within a mixed-use project that was designated for occupancy by elderly persons, or persons with disabilities at its inception or, although not so designated, for which the eligible owner or grantee gives preference in tenant selection (with HUD approval) for all units in the eligible project (or for a building within an eligible mixed-use project) to eligible elderly persons, persons with disabilities, or temporarily disabled individuals. For purposes of this part, this term does not include projects assisted under the Low-Rent Housing Homeownership Opportunity program (Turnkey III (24 CFR part 905, subpart G)).

Eligible owner means an owner of an eligible housing project.

Excess residual receipts mean residual receipts of more than $500 per unit in the project which are available and not committed to other uses at the time of application to HUD for CHSP. Such receipts may be used as matching funds and may be spent down to a minimum of $500/unit.

For-profit owner of eligible housing for the elderly means an owner of an eligible housing project in which some part of the project's earnings lawfully inure to the benefit of any private shareholder or individual.

Grantee or *Grant recipient* means the recipient of funding under CHSP. Grantees under this Program may be states, units of general local government, Indian tribes, PHAs, IHAs, and local nonprofit housing sponsors.

Local nonprofit housing sponsor means an owner or borrower of eligible housing for the elderly; no part of the net earnings of the owning organization shall lawfully inure to the benefit of any shareholder or individual.

Nonprofit includes a public housing agency as that term is defined in section 3(b)(6) of the United States Housing Act of 1937.

Person with disabilities means a household composed of one or more persons, at least one of whom is an adult who has a disability.

(1) A person shall be considered to have a disability if such person is determined under regulations issued by the Secretary to have a physical, mental, or emotional impairment which:

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that the person's ability could be improved by more suitable housing conditions.

(2) A person shall also be considered to have a disability if the person has a developmental disability as defined in section 102(5) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001–7). Notwithstanding the preceding provisions of this paragraph, the terms ''person with disabilities'' or ''temporarily disabled'' include two or more persons with disabilities living together, one or more such persons living with another person who is determined (under regulations prescribed by the Secretary of HUD) to be essential to their care or well-being, and the surviving member or members of any household where at least one or more persons was an adult with a disability who was living, in a

unit assisted under this section, with the deceased member of the household at the time of his or her death.

Program participant (participant) means any project resident as defined in section 802(e)(1) who is formally accepted into CHSP, receives CHSP services, and resides in the eligible housing project served by CHSP grant.

Qualifying supportive services means those services described in section 802(k)(16). Under this Program, ''health-related services'' mean non-medical supervision, wellness programs, preventive health screening, monitoring of medication consistent with state law, and non-medical components of adult day care. The Secretary concerned may also approve other requested supportive services essential for achieving and maintaining independent living.

Rural Housing Service (RHS) means a credit agency for rural housing and rural development in the U.S. Department of Agriculture (USDA).

Secretary concerned means (1) The Secretary of Housing and Urban Development, with respect to eligible federally assisted housing administered by HUD; and

(2) The Secretary of Agriculture with reference to programs administered by the Administrator of the Rural Housing Service.

Service coordinator means CHSP staff person responsible for coordinating Program services as described in section 700.130.

Service provider means a person or organization licensed or otherwise approved in writing by a State or local agency (*e.g.*, Department of Health, Department of Human Services or Welfare) to provide supportive services.

State agency means the State or an agency or instrumentality of the State.

State agency on aging means the single agency designated by the Governor to administer the program described in Title III of the Older Americans Act of 1965 (See 45 CFR part 13).

§ 700.110 Announcement of fund availability, application process and selection.

(a) *Notice of funding availability*. A Notice of Funding Availability (NOFA) will be published periodically in the FEDERAL REGISTER by the Secretary concerned containing the amounts of funds available, allocation or distribution of funds available among eligible applicant groups, where to obtain and submit applications, the deadline for submissions, and further explanation of the selection criteria, review and selection process. The Secretary concerned will designate the maximum allowable size for grants.

(b) *Selection criteria* are set forth in section 802(h)(1) and shall include additional criteria specified by the Secretary concerned.

§ 700.115 Program costs.

(a) *Allowable costs.* (1) Allowable costs for direct provision of supportive services includes the provision of supportive services and others approved by the Secretary concerned for:

(i) Direct hiring of staff, including a service coordinator;

(ii) Supportive service contracts with third parties;

(iii) Equipment and supplies (including food) necessary to provide services;

(iv) Operational costs of a transportation service (*e.g.*, mileage, insurance, gasoline and maintenance, driver wages, taxi or bus vouchers);

(v) Purchase or leasing of vehicles;

(vi) Direct and indirect administrative expenses for administrative costs such as annual fiscal review and audit, telephones, postage, travel, professional education, furniture and equipment, and costs associated with self evaluation or assessment (not to exceed one percent of the total budget for the activities approved); and

(vii) States, Indian tribes and units of general local government with more than one project included in the grant may receive up to 1% of the total cost of the grant for monitoring the projects.

(2) Allowable costs shall be reasonable, necessary and recognized as expenditures in compliance with OMB Cost Policies, i.e., OMB Circular A–87, 24 CFR 85.36, and OMB Circular A–128.

(b) *Nonallowable costs.* (1) CHSP funds may not be used to cover expenses related to any grantee program, service, or activity existing at the time of application to CHSP.

(2) Examples of nonallowable costs under the program are:

(i) Capital funding (such as purchase of buildings, related facilities or land and certain major kitchen items such as stoves, refrigerators, freezers, dishwashers, trash compactors or sinks);

(ii) Administrative costs that represent a non-proportional share of costs charged to the Congregate Housing Services Program for rent or lease, utilities, staff time;

(iii) Cost of supportive services other than those approved by the Secretary concerned;

(iv) Modernization, renovation or new construction of a building or facility, including kitchens;

(v) Any costs related to the development of the application and plan of operations before the effective date of CHSP grant award;

(vi) Emergency medical services and ongoing and regular care from doctors and nurses, including but not limited to administering medication, purchase of medical supplies, equipment and medications, overnight nursing services, and other institutional forms of service, care or support;

(vii) Occupational therapy and vocational rehabilitation services; or

(viii) Other items defined as unallowable costs elsewhere in this part, in CHSP grant agreement, and OMB Circular A–87 or 122.

(c) *Administrative cost limitation.* Grantees are subject to the limitation in section 802(j)(4).

§ 700.120 Eligible supportive services.

(a) Supportive services or funding for such services may be provided by state, local, public or private providers and CHSP funds. A CHSP under this section shall provide meal and other qualifying services for program participants (and other residents and nonresidents, as described in § 700.125(a)) that are coordinated on site.

(b) Qualifying supportive services are those listed in section 802(k)(16) and in section 700.105.

(c) Meal services shall meet the following guidelines:

(1) *Type of service.* At least one meal a day must be served in a group setting for some or all of the participants; if more than one meal a day is provided, a combination of a group setting and carry-out meals may be utilized.

(2) *Hot meals.* At least one meal a day must be hot. A hot meal for the purpose of this program is one in which the principal food item is hot at the time of serving.

(3) *Special menus.* Grantees shall provide special menus as necessary for meeting the dietary needs arising from the health requirements of conditions such as diabetes and hypertension. Grantees should attempt to meet the dietary needs of varying religious and ethnic backgrounds.

(4) *Meal service standards.* Grantees shall plan for and provide meals which are wholesome, nutritious, and each of which meets a minimum of one-third of the minimum daily dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council (or State or local standards, if these standards are higher). Grantees must have an annual certification, prepared and signed by a registered dietitian, which states that each meal provided under CHSP meets the minimum daily dietary allowances.

(5) *Food stamps and agricultural commodities.* In providing meal services grantees must apply for and use food stamps and agricultural commodities as set forth in section 802(d)(2)(A).

(6) *Preference for nutrition providers:* In contracting for or otherwise providing for meal services grantees must follow the requirements of section 802(d)(2)(B). These requirements do not preclude a grantee or owner from directly preparing and providing meals under its own auspices.

§ 700.125 Eligibility for services.

(a) *Participants, other residents, and nonresidents.* Such individuals are eligible either to participate in CHSP or to receive CHSP services, if they qualify under section 802(e)(1), (4) and (5). Under this paragraph, temporarily disabled persons are also eligible.

(b) *Economic need.* In providing services under CHSP, grantees shall give priority to very low income individuals, and shall consider their service needs in selecting program participants.

§ 700.130 Service coordinator.

(a) Each grantee must have at least one service coordinator who shall perform the responsibilities listed in section 802(d)(4).

(b) The service coordinator shall comply with the qualifications and standards required by the Secretary concerned. The service coordinator shall be trained in the subject areas set forth in section 802(d)(4), and in any other areas required by the Secretary concerned.

(c) The service coordinator may be employed directly by the grantee, or employed under a contract with a case management agency on a fee-for-service basis, and may serve less than full-time. The service coordinator or the case management agency providing service coordination shall not provide supportive services under a CHSP grant or have a financial interest in a service provider agency which intends to provide services to the grantee for CHSP.

(d) The service coordinator shall:

(1) Provide general case management and referral services to all potential participants in CHSP. This involves intake screening, upon referral from the grantee of potential program participants, and preliminary assessment of frailty or disability, using a commonly accepted assessment tool. The service coordinator then will refer to the professional assessment committee (PAC) those individuals who appear eligible for CHSP;

(2) Establish professional relationships with all agencies and service providers in the community, and develop a directory of providers for use by program staff and program participants;

(3) Refer proposed participants to service providers in the community, or those of the grantee;

(4) Serve as staff to the PAC;

(5) Complete, for the PAC, all paperwork necessary for the assessment, referral, case monitoring and reassessment processes;

(6) Implement any case plan developed by the PAC and agreed to by the program participant;

(7) Maintain necessary case files on each program participant, containing such information and kept in such form as HUD and RHS shall require;

(8) Provide the necessary case files to PAC members upon request, in connection with PAC duties;

(9) Monitor the ongoing provision of services from community agencies and keep the PAC and the agency providing the supportive service informed of the progress of the participant;

(10) Educate grant recipient's program participants on such issues as benefits application procedures (e.g. SSI, food stamps, Medicaid), service availability, and program participant options and responsibilities;

(11) Establish volunteer support programs with service organizations in the community;

(12) Assist the grant recipient in building informal support networks with neighbors, friends and family; and

(13) Educate other project management staff on issues related to ''aging-in-place'' and services coordination, to help them to work with and assist other persons receiving housing assistance through the grantee.

(e) The service coordinator shall tailor each participant's case plan to the individual's particular needs. The service coordinator shall work with community agencies, the grantee and third party service providers to ensure that the services are provided on a regular, ongoing, and satisfactory basis, in accordance with the case plan approved by the PAC and the participant.

(f) Service coordinators shall not serve as members of the PAC.

§ 700.135 Professional assessment committee.

(a) *General.* (1) A professional assessment committee (PAC), as described in this section, shall recommend services appropriate to the functional abilities and needs of each eligible project resident. The PAC shall be either a voluntary committee appointed by the project management or an agency in the community which provides assessment services and conforms to section 802(e)(3)(A) and (B). PAC members are subject to the conflict of interest provisions in section 700.175(b).

(2) The PAC shall utilize procedures that ensure that the process of determining eligibility of individuals for congregate services affords individuals fair treatment, due process, and a right

of appeal of the determination of eligibility, and shall ensure the confidentiality of personal and medical records.

(3) The dollar value of PAC members' time spent on regular assessments after initial approval of program participants may be counted as match. If a community agency discharges the duties of the PAC, staff time is counted as its imputed value, and if the members are volunteers, their time is counted as volunteer time, according to sections 700.145(c)(2) (ii) and (iv).

(b) *Duties of the PAC.* The PAC is required to:

(1) Perform a formal assessment of each potential elderly program participant to determine if the individual is frail. To qualify as frail, the PAC must determine if the elderly person is deficient in at least three ADLs, as defined in section 700.105. This assessment shall be based upon the screening done by the service coordinator, and shall include a review of the adequacy of the informal support network (*i.e.*, family and friends available to the potential participant to assist in meeting the ADL needs of that individual), and may include a more in-depth medical evaluation, if necessary;

(2) Determine if non-elderly disabled individuals qualify under the definition of person with disabilities under section 700.105. If they do qualify, this is the acceptance criterion for them for CHSP. Persons with disabilities do not require an assessment by the PAC;

(3) Perform a regular assessment and updating of the case plan of all participants;

(4) Obtain and retain information in participant files, containing such information and maintained in such form, as HUD or RHS shall require;

(5) Replace any members of the PAC within 30 days after a member resigns. A PAC shall not do formal assessments if its membership drops below three, or if the qualified medical professional leaves the PAC and has not been replaced.

(6) Notify the grantee or eligible owner and the program participants of any proposed modifications to PAC procedures, and provide these parties with a process and reasonable time period in which to review and comment, before adoption of a modification;

(7) Provide assurance of nondiscrimination in selection of CHSP participants, with respect to race, religion, color, sex, national origin, familial status or type of disability;

(8) Provide complete confidentiality of information related to any individual examined, in accordance with the Privacy Act of 1974;

(9) Provide all formal information and reports in writing.

(c) *Prohibitions relating to the PAC.* (1) At least one PAC member shall not have any direct or indirect relationship to the grantee.

(2) No PAC member may be affiliated with organizations providing services under the grant.

(3) Individuals or staff of third party organizations that act as PAC members may not be paid with CHSP grant funds.

(d) *Eligibility and admissions.* (1) Before selecting potential program participants, each grantee (with PAC assistance) shall develop a CHSP application form. The information in the individual's application is crucial to the PAC's ability to determine the need for further physical or psychological evaluation.

(2) The PAC, upon completion of a potential program participant's initial assessment, must make a recommendation to the service coordinator for that individual's acceptance or denial into CHSP.

(3) Once a program participant is accepted into CHSP, the PAC must provide a supportive services case plan for each participant. In developing this plan, the PAC must take into consideration the participant's needs and wants. The case plan must provide the minimum supportive services necessary to maintain independence.

(e) *Transition-out procedures.* The grantee or PAC must develop procedures for providing for an individual's transition out of CHSP to another setting. Transition out is based upon the degree of supportive services needed by an individual to continue to live independently. If a program participant leaves the program, but wishes to retain supportive services, he or she may do so, as long as he or she continues to live in an eligible project, pays the full

cost of services provided, and management agrees (section 802(e)(4) and (5)). A participant can be moved out of CHSP if he or she:

(1) Gains physical and mental health and is able to function without supportive services, even if only for a short time (in which case readmission, based upon reassessment to determine the degree of frailty or the disability, is acceptable);

(2) Requires a higher level of care than that which can be provided under CHSP; or

(3) Fails to pay services fees.

(f) *Procedural rights of participants.* (1) The PAC must provide an informal process that recognizes the right to due process of individuals receiving assistance. This process, at a minimum, must consist of:

(i) Serving the participant with a written notice containing a clear statement of the reasons for termination;

(ii) A review of the decision, in which the participant is given the opportunity to present written or oral objections before a person other than the person (or a subordinate of that person) who made or approved the termination decision; and

(iii) Prompt written notification of the final decision to the participant.

(2) Procedures must ensure that any potential or current program participant, at the time of initial or regular assessment, has the option of refusing offered services and requesting other supportive services as part of the case planning process.

(3) In situations where an individual requests additional services, not initially recommended by the PAC, the PAC must make a determination of whether the request is legitimately a needs-based service that can be covered under CHSP subsidy. Individuals can pay for services other than those recommended by the PAC as long as the additional services do not interfere with the efficient operation of the program.

§ 700.140 Participatory agreement.

(a) Before actual acceptance into CHSP, potential participants must work with the PAC and the service coordinator in developing supportive services case plans. A participant has the option of accepting any of the services under the case plan.

(b) Once the plan is approved by the PAC and the program participant, the participant must sign a participatory agreement governing the utilization of the plan's supportive services and the payment of supportive services fees. The grantee annually must renegotiate the agreement with the participant.

§ 700.145 Cost distribution.

(a) *General.* (1) Grantees, the Secretary concerned, and participants shall all contribute to the cost of providing supportive services according to section 802(i)(A)(i). Grantees must contribute at least 50 percent of program cost, participants must contribute fees that in total are at least 10 percent of program cost, and the Secretary concerned will provide funds in an amount not to exceed 40 percent.

(2) Section 802(i)(1)(B)(ii) creates a cost-sharing provision between grantee and the Secretary concerned if total participant fees collected over a year are less than 10 percent of total program cost. This provision is subject to availability of appropriated grant funds. If funds are not available, the grantee must assume the funding shortfall.

(b) *Prohibition on substitution of funds and maintenance of existing supportive services.* Grantees shall maintain existing funding for and provision of supportive services prior to the application date, as set forth in section 802(i)(1)(D). The grantee shall ensure that the activities provided to the project under a CHSP grant will be in addition to, and not in substitution for, these previously existing services. The value of these services do not qualify as matching funds. Such services must be maintained either for the time the participant remains in CHSP, or for the duration of CHSP grant. The grantee shall certify compliance with this paragraph to the Secretary concerned.

(c) *Eligible matching funds.* (1) All sources of matching funds must be directly related to the types of supportive services prescribed by the PAC or used for administration of CHSP.

(2) Matching funds may include:

(i) Cash (which may include funds from Federal, State and local governments, third party contributions, available payments authorized under Medicaid for specific individuals in CHSP, Community Development Block Grants or Community Services Block Grants, Older American Act programs or excess residual funds with the approval of the Secretary concerned),

(ii) The imputed dollar value of other agency or third party-provided direct services or staff who will work with or provide services to program participants; these services must be justified in the application to assure that they are the new or expanded services of CHSP necessary to keep the program participants independent. If services are provided by the state, Indian tribe, unit of general local government, or local nonprofit housing sponsor, IHA, PHA, or for-profit or not-for-profit owner, any salary paid to staff from governmental sources to carry out the program of the grantee and any funds paid to residents employed by the Program (other than from amounts under a contract under section 700.155) is allowable match.

(iii) In-kind items (these are limited to 10 percent of the 50 percent matching amount), such as the current market value of donated common or office space, utility costs, furniture, material, supplies, equipment and food used in direct provision of services. The applicant must provide an explanation for the estimated donated value of any item listed.

(iv) The value of services performed by volunteers to CHSP, at the rate of $5.00 an hour.

(d) *Limitation*. (1) The following are not eligible for use as matching funds:

(i) PHA operating funds;

(ii) CHSP funds;

(iii) Section 8 funds other than excess residual receipts;

(iv) Funds under section 14 of the U.S. Housing Act of 1937, unless used for service coordination or case management; and

(v) Comprehensive grant funds unless used for service coordination or case management;

(2) Local government contributions are limited by section 802(i)(1)(E).

(e) *Annual review of match*. The Secretary concerned will review the infusion of matching funds annually, as part of the program or budget review. If there are insufficient matching funds available to meet program requirements at any point after grant start-up, or at any time during the term of the grant (*i.e.*, if matching funds from sources other than program participant fees drop below 50 percent of total supportive services cost), the Secretary concerned may decrease the federal grant share of supportive services funds accordingly.

§ 700.150 Program participant fees.

(a) *Eligible program participants.* The grantee shall establish fees consistent with section 700.145(a). Each program participant shall pay CHSP fees as stated in paragraphs (d) and (e) of this section, up to a maximum of 20 percent of the program participant's adjusted income. Consistent with section 802(d)(7)(A), the Secretary concerned shall provide for the waiver of fees for individuals who are without sufficient income to provide for any payment.

(b) *Fees shall include:* (1) Cash contributions of the program participant;

(2) Food Stamps; and

(3) Contributions or donations to other eligible programs acceptable as matching funds under section 700.145(c).

(c) *Older Americans Act programs.* No fee may be charged for any meals or supportive services under CHSP if that service is funded under an Older Americans Act Program.

(d) *Meals fees:* (1) For full meal services, the fees for residents receiving more than one meal per day, seven days per week, shall be reasonable and shall equal between 10 and 20 percent of the adjusted income of the project resident, or the cost of providing the services, whichever is less.

(2) The fees for residents receiving meal services less frequently than as described in paragraph (d)(1) of this section shall be in an amount equal to 10 percent of the adjusted income of the project resident, or the cost of providing the services, whichever is less.

(e) *Other service fees.* The grantee may also establish fees for other supportive services so that the total fees collected

from all participants for meals and other services is at least 10 percent of the total cost of CHSP. However, no program participants may be required to pay more than 20 percent of their adjusted incomes for any combination of services.

(f) *Other residents and nonresidents.* Fees shall be established for residents of eligible housing projects (other than eligible project residents) and for nonresidents who receive meals and other services from CHSP under section 700.125(a). These fees shall be in an amount equal to the cost of providing the services.

§ 700.155 Grant agreement and administration.

(a) *General.* HUD will enter into grant agreements with grantees, to provide congregate services for program participants in eligible housing projects, in order to meet the purposes of CHSP.

(b) *Term of grant agreement and reservation of amount.* A grant will be for a term of five years and the Secretary concerned shall reserve a sum equal to the total approved grant amount for each grantee. Grants will be renewable at the expiration of a term, subject to the availability of funds and conformance with the regulations in this part, except as otherwise provided in section 700.160.

(c) *Monitoring of project sites by governmental units.* States, Indian tribes, and units of general local government with a grant covering multiple projects shall monitor, review, and evaluate Program performance at each project site for compliance with CHSP regulations and procedures, in such manner as prescribed by HUD or RHS.

(d) *Reports.* Each grantee shall submit program and fiscal reports and program budgets to the Secretary concerned in such form and at such times, as the Secretary concerned requires.

(e) *Enforcement.* The Secretary concerned will enforce the obligations of the grantee under the agreement through such action as may be necessary, including terminating grants, recapturing grant funds, and imposing sanctions.

(1) These actions may be taken for:

(i) A grantee's non-compliance with the grant agreement or HUD or RHS regulations;

(ii) Failure of the grantee to provide supportive services within 12 months of execution of the grant agreement.

(2) Sanctions include but are not limited to the following:

(i) Temporary withholding of reimbursements or extensions or renewals under the grant agreement, pending correction of deficiencies by the grantee;

(ii) Setting conditions in the contract;

(iii) Termination of the grant;

(iv) Substitution of grantee; and

(v) Any other action deemed necessary by the Secretary concerned.

(f) *Renewal of grants.* Subject to the availability of funding, satisfactory performance, and compliance with the regulations in this part:

(1) Grantees funded initially under this part shall be eligible to receive continued, non-competitive renewals after the initial five-year term of the grant.

(2) Grantees will receive priority funding and grants will be renewed within time periods prescribed by the Secretary concerned.

(g) *Use of Grant Funds.* If during any year, grantees use less than the annual amount of CHSP funds provided to them for that year, the excess amount can be carried forward for use in later years.

§ 700.160 Eligibility and priority for 1978 Act recipients.

Grantees funded initially under 42 U.S.C. 8001 shall be eligible to receive continued, non-competitive funding subject to its availability. These grantees will be eligible to receive priority funding under this part if they comply with the regulations in this part and with the requirements of any NOFA issued in a particular fiscal year.

§ 700.165 Evaluation of Congregate Housing Services Programs.

(a) Grantees shall submit annually to the Secretary concerned, a report evaluating the impact and effectiveness of CHSPs at the grant sites, in such form as the Secretary concerned shall require.

(b) The Secretaries concerned shall further review and evaluate the performance of CHSPs at these sites and shall evaluate the Program as a whole.

(c) Each grantee shall submit a certification with its application, agreeing to cooperate with and to provide requested data to the entity responsible for the Program's evaluation, if requested to do so by the Secretary concerned.

§ 700.170 Reserve for supplemental adjustment.

The Secretary concerned may reserve funds subject to section 802(o). Requests to utilize supplemental funds by the grantee shall be transmitted to the Secretary concerned in such form as may be required.

§ 700.175 Other Federal requirements.

In addition to the Federal Requirements set forth in 24 CFR part 5, the following requirements apply to grant recipient organizations in this program:

(a) *Office of Management and Budget (OMB) Circulars and Administrative Requirements.* The policies, guidelines, and requirements of OMB Circular No. A–87 and 24 CFR part 85 apply to the acceptance and use of assistance under this program by public body grantees. The policies, guidelines, and requirements of OMB Circular No. A–122 apply to the acceptance and use of assistance under this program by non-profit grantees. Grantees are also subject to the audit requirements described in 24 CFR part 44 (OMB Circular A–128).

(b) *Conflict of interest.* In addition to the conflict of interest requirements in OMB Circular A–87 and 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of the applicant, and who exercises or has exercised any function or responsibilities with respect to activities assisted with CHSP grant funds, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or any proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties during his or her tenure, or for one year thereafter. CHSP employees may receive reasonable salary and benefits.

(c) *Disclosures required by Reform Act.* Section 102(c) of the HUD Reform Act of 1989 (42 U.S.C. 3545(c)) requires disclosure concerning other government assistance to be made available with respect to the Program and parties with a pecuniary interest in CHSP and submission of a report on expected sources and uses of funds to be made available for CHSP. Each applicant shall include information required by 24 CFR part 12 on form HUD–2880 ''Applicant/Recipient Disclosure/Update Report,'' as required by the FEDERAL REGISTER Notice published on January 16, 1992, at 57 FR 1942.

(d) *Nondiscrimination and equal opportunity.* (1) The fair housing poster regulations (24 CFR part 110) and advertising guidelines (24 CFR part 109);

(2) The Affirmative Fair Housing Marketing Program requirements of 24 CFR part 200, subpart M, and the implementing regulations at 24 CFR part 108; and

(3) Racial and ethnic collection requirements—Recipients must maintain current data on the race, ethnicity and gender of program applicants and beneficiaries in accordance with section 562 of the Housing and Community Development Act of 1987 and section 808(e)(6) of the Fair Housing Act.

(e) *Environmental requirements.* Support services, including the operating and administrative expenses described in section 700.115(a), are categorically excluded from the requirements of the National Environmental Policy Act (NEPA) of 1969. These actions, however, are not excluded from individual compliance requirements of other environmental statutes, Executive Orders, and agency regulations where appropriate. When the responsible official determines that any action under this part may have an environmental effect because of extraordinary circumstances, the requirements of NEPA shall apply.

PARTS 701–760 [RESERVED]

PART 761—DRUG ELIMINATION PROGRAMS

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AUTHORITY: 42 U.S.C. 3535(d) and 11901 *et seq.*

EDITORIAL NOTE: Nomenclature changes to part 761 appear at 64 FR 49917, Sept. 14, 1999.

SOURCE: 61 FR 13987, Mar. 28, 1996, unless otherwise noted.

Subpart A—General

§ 761.1 Purpose and scope.

This part 761 contains the regulatory requirements for the Assisted Housing Drug Elimination Program (AHDEP) and the Public Housing Drug Elimination Program (PHDEP). The purposes of these programs are to:

(a) Eliminate drug-related and violent crime and problems associated with it in and around the premises of Federally assisted low-income housing, and public and Indian housing developments;

(b) Encourage owners of Federally assisted low-income housing, public housing agencies and Indian housing authorities (collectively referred to as HAs), and resident management corporations to develop a plan that includes initiatives that can be sustained over a period of several years for addressing drug-related and violent crime and problems associated with it in and around the premises of housing proposed for funding under this part; and

(c) Make available Federal grants to help owners of Federally assisted low-income housing, HAs, and RMCs carry out their plans.

[61 FR 13987, Mar. 28, 1996, as amended at 64 FR 49917, Sept. 14, 1999]

§ 761.5 Public housing; encouragement of resident participation.

For the purposes of the Public Housing Drug Elimination Program, the elimination of drug-related and violent crime within public housing developments requires the active involvement and commitment of public housing residents and their organizations. To enhance the ability of PHAs to combat drug-related and violent crime within their developments, Resident Councils (RCs), Resident Management Corporations (RMCs), and Resident Organizations (ROs) will be permitted to undertake management functions specified in this part, notwithstanding the otherwise applicable requirements of part 964 of this title.

[64 FR 49917, Sept. 14, 1999]

§ 761.10 Definitions.

The definitions *Department, HUD,* and *Public Housing Agency (PHA)* are defined in part 5 of this title.

Controlled substance shall have the meaning provided in section 102 of the Controlled Substance Act (21 U.S.C. 802).

Drug intervention means a process to identify assisted housing or public housing resident drug users, to assist them in modifying their behavior, and/or to refer them to drug treatment to reduce or eliminate drug abuse.

Drug prevention means a process to provide goods and services designed to alter factors, including activities, environmental influences, risks, and expectations, that lead to drug abuse.

Drug-related and violent crime shall have the meaning provided in 42 U.S.C. 11905(2).

Drug treatment means a program for the residents of an applicant's development that strives to end drug abuse and to eliminate its negative effects

through rehabilitation and relapse prevention.

Federally assisted low-income housing, or *assisted housing,* shall have the meaning provided in 42 U.S.C. 11905(4). However, sections 221(d)(3) and 221(d)(4) market rate projects with tenant-based assistance contracts and section 8 projects with tenant-based assistance are not considered federally assisted low-income housing and are not eligible for funding under this part 761.

Governmental jurisdiction means the unit of general local government, State, or area of operation of an Indian tribe in which the housing development administered by the applicant is located.

In and around means within, or adjacent to, the physical boundaries of a housing development.

Indian tribe means any tribe, band, pueblo, group, community, or nation of Indians, or Alaska Natives.

Local law enforcement agency means a police department, sheriff's office, or other entity of the governmental jurisdiction that has law enforcement responsibilities for the community at large, including the housing developments owned or administered by the applicant. In Indian jurisdictions, this includes tribal prosecutors that assume law enforcement functions analogous to a police department or the Bureau of Indian Affairs (BIA). More than one law enforcement agency may have these responsibilities for the jurisdiction that includes the applicant's developments.

Problems associated with drug-related and violent crime means the negative physical, social, educational, and economic impact of drug-related and violent crime on assisted housing residents or public and Indian housing residents, and the deterioration of the assisted housing or public and Indian housing environment because of drug-related and violent crime.

Program income means gross income received by a grantee and directly generated from the use of program funds. When program income is generated by an activity only partially assisted with program funds, the income shall be prorated to reflect the percentage of program funds used.

Recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA recipient) shall have the same meaning as *recipient* provided in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

Resident council (RC), for purposes of the Public Housing Program, means an incorporated or unincorporated nonprofit organization or association that meets each of the following requirements:

(1) It must be representative of the residents it purports to represent;

(2) It may represent residents in more than one development or in all of the developments of a HA, but it must fairly represent residents from each development that it represents;

(3) It must adopt written procedures providing for the election of specific officers on a regular basis (but at least once every three years); and

(4) It must have a democratically elected governing board. The voting membership of the board must consist of residents of the development or developments that the resident organization or resident council represents.

Resident Management Corporation (RMC), for purposes of the Public Housing Program, means the entity that proposes to enter into, or that enters into, a management contract with a PHA under part 964 of this title in accordance with the requirements of that part.

State means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public or Indian housing agency under the United States Housing Act of 1937 (42 U.S.C. 1437 *note*).

Unit of general local government means any city, county, town, municipality, township, parish, village, local public authority (including any public or Indian housing agency under the United States Housing Act of 1937) or other general purpose political subdivision of a State.

[61 FR 13987, Mar. 28, 1996, as amended at 64 FR 49918, Sept. 14, 1999]

Subpart B—Grant Funding

§ 761.13 Amount of funding.

(a) *PHDEP formula funding.* (1) *Funding share formula.* (i) *Per unit amount.* Subject to the availability of funding, the amount of funding made available each FFY to an applicant that qualifies for funding in accordance with § 761.15(a) is based upon the applicant's share of the total number of units of all applicants that qualify for funding, with a maximum award of $35 million and a minimum award of $25,000, except that qualified applicants with less than 50 units will not receive more than $500 per unit.

(ii) *Calculation of number of units.* For purposes of determining the number of units counted for purposes of the PHDEP formula, HUD shall count as one unit each existing rental and Section 23 bond-financed unit under the ACC. Units that are added to a PHA's inventory will be added to the overall unit count so long as the units are under ACC amendment and have reached DOFA by the date HUD establishes for the Federal Fiscal Year in which the PHDEP formula is being run (hereafter called the ''reporting date''). Any such increase in units shall result in an adjustment upwards in the number of units under the PHDEP formula. New units reaching DOFA after this date will be counted for PHDEP formula purposes as of the following Federal Fiscal Year. Federalized units that are eligible for operating subsidy will be counted for PHDEP formula purposes based on the unit count reflected on the PHA's most recently approved Operating Budget (Form HUD–52564) and/or subsidy calculation (Form HUD–52723), or successor form submitted for that program. Units approved for demolition/disposition continue to be counted for PHDEP formula funding purposes until actual demolition/disposition of the unit.

(2) *Consortium funding.* The amount of funding made available to a consortium will be the total of the amounts that each individual member would otherwise qualify to receive under the PHDEP funding formula in accordance with paragraph (a)(1) of this section.

(3) *Adjustments to funding.* The amount of funding made available each FFY to an applicant in accordance with paragraphs (a)(1) and (a)(2) of this section may be adjusted as follows:

(i) An applicant must submit a PHDEP plan that meets the requirements of § 761.21, as required by § 761.15(a)(5), each FFY year to receive that FFY's funding. An applicant that does not submit a PHDEP plan for a FFY as required will not receive that FFY's funding.

(ii) Ineligible activities, described at § 761.17(b), are not eligible for funding. Activities proposed for funding in an applicant's PHDEP plan that are determined to be ineligible will not be funded, and the applicant's funding for that FFY may be reduced accordingly.

(iii) In accordance with § 761.15(a)(6), an applicant that does not meet the performance requirements of § 761.23 will be subject to the sanctions listed in § 761.30(f)(2).

(iv) Both the amount of and continuing eligibility for funding is subject to the sanctions in § 761.30(f).

(v) Any amounts that become available because of adjustments to an applicant's funding will be distributed to every other applicant that qualifies for funding in accordance with paragraphs (a)(1) and (a)(2) of this section.

(b) *AHDEP funding.* Information concerning funding made available under AHDEP for a given FFY will be contained in Notices of Funding Availability (NOFAs) published in the FEDERAL REGISTER.

[64 FR 49918, Sept. 14, 1999]

§ 761.15 Qualifying for funding.

(a) *Qualifications for PHDEP funding.* (1) *Eligible applicants.* The following are eligible applicants for PHDEP funding:

(i) A PHA;

(ii) An RMC; and

(iii) A consortium of PHAs.

(2) *Preference PHAs.* A PHA that successfully competed for PHDEP funding under at least one of the PHDEP NOFAs for FFY 1996, FFY 1997 or FFY 1998 qualifies to receive PHDEP funding.

(3) *Needs qualification for funding.* An eligible applicant that does not qualify to receive PHDEP funding under paragraph (a)(2) of this section must be in one of the following needs categories to qualify for funding:

(i) The eligible applicant must be in the top 50% of the unit-weighted distribution of an index of a rolling average rate of violent crimes of the community, as computed for each Federal Fiscal Year (FFY). The crime rate used in this needs determination formula is the rate, from the most recent years feasible, of FBI violent crimes per 10,000 residents of the community (or communities). If this information is not available for a particular applicant's community, HUD will use the average of data from recipients of a comparable State and size category of PHA (less than 500 units, 500 to 1249 units, and more than 1250 units). If fewer than five PHAs have data for a given size category within a State, then the average of PHAs for a given size category within the census region will be used; or

(ii) The eligible applicant must have qualified for PHDEP funding, by receiving an application score of 70 or more points under any one of the PHDEP NOFAs for FFY 1996, FFY 1997 or FFY 1998, but not have received an award because of the unavailability of funds.

(4) *Consortium of eligible applicants.* Eligible applicants may join together and form a consortium to apply for funding, whether or not each member would individually qualify for PHDEP funding under paragraphs (a)(2) or (a)(3) of this section. The act of two or more eligible applicants joining together to form a consortium, and identifying related crime problems and eligible activities to address those problems pursuant to a consortium PHDEP plan, qualifies the consortium for PHDEP funding of an amount as determined under § 761.13(a)(2).

(5) *PHDEP plan requirement.* (i) *PHAs.* Except as provided in paragraph (a)(5)(ii), below, of this section, to receive PHDEP funding, a PHA that qualifies to receive PHDEP funding for Federal Fiscal Year 2000 and beyond must include a PHDEP plan that meets the requirements of § 761.21 with its PHA Plan submitted pursuant to part 903 of this title for each Federal Fiscal Year for which it qualifies for funding.

(ii) To receive PHDEP funding, a PHA that qualifies to receive PHDEP funding and is operating under an executed Moving To Work (MTW) agreement with HUD must submit a PHDEP plan that meets the requirements of § 761.21 with its required MTW plan for each Federal Fiscal Year for which it qualifies for funding.

(iii) *RMCs.* To receive PHDEP funding, an RMC operating in an PHA that qualifies to receive PHDEP funding must submit a PHDEP plan for the units managed by the RMC that meets the requirements of § 761.21 to its PHA. Upon agreement between the RMC and PHA, the PHA must submit to HUD, with its PHA Plan submitted pursuant to part 903 of this title, the RMC's PHDEP plan. The RMC will implement its plan as a subrecipient of the PHA.

(iv) *Consortia.* To receive PHDEP funding, the consortium members must prepare and submit a consortium PHDEP plan that meets the requirements of § 761.21, including the additional requirements that apply to consortia. Each member must submit the consortium plan with its PHA plan, submitted pursuant to part 903 of this title, or IHP, submitted pursuant to subpart C of part 1000 of this title, as appropriate.

(6) An otherwise qualified recipient PHA, RMC or consortium may not be funded if HUD determines, on a case-by-case basis, that it does not meet the performance requirements of § 761.23.

(b) *Qualifications for AHDEP funding.* Under AHDEP, eligible applicants are owners of federally assisted low-income housing, as the term *Federally assisted low-income housing* is defined in § 761.10. Notices of Funding Availability (NOFAs) published in the FEDERAL REGISTER will contain specific information concerning funding requirements and eligible and ineligible applicants and activities.

[64 FR 49918, Sept. 14, 1999]

§ 761.17 Eligible and ineligible activities for funding.

(a) *Eligible activities.* One or more of the eligible activities described in 42 U.S.C. 11903 and in this § 761.17(a) are eligible for funding under PHDEP or AHDEP, as further explained or limited in paragraph (b) of this section and, for AHDEP, in separate annual Notices of

Funding Availability (NOFAs). All personnel funded by these programs in accordance with an eligible activity must meet, and demonstrate compliance with, all relevant Federal, State, tribal, or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(1) *Employment of security personnel,* as provided in 42 U.S.C. 11903(a)(1), with the following additional requirements:

(i) *Security guard personnel.* (A) Contract security personnel funded by this program must perform services not usually performed by local law enforcement agencies on a routine basis. The applicant must identify the baseline services provided by the local law enforcement agency.

(B) The applicant, the provider (contractor) of the security personnel and, only if the local law enforcement agency is receiving any PHDEP funds from the applicant, the local law enforcement agency, are required, as a part of the security personnel contract, to enter into and execute a written agreement that describes the following:

(*1*) The activities to be performed by the security personnel, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(*2*) The types of activities that the security personnel are expressly prohibited from undertaking.

(ii) *Employment of HA police.* (A) If additional HA police are to be employed for a service that is also provided by a local law enforcement agency, the applicant must undertake and retain a cost analysis that demonstrates the employment of HA police is more cost efficient than obtaining the service from the local law enforcement agency.

(B) Additional HA police services to be funded under this program must be over and above those that the existing HA police, if any, provides, and the tribal, State or local government is contractually obligated to provide under its Cooperation Agreement with the applying HA (as required by the HA's Annual Contributions Contract). An applicant seeking funding for this activity must first establish a baseline by describing the current level of services provided by both the local law enforcement agency and the HA police, if any (in terms of the kinds of services provided, the number of officers and equipment and the actual percent of their time assigned to the developments proposed for funding), and then demonstrate that the funded activity will represent an increase over this baseline.

(C) If the local law enforcement agency is receiving any PHDEP funds from the applicant, the applicant and the local law enforcement agency are required to enter into and execute a written agreement that describes the following:

(*1*) The activities to be performed by the HA police, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(*2*) The types of activities that the HA police are expressly prohibited from undertaking.

(2) *Reimbursement of local law enforcement agencies for additional security and protective services,* as provided in 42 U.S.C. 11903(a)(2), with the following additional requirements:

(i) Additional security and protective services to be funded must be over and above those that the tribal, State, or local government is contractually obligated to provide under its Cooperation Agreement with the applying HA (as required by the HA's Annual Contributions Contract). An application seeking funding for this activity must first establish a baseline by describing the current level of services (in terms of the kinds of services provided, the number of officers and equipment, and the actual percent of their time assigned to the developments proposed for funding) and then demonstrate that the funded activity will represent an increase over this baseline.

(ii) Communications and security equipment to improve the collection, analysis, and use of information about drug-related or violent criminal activities in a public housing community may be eligible items if used exclusively in connection with the establishment of a law enforcement substation on the funded premises or scattered site developments of the applicant. Funds for activities under this section may not be drawn until the grantee has

executed a contract for the additional law enforcement services.

(3) *Physical improvements to enhance security,* as provided in 42 U.S.C. 11903(a)(3). For purposes of PHDEP, the following provisions in paragraphs (a)(3)(i) through (a)(3)(iv) of this section apply:

(i) An activity that is funded under any other HUD program shall not also be funded by this program.

(ii) Funding is not permitted for physical improvements that involve the demolition of any units in a development.

(iii) Funding is not permitted for any physical improvements that would result in the displacement of persons.

(iv) Funding is not permitted for the acquisition of real property.

(4) *Employment of investigating individuals,* as provided in 42 U.S.C. 11903(a)(4). For purposes of PHDEP, the following provisions in paragraphs (a)(4)(i) and (a)(4)(ii) of this section apply:

(i) If one or more investigators are to be employed for a service that is also provided by a local law enforcement agency, the applicant must undertake and retain a cost analysis that demonstrates the employment of investigators is more cost efficient than obtaining the service from the local law enforcement agency.

(ii) The applicant, the investigator(s) and, only if the local law enforcement agency is receiving any PHDEP funds from the applicant, the local law enforcement agency, are required, before any investigators are employed, to enter into and execute a written agreement that describes the following:

(A) The nature of the activities to be performed by the investigators, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(B) The types of activities that the investigators are expressly prohibited from undertaking.

(5) *Voluntary tenant patrols,* as provided in 42 U.S.C. 11903(a)(5). For purposes of PHDEP, the following provisions in paragraphs (a)(5)(i) through (a)(5)(iv) of this section apply:

(i) The provision of training, communications equipment, and other related equipment (including uniforms), for use by voluntary tenant patrols acting in cooperation with officials of local law enforcement agencies is permitted. Grantees are required to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol. The cost of this insurance will be considered an eligible program expense.

(ii) The applicant, the members of the tenant patrol and, only if the local law enforcement agency is receiving any PHDEP funds from the applicant, the local law enforcement agency, are required, before putting the tenant patrol into effect, to enter into and execute a written agreement that describes the following:

(A) The nature of the activities to be performed by the tenant patrol, the patrol's scope of authority, and how the patrol will coordinate its activities with the local law enforcement agency;

(B) The types of activities that a tenant patrol is expressly prohibited from undertaking, to include but not limited to, the carrying or use of firearms or other weapons, nightsticks, clubs, handcuffs, or mace in the course of their duties under this program;

(C) The type of initial tenant patrol training and continuing training the members receive from the local law enforcement agency (training by the local law enforcement agency is required before putting the tenant patrol into effect).

(iii) Tenant patrol members must be advised that they may be subject to individual or collective liability for any actions undertaken outside the scope of their authority and that such acts are not covered under a HA's or RMC's liability insurance.

(iv) Grant funds may not be used for any type of financial compensation for voluntary tenant patrol participants. However, the use of program funds for a grant coordinator for volunteer tenant foot patrols is permitted.

(6) *Drug prevention, intervention, and treatment programs,* as provided in 42 U.S.C. 11903(a)(6).

(7) *Funding resident management corporations (RMCs), resident councils (RCs), and resident organizations (ROs).* For purposes of the Public Housing Program, funding may be provided for PHAs that receive grants to contract

with RMCs and incorporated RCs and ROs to develop security and drug abuse prevention programs involving site residents, as provided in 42 U.S.C. 11903(a)(7).

(8) *Youth sports.* Sports programs and sports activities that serve primarily youths from public or other federally assisted low-income housing projects and are operated in conjunction with, or in furtherance of, an organized program or plan designed to reduce or eliminate drugs and drug-related problems in and around such projects, as provided in 42 U.S.C. 11903(a)(8).

(9) *Eliminating drug-related and violent crime in PHA-owned housing,* under the Public Housing Program, as provided in 42 U.S.C. 11903(b).

(b) *Ineligible activities.* For purposes of PHDEP, funding is not permitted:

(1) For activities not included under paragraph (a) of this section;

(2) For costs incurred before the effective date of the grant agreement;

(3) For the costs related to screening or evicting residents for drug-related crime. However, investigators funded under this program may participate in judicial and administrative proceedings;

(4) For previously funded activities determined by HUD on a case-by-case basis to be unworthy of continuation.

[64 FR 49919, Sept. 14, 1999]

Subpart C—Application and Selection

§ 761.20 Selection requirements.

(a) *PHDEP selection.* Every PHA, RMC and consortium that meets the requirements of § 761.15 in a FFY will be selected for funding in that FFY and, subject to meeting the performance requirements of § 761.23, for four additional FFYs.

(b) *AHDEP selection.* HUD will publish specific Notices of Funding Availability (NOFAs) in the FEDERAL REGISTER to inform the public of the availability of AHDEP grant amounts under this part 761. The NOFAs will provide specific guidance with respect to the grant process, including identifying the eligible applicants; deadlines for the submission of grant applications; the limits (if any) on maximum grant amounts; the information that must be submitted to permit HUD to score each of the selection criteria; the maximum number of points to be awarded for each selection criterion; the contents of the plan for addressing drug-related and violent crime that must be included with the application; the listing of any certifications and assurances that must be submitted with the application; and the process for ranking and selecting applicants. NOFAs will also include any additional information, factors, and requirements that HUD has determined to be necessary and appropriate to provide for the implementation and administration of AHDEP under this part 761.

[64 FR 49920, Sept. 14, 1999]

§ 761.21 Plan requirement.

(a) *General requirement.* To receive funding under this part, each PHDEP qualified recipient or AHDEP applicant must submit to HUD, for Federal Fiscal Year (FFY) 2000 and each following FFY, a plan for addressing the problem of drug-related and violent crime in and around the housing covered by the plan. If the plan covers more than one development, it does not have to address each development separately if the same activities will apply to each development. The plan must address each development separately only where program activities will differ from one development to another. The plan must include a description of the planned activity or activities, a description of the role of plan partners and their contributions to carrying out the plan, a budget and timetable for implementation of the activities, and the funding source for each activity, identifying in particular all activities to be funded under this part. In addition, the plan must set measurable performance goals and interim milestones for the PHDEP-supported activities and describe the system for monitoring and evaluating these activities. Measurable goals must be established for each category of funded activities, including drug prevention, drug intervention, drug treatment, tenant patrols, and physical improvements. The plan under this section serves as the application for PHDEP funding, and an otherwise qualified recipient that does not

submit a PHDEP plan as required will not be funded. For AHDEP funding, NOFAs published in the FEDERAL REGISTER may provide additional information on plan requirements for purposes of this section. Plans must meet the requirements of this section before grant funds are distributed. HUD will review the submitted plans for a determination of whether they meet the requirements of this section.

(b) *Additional requirements for consortia.* In addition to meeting the requirements of paragraph (a) of this section, to receive funding under this part, a consortium's plan must include a copy of the consortium agreement between the PHAs which are participating in the consortium, and a copy of the payment agreement between the consortium and HUD.

[64 FR 49920, Sept. 14, 1999]

§ 761.23 Grantee performance requirements.

(a) *Basic grantee requirements.* (1) *Compliance with civil rights requirements.* Grantees must be in compliance with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). Federally recognized Indian tribes must comply with the Age Discrimination Act of 1975 and the Indian Civil Rights Act.

(2) *Adherence to the grant agreement.* The grant agreement between HUD and the grantee incorporates the grantee's application and plan for the implementation of grant-funded activities.

(3) *Compliance with ''baseline'' funding requirement.* Grantees may not use grant funds to reimburse law enforcement agencies for ''baseline'' community safety services. Grantees must adhere to § 761.17(a)(2)(i), reimbursement of local law enforcement agencies for additional security and protective services. In addition, grantees must provide to HUD a description of the baseline of services for the unit of general local government in which the jurisdiction of the agency is located.

(4) *Partnerships.* Grantees must provide HUD with evidence of partnerships—in particular, firm commitments by organizations providing funding, services, or other in-kind resources for PHDEP-funded activities (e.g., memorandum of agreement, letter of firm commitment). The partnership agreement must cover the applicable funding period.

(5) *MTCS reporting.* Grantees must maintain a level of compliance with MTCS reporting requirements that is satisfactory to HUD.

(b) *Planning and reporting requirements.* (1) *Planning consistency.* PHDEP funded activities must be consistent with the most recent HUD-approved PHA Plan or Indian Housing Plan, as appropriate. AHDEP funded activities must be consistent with the most recent Consolidated Plan under part 91 of this title for the community.

(2) *Demonstration of coordination with other law enforcement efforts.* Each grantee must consult with local law enforcement authorities and other local entities in the preparation of its plan for addressing the problem of drug-related and violent crime under § 761.21 and must maintain documentation of such consultation. Furthermore, a grantee must coordinate its grant-funded activities with other anti-crime and anti-drug programs, such as Operation Safe Home, Operation Weed and Seed, and the Safe Neighborhoods Action Program operating in the community, if applicable and maintain documentation of such coordination.

(3) *Compliance with reporting requirements.* Grantees must provide periodic reports consistent with this part at such times and in such form as is required by HUD.

(4) *Reporting on drug-related and violent crime.* Grantees must report any change or lack of change in crime statistics—especially drug-related crime and violent crime—or other relevant indicators drawn from the applicant's or grantee's evaluation and monitoring plan, IHP or PHA Plan. The grantee must also indicate, if applicable, how it is adequately addressing any recommendations emanating from other anti-crime and anti-drug programs, such as Operation Safe Home, Operation Weed and Seed, and the Safe Neighborhoods Action Program, operating in the community and is taking appropriate actions, in view of available resources, such as post-enforcement measures, to take full advantage of these programs.

(c) *Funding and evaluation requirements.* (1) *Timely obligation and expenditure of grant funds.* The HA must obligate and expend funds in compliance with all funding notifications, regulations, notices, and grant agreements. In addition, the HA must obligate at least 50 percent of funds under a particular grant within 12 months of the execution of the grant agreement, and must expend at least 25 percent of funds under a particular grant within 12 months of the execution of the grant agreement.

(2) *Operational monitoring and evaluation system.* The grantee must demonstrate that it has a fully operational system for monitoring and evaluating its grant-funded activities. A monitoring and evaluation system must collect quantitative evidence of the number of persons and units served, including youth served as a separate category, types of services provided, and the impact of such services on the persons served. Also, the monitoring and evaluation system must collect quantitative and qualitative evidence of the impact of grant-funded activities on the public housing or other housing, the community and the surrounding neighborhood.

(3) *Reduction of violent crime and drug use.* The grantee must demonstrate that it has established, and is attaining, measurable goals including the overall reduction of violent crime and drug use.

(d) *Other requirements.* HUD reserves the right to add additional performance factors consistent with this rule and other related statutes and regulations on a case-by-case basis.

(e) *Sanctions.* A grantee that fails to satisfy the performance requirements of this section will be subject to the sanctions listed in § 761.30(f)(2).

[64 FR 49921, Sept. 14, 1999]

§ 761.25 Resident comments on grant application.

The applicant must provide the residents of developments proposed for funding under this part 761, as well as any RMCs, RCs, or ROs that represent those residents (including any HA-wide RMC, RC, or RO), if applicable, with a reasonable opportunity to comment on its application for funding under these programs. The applicant must give these comments careful consideration in developing its plan and application, as well as in the implementation of funded programs. Grantees must maintain copies of all written comments submitted for three years.

Subpart D—Grant Administration

§ 761.30 Grant administration.

(a) *General.* Each grantee is responsible for ensuring that grant funds are administered in accordance with the requirements of this part 761, any specific Notices of Funding Availability (NOFAs) issued for these programs, 24 CFR part 85 (as applicable), applicable laws and regulations, applicable OMB circulars, HUD fiscal and audit controls, grant agreements, grant special conditions, the grantee's approved budget (SF–424A), budget narrative, plan, and activity timetable.

(b) *Grant term extensions.* (1) *Grant term.* Terms of the grant agreement may not exceed 12 months for the Assisted Housing Program, and 24 months for the Public Housing Program, unless an extension is approved by the local HUD Office or local HUD Office of Native American Programs. Any funds not expended at the end of the grant term shall be remitted to HUD.

(2) *Extension.* HUD may grant an extension of the grant term in response to a written request for an extension stating the need for the extension and indicating the additional time required. HUD will not consider requests for retroactive extension of program periods. HUD will permit only one extension. HUD will only consider extensions if the grantee meets the extension criteria of paragraph (b)(5) of this section at the time the grantee submits for approval the request for the extension.

(3) *Receipt.* The request must be received by the local HUD Office or local HUD Office of Native American Programs prior to the termination of the grant, and requires approval by the local HUD Office or local HUD Office of Native American Programs with jurisdiction over the grantee.

(4) *Term.* The maximum extension allowable for any program period is 6 months.

(5) *Extension criteria.* The following criteria must be met by the grantee when submitting a request to extend the expenditure deadline for a program or set of programs.

(i) *Financial status reports.* There must be on file with the local HUD Office or local HUD Office of Native American Programs current and acceptable Financial Status Reports, SF–269As.

(ii) *Grant agreement special conditions.* The grantee must have satisfied all grant agreement special conditions except those conditions that the grantee must fulfill in the remaining period of the grant. This also includes the performance and resolution of audit findings in a timely manner.

(iii) *Justification.* The grantee must submit a narrative justification with the program extension request. The justification must provide complete details, including the circumstances that require the proposed extension, and an explanation of the impact of denying the request.

(6) *HUD action.* The local HUD Office or local HUD Office of Native American Programs will attempt to take action on any proposed extension request within 15 days after receipt of the request.

(c) *Duplication of funds.* To prevent duplicate funding of any activity, the grantee must establish controls to assure that an activity or program that is funded by other HUD programs, or programs of other Federal agencies, shall not also be funded by the Drug Elimination Program. The grantee must establish an auditable system to provide adequate accountability for funds that it has been awarded. The grantee is responsible for ensuring that there is no duplication of funds.

(d) *Insurance.* Each grantee shall obtain adequate insurance coverage to protect itself against any potential liability arising out of the eligible activities under this part. In particular, applicants shall assess their potential liability arising out of the employment or contracting of security personnel, law enforcement personnel, investigators, and drug treatment providers, and the establishment of voluntary tenant patrols; evaluate the qualifications and training of the individuals or firms undertaking these functions; and consider any limitations on liability under tribal, State, or local law. Grantees shall obtain liability insurance to protect the members of the voluntary tenant patrol against potential liability as a result of the patrol's activities under § 761.15(b)(5). Voluntary tenant patrol liability insurance costs are eligible program expenses. Subgrantees shall obtain their own liability insurance.

(e) *Failure to implement program.* If the grant plan, approved budget, and timetable, as described in the approved application, are not operational within 60 days of the grant agreement date, the grantee must report by letter to the local HUD Office or the local HUD Office of Native American Programs the steps being taken to initiate the plan and timetable, the reason for the delay, and the expected starting date. Any timetable revisions that resulted from the delay must be included. The local HUD Office or local HUD Office of Native American Programs will determine if the delay is acceptable, approve/disapprove the revised plan and timetable, and take any additional appropriate action.

(f) *Sanctions.* (1) HUD may impose sanctions if the grantee:

(i) Is not complying with the requirements of this part 761, or of other applicable Federal law;

(ii) Fails to make satisfactory progress toward its drug elimination goals, as specified in its plan and as reflected in its performance and financial status reports;

(iii) Does not establish procedures that will minimize the time elapsing between drawdowns and disbursements;

(iv) Does not adhere to grant agreement requirements or special conditions;

(v) Proposes substantial plan changes to the extent that, if originally submitted, the applications would not have been selected for funding;

(vi) Engages in the improper award or administration of grant subcontracts;

(vii) Does not submit reports; or

(viii) Files a false certification.

(2) HUD may impose the following sanctions:

(i) Temporarily withhold cash payments pending correction of the deficiency by the grantee or subgrantee;

(ii) Disallow all or part of the cost of the activity or action not in compliance;

(iii) Wholly or partly suspend or terminate the current award for the grantee's or subgrantee's program;

(iv) Require that some or all of the grant amounts be remitted to HUD;

(v) Condition a future grant and elect not to provide future grant funds to the grantee until appropriate actions are taken to ensure compliance;

(vi) Withhold further awards for the program; or

(vii) Take other remedies that may be legally available.

§ 761.35 Periodic grantee reports.

Grantees are responsible for managing the day-to-day operations of grant and subgrant supported activities. Grantees must monitor grant and subgrant supported activities to assure compliance with applicable Federal requirements and that performance goals are being achieved. Grantee monitoring must cover each program, function or activity of the grant.

(a) *Semi-annual (nonconstruction) performance reports.* For purposes of the Public Housing Program only, the following provisions in paragraph (a) of this section apply:

(1) In accordance with 24 CFR 85.40(b)(1)(2) and 85.50(b), grantees are required to provide the local HUD Office or the local HUD Office of Native American Programs with a semi-annual performance report that evaluates the grantee's performance against its plan. These reports shall include (but are not limited to) the following in summary form:

(i) Any change or lack of change in crime statistics or other indicators drawn from the applicant's plan assessment and an explanation of any difference;

(ii) Successful completion of any of the strategy components identified in the applicant's plan;

(iii) A discussion of any problems encountered in implementing the plan and how they were addressed;

(iv) An evaluation of whether the rate of progress meets expectations;

(v) A discussion of the grantee's efforts in encouraging resident participation; and

(vi) A description of any other programs that may have been initiated, expanded, or deleted as a result of the plan, with an identification of the resources and the number of people involved in the programs and their relation to the plan.

(2) *Reporting period.* Semi-annual performance reports (for periods ending June 30 and December 31) are due to the local HUD Office or the local HUD Office of Native American Programs on July 30 and January 31 of each year. If the reports are not received by the local HUD Office or the local HUD Office of Native American Programs on or before the due date, grant funds will not be advanced until the reports are received.

(b) *Final performance report.* For purposes of both the Assisted Housing Program and the Public Housing Program, the following provisions in paragraph (b) of this section apply:

(1) *Evaluation.* Grantees are required to provide the local HUD Office or the local HUD Office of Native American Programs, as applicable, with a final cumulative performance report that evaluates the grantee's overall performance against its plan. This report shall include (but is not limited to) the information listed in paragraphs (a)(1)(i) through (a)(1)(vi) of this section, in summary form.

(2) *Reporting period.* The final performance report shall cover the period from the date of the grant agreement to the termination date of the grant agreement. The report is due to the local HUD Office or the local HUD Office of Native American Programs, as applicable, within 90 days after termination of the grant agreement.

(c) *Semi-annual financial status reporting requirements.* For purposes of both the Assisted Housing Program and the Public Housing Program, the following provisions in paragraph (c) of this section apply, as specified below:

(1) *Forms.* The grantee shall provide a semi-annual financial status report. For purposes of the Public Housing Program, this report shall be in accordance with 24 CFR 85.41 (b) and (c). For both the Assisted Housing and Public

Housing Programs, the grantee shall use the form SF–269A, Financial Status Report-Long Form, to report the status of funds for nonconstruction programs. The grantee shall use SF–269A, block 12, ''Remarks,'' to report on the status of programs, functions, or activities within the program.

(2) *Reporting period.* Semi-annual financial status reports (SF–269A) must be submitted as follows:

(i) For purposes of the Assisted Housing Program, semi-annual financial status reports covering the first 180 days of funded activities must be submitted to the local HUD Office between 190 and 210 days after the date of the grant agreement. If the SF–269A is not received on or before the due date (210 days after the date of the grant agreement) by the local HUD Office, grant funds will not be advanced until the reports are received.

(ii) For purposes of the Public Housing Program, semi-annual financial status reports (for periods ending June 30 and December 31) must be submitted to the local HUD Office or the local Office of Indian Programs, as applicable, by July 30 and January 31 of each year. If the local HUD Office or the local HUD Office of Native American Programs, as applicable, does not receive the SF–269A on or before the due date, the grant funds will not be advanced until the reports are received.

(d) *Final financial status report (SF–269A).* For purposes of both the Assisted Housing Program and the Public Housing Program, the following provisions in paragraph (d) of this section apply:

(1) *Cumulative summary.* The final report will be a cumulative summary of expenditures to date and must indicate the exact balance of unexpended funds. The grantee shall remit all Drug Elimination Program funds owed to HUD, including any unexpended funds, as follows:

(i) For purposes of the Assisted Housing Program, the grantee must remit such funds to HUD within 90 days after the termination of the grant agreement.

(ii) For purposes of the Public Housing Program, the local HUD Office or the local HUD Office of Native American Programs shall notify the grantee, in writing, of the requirement to remit such funds to HUD. The grantee shall remit such funds prior to or upon receipt of the notice.

(2) *Reporting period.* The final financial status report shall cover the period from the date of the grant agreement to the termination date of the grant agreement. The report is due to the local HUD Office or the local HUD Office of Native American Programs, as applicable, within 90 days after the termination of the grant agreement.

§ 761.40 Other Federal requirements.

In addition to the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5, subpart A, use of grant funds requires compliance with the following Federal requirements:

(a) *Labor standards.* (1) When grant funds are used to undertake physical improvements to increase security under § 761.15(b)(3), the following labor standards apply:

(i) The grantee and its contractors and subcontractors must pay the following prevailing wage rates, and must comply with all related rules, regulations and requirements:

(A) For laborers and mechanics employed in the program, the wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a et seq.) to be prevailing in the locality with respect to such trades;

(B) For laborers and mechanics employed in carrying out nonroutine maintenance in the program, the HUD-determined prevailing wage rate. As used in paragraph (a) of this section, nonroutine maintenance means work items that ordinarily would be performed on a regular basis in the course of upkeep of a property, but have become substantial in scope because they have been put off, and that involve expenditures that would otherwise materially distort the level trend of maintenance expenses. Nonroutine maintenance may include replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind. Work that constitutes reconstruction, a substantial improvement in the quality or kind of original

equipment and materials, or remodeling that alters the nature or type of housing units is not nonroutine maintenance.

(ii) The employment of laborers and mechanics is subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333).

(2) The provisions of paragraph (a)(1) of this section shall not apply to labor contributed under the following circumstances:

(i) Upon the request of any resident management corporation, HUD may, subject to applicable collective bargaining agreements, permit residents (for purposes of the Public Housing Program, residents of a program managed by the resident management corporation) to volunteer a portion of their labor.

(ii) An individual may volunteer to perform services if:

(A) The individual does not receive compensation for the voluntary services, or is paid expenses, reasonable benefits, or a nominal fee for voluntary services; and

(B) Is not otherwise employed at any time in the work subject to paragraphs (a)(1)(i)(A) or (a)(1)(i)(B) of this section.

(b) *Flood insurance.* Grants will not be awarded for proposed activities that involve acquisition, construction, reconstruction, repair or improvement of a building or mobile home located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

(1) The community in which the area is situated is participating in the National Flood Insurance Program in accordance with 44 CFR parts 59 through 79; or

(2) Less than a year has passed since FEMA notification to the community regarding such hazards; and

(3) Flood insurance on the structure is obtained in accordance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(c) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title.

(d) *Conflicts of interest.* In addition to the conflict of interest requirements in 24 CFR part 85 for the Public Housing Program, no person, as described in paragraphs (d)(1) and (d)(2) of this section, may obtain a personal or financial interest or benefit from an activity funded under these drug elimination programs, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for him or herself or for those with whom he or she has family or business ties, during his or her tenure, or for one year thereafter:

(1) Who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, that receives assistance under the program and who exercises or has exercised any functions or responsibilities with respect to assisted activities; or

(2) Who is in a position to participate in a decisionmaking process or gain inside information with regard to such activities.

(e) *For IHAs,* § 950.115 of this title, ''Applicability of civil rights requirements,'' and § 950.120 of this title, ''Compliance with other Federal requirements,'' apply and control to the extent they may differ from other requirements of this section;

(f) *Intergovernmental Review.* The requirements of Executive Order 12372 (3 CFR, 1982 Comp., p. 197) and the regulations issued under the Order in part 52 of this title, to the extent provided by FEDERAL REGISTER notice in accordance with 24 CFR 52.3, apply to these programs.

(g) *Environmental review.* Certain eligible activities under this part 761 are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and are not subject to review under related laws, in accordance with 24 CFR 50.19(b)(4), (b)(12), or (b)(13). If the PHDEP plan proposes the use of grant funds to assist any non-exempt activities, HUD will perform an environmental review to the extent required by 24 CFR part 50, prior to grant award.

[61 FR 13987, Mar. 28, 1996, as amended at 64 FR 49921, Sept. 14, 1999; 64 FR 50227, Sept. 15, 1999]

PARTS 762–790 [RESERVED]

PART 791—ALLOCATIONS OF HOUSING ASSISTANCE FUNDS

Subpart A—General Provisions

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Subpart D—Allocation of Budget Authority for Housing Assistance

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791.405 Reallocations of budget authority.
791.406 Competition.
791.407 Headquarters Reserve.

AUTHORITY: 42 U.S.C. 1439 and 3535(d).

SOURCE: 61 FR 10849, Mar. 15, 1996, unless otherwise noted.

Subpart A—General Provisions

§ 791.101 Applicability and scope.

This part describes the role and responsibility of HUD in allocation of budget authority (pursuant to section 213 of the Housing and Community Development Act of 1974 (42 U.S.C. 1439)) for housing assistance under the United States Housing Act of 1937 (Section 8 and public housing) and under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), and of budget authority for housing assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1710q). This part does not apply to budget authority for the public housing operating fund or capital fund.

[64 FR 26639, May 14, 1999]

§ 791.102 Definitions.

Act. The Housing and Community Development Act of 1974 (42 U.S.D. 1437), as amended.

Allocation area. A municipality, county, or group of municipalities or counties identified by the HUD field office for the purpose of allocating housing assistance.

Assistant Secretary. The Assistant Secretary for Housing or the Assistant Secretary for Public and Indian Housing, as appropriate to the housing assistance under consideration.

Budget authority. The maximum amount authorized by the Congress for payments over the term of assistance contracts.

Fiscal year. The official operating period of the Federal government, beginning on October 1 and ending on September 30.

Metropolitan area. See MSA.

MSA. A metropolitan statistical area established by the Office of Management and Budget. The term also includes primary metropolitan statistical areas (PMSAs), which are the component parts of larger urbanized areas designated as consolidated metropolitan statistical areas (CMSAs). Where an MSA is divided among two or more field offices, references to an MSA mean the portion of the MSA within the State/Area Office jurisdiction.

Public housing agency (PHA). (1) Any State, county, municipality, or other governmental entity or public body which is authorized to administer a program under the 1937 Act (or an agency or instrumentality of such an entity).

(2) In addition, for purposes of the program of Section 8 tenant-based assistance under part 982 of this title, the term PHA also includes any of the following:

(i) A consortia of housing agencies, each of which meets the qualifications in paragraph (1) of this definition, that HUD determines has the capacity and capability to efficiently administer the program (in which case, HUD may enter into a consolidated ACC with any legal entity authorized to act as the legal representative of the consortia members);

(ii) Any other public or private nonprofit entity that was administering a Section 8 tenant-based assistance program pursuant to a contract with the contract administrator of such program (HUD or a PHA) in effect on October 21, 1998; or

(iii) For any area outside the jurisdiction of a PHA that is administering a tenant-based program, or where HUD determines that such PHA is not administering the program effectively, a

private non-profit entity or a governmental entity or public body that would otherwise lack jurisdiction to administer the program in such area.

[61 FR 10849, Mar. 15, 1996, as amended at 64 FR 26639, May 14, 1999]

Subparts B–C [Reserved]

Subpart D—Allocation of Budget Authority for Housing Assistance

§ 791.401 General.

This subpart D establishes the procedures for allocating budget authority under section 213(d) of the Act for the programs identified in § 791.101. It describes the allocation of budget authority by the appropriate Assistant Secretary to the applicable Program Office Director in the HUD field office, and by the Program Office Director to allocation areas within their jurisdiction.

[61 FR 10849, Mar. 15, 1996, as amended at 64 FR 26639, May 14, 1999]

§ 791.402 Determination of low-income housing needs.

(a) Before budget authority is allocated, the Assistant Secretary for Policy Development and Research shall determine the relative need for low-income housing assistance in each HUD field office jurisdiction. This determination shall be based upon data from the most recent, available decennial census and, where appropriate, upon more recent data from the Bureau of the Census or other Federal agencies, or from the American Housing Survey.

(b) Except for paragraph (c) of this section, the factors used to determine the relative need for assistance shall be based upon the following criteria:

(1) *Population.* The renter population;

(2) *Poverty.* The number of renter households with annual incomes at or below the poverty level, as defined by the Bureau of the Census;

(3) *Housing overcrowding.* The number of renter-occupied housing units with an occupancy ratio of 1.01 or more persons per room;

(4) *Housing vacancies.* The number of renter housing units that would be required to maintain vacancies at levels typical of balanced market conditions;

(5) *Substandard housing.* The number of housing units built before 1940 and occupied by renter households with annual incomes at or below the poverty level, as defined by the Bureau of the Census; and

(6) *Other objectively measurable conditions.* Data indicating potential need for rental housing assistance, such as the number of renter households with incomes below specified levels and paying a gross rent of more than 30 percent of household income.

(c) For the section 202 elderly program, the data used shall reflect relevant characteristics of the elderly population. The data shall use the criteria specified in paragraph (b)(1) and (6) of this section, as modified to apply specifically to the needs of the elderly population.

(d) Based on the criteria in paragraphs (b) and (c) of this section, the Assistant Secretary for Policy Development and Research shall establish housing needs factors for each county and independent city in the field office jurisdiction, and shall aggregate the factors for such jurisdiction. The field office total for each factor is then divided by the respective national total for that factor. The resulting housing needs ratios under paragraph (b) of this section are then weighted to provide housing needs percentages for each field office, using the following weights: population—20 percent; poverty—20 percent; housing overcrowding—10 percent; housing vacancies—10 percent; substandard housing—20 percent; other objectively measurable conditions—20 percent. For the section 202 elderly program, the two criteria described in paragraph (c) of this section are weighted equally.

(e) The Assistant Secretary for Policy Development and Research shall adjust the housing needs percentages derived in paragraph (d) of this section to reflect the relative cost of providing housing among the field office jurisdictions.

[61 FR 10849, Mar. 15, 1996, as amended at 64 FR 26639, May 14, 1999]

§ 791.403 Allocation of housing assistance.

(a) The total budget authority available for any fiscal year shall be determined by adding any available unreserved budget authority from prior fiscal years to any newly appropriated budget authority for each housing program.

(b) Budget authority available for the fiscal year, except for that retained pursuant to § 791.407, shall be allocated to the field offices as follows:

(1) Budget authority shall be allocated as needed for uses that the Secretary determines are incapable of geographic allocation by formula, including—

(i) Amendments of existing contracts, renewal of assistance contracts, assistance to families that would otherwise lose assistance due to the decision of the project owner to prepay the project mortgage or not to renew the assistance contract, assistance to prevent displacement or to provide replacement housing in connection with the demolition or disposition of public housing, assistance in support of the property disposition and loan management functions of the Secretary;

(ii) Assistance which is—

(A) The subject of a line item identification in the HUD appropriations law, or in the table customarily included in the Conference Report on the appropriation for the Fiscal Year in which the funds are to be allocated;

(B) Reported in the Operating Plan submitted by HUD to the Committees on Appropriations; or

(C) Included in an authorization statute where the nature of the assistance, such as a prescribed set-aside, is, in the determination of the Secretary, incapable of geographic allocation by formula,

(iii) Assistance determined by the Secretary to be necessary in carrying out the following programs authorized by the Cranston-Gonzalez National Affordable Housing Act: the Homeownership and Opportunity Through HOPE Act under title IV and HOPE for Elderly Independence under section 803.

(2) Budget authority remaining after carrying out allocation steps outlined in paragraph (b)(1) of this section shall be allocated in accordance with the housing needs percentages calculated under paragraphs (b), (c), (d), and (e) of § 791.402. HUD may allocate assistance under this paragraph in such a manner that each State shall receive not less than one-half of one percent of the amount of funds available for each program referred to in § 791.101(a) in each fiscal year. If the budget authority for a particular program is insufficient to fund feasible projects, or to promote meaningful competition, at the field office level, budget authority may be allocated among the ten geographic areas of the country. The funds so allocated will be assigned by Headquarters to the field office(s) with the highest ranked applications within the ten geographic areas.

(c) At least annually HUD will publish a notice in the FEDERAL REGISTER informing the public of all allocations under § 791.403(b)(2).

[61 FR 10849, Mar. 15, 1996, as amended at 64 FR 26640, May 14, 1999]

§ 791.404 Field Office allocation planning.

(a) *General objective.* The allocation planning process should provide for the equitable distribution of available budget authority, consistent with the relative housing needs of each allocation area within the field office jurisdiction.

(b) *Establishing allocation areas.* Allocation areas, consisting of one or more counties or independent cities, shall be established by the field office in accordance with the following criteria:

(1) Each allocation shall be to the smallest practicable area, but of sufficient size so that at least three eligible entities are viable competitors for funds in the allocation area, and so that all applicable statutory requirements can be met. (It is expected that in many instances individual MSAs will be established as metropolitan allocation areas.) For the section 202 program for the elderly, the allocation area must include sufficient units to promote a meaningful competition among disparate types of providers of such housing (e.g., local as well as national sponsors, minority as well as non-minority sponsors). The preceding

sentence shall not apply to projects acquired from the Resolution Trust Corporation under section 21A(c) of the Federal Home Loan Bank Act.

(2) Each allocation area shall also be of sufficient size, in terms of population and housing need, that the amount of budget authority being allocated to the area will support at least one feasible program or project.

(3) In establishing allocation areas, counties and independent cities within MSAs should not be combined with counties that are not in MSAs.

(c) *Determining the amount of budget authority.* Where the field office establishes more than one allocation area, it shall determine the amount of budget authority to be allocated to each allocation area, based upon a housing needs percentage which represents the needs of that area relative to the field office jurisdiction. For each program, a composite housing needs percentage developed under § 791.402 for those counties and independent cities comprising the allocation area shall be aggregated into allocation area totals.

(d) *Planning for the allocation.* The field office should develop an allocation plan which reflects the amount of budget authority determined for each allocation area in paragraph (c). The plan should include a map or maps clearly showing the allocation areas within the field office jurisdiction. The relative share of budget authority by individual program type need not be the same for each allocation area, so long as the total amount of budget authority made available to the allocation area is not significantly reduced.

[61 FR 10849, Mar. 15, 1996, as amended at 64 FR 26640, May 14, 1999]

§ 791.405 Reallocations of budget authority.

(a) The field office shall make every reasonable effort to use the budget authority made available for each allocation area within such area. If the Program Office Director determines that not all of the budget authority allocated for a particular allocation area is likely to be used during the fiscal year, the remaining authority may be allocated to other allocation areas where it is likely to be used during that fiscal year.

(b) If the Assistant Secretary determines that not all of the budget authority allocated to a field office is likely to be used during the fiscal year, the remaining authority may be reallocated to another field office where it is likely to be used during that fiscal year.

(c) Any reallocations of budget authority among allocation areas or field offices shall be consistent with the assignment of budget authority for the specific program type and established set-asides.

(d) Notwithstanding the requirements of paragraphs (a) through (c) of this section, budget authority shall not be reallocated for use in another State unless the Program Office Director or the Assistant Secretary has determined that other allocation areas within the same State cannot use the available authority during the fiscal year.

§ 791.406 Competition.

(a) All budget authority allocated pursuant to § 791.403(b)(2) shall be reserved and obligated pursuant to a competition. Any such competition shall be conducted pursuant to specific criteria for the selection of recipients of assistance. These criteria shall be contained in a regulation promulgated after notice and public comment or, to the extent authorized by law, a notice published in the FEDERAL REGISTER.

(b) This section shall not apply to assistance referred to in §§ 791.403(b)(1) and 791.407.

§ 791.407 Headquarters Reserve.

(a) A portion of the budget authority available for the housing programs listed in § 791.101(a), not to exceed an amount equal to five percent of the total amount of budget authority available for the fiscal year for programs under the United States Housing Act of 1937 listed in § 791.101(a), may be retained by the Assistant Secretary for subsequent allocation to specific areas and communities, and may only be used for:

(1) Unforeseen housing needs resulting from natural and other disasters, including hurricanes, tornadoes, storms, high water, wind driven water, tidal waves, tsunamis, earthquakes, volcanic eruptions, landslides,

mudslides, snowstorms, drought, fires, floods, or explosions, which in the determination of the Secretary cause damage of sufficient severity and magnitude to warrant Federal housing assistance;

(2) Housing needs resulting from emergencies, as certified by the Secretary, other than disasters described in paragraph (a)(1) of this section. Emergency housing needs that can be certified are only those that result from unpredictable and sudden circumstances causing housing deprivation (such as physical displacement, loss of Federal rental assistance, or substandard housing conditions) or causing an unforeseen and significant increase in low-income housing demand in a housing market (such as influx of refugees or plant closings);

(3) Housing needs resulting from the settlement of litigation; and

(4) Housing in support of desegregation efforts.

(b) Applications for funds retained under paragraph (a) of this section shall be made to the field office, which will make recommendations to Headquarters for approval or rejection of the application. Applications generally will be considered for funding on a first-come, first-served basis. Specific instructions governing access to the Headquarters Reserve shall be published by notice in the FEDERAL REGISTER, as necessary.

(c) Any amounts retained in any fiscal year under paragraph (a) of this section that are not reserved by the end of such fiscal year shall remain available for the following fiscal year in the program under §791.101(a) from which the amount was retained. Such amounts shall be allocated pursuant to §791.403(b)(2).

PART 792—PUBLIC HOUSING AGENCY SECTION 8 FRAUD RECOVERIES

Subpart A—General Provisions

Sec.
792.101 Purpose.
792.102 Applicability.
792.103 Definitions.

Subpart B—Recovery of Section 8 Funds

792.201 Conduct of litigation.
792.202 PHA retention of proceeds.
792.203 Application of amounts recovered.
792.204 Recordkeeping and reporting.

AUTHORITY: 42 U.S.C. 1437f note and 3535(d).

SOURCE: 59 FR 9409, Feb. 28, 1994, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 792 appear at 64 FR 26640, May 14, 1999.

Subpart A—General Provisions

§792.101 Purpose.

The purpose of this part is to encourage public housing agencies (PHAs) to investigate and pursue instances of tenant and owner fraud and abuse in the operation of the Section 8 housing assistance payments programs.

[64 FR 26640, May 14, 1999]

§792.102 Applicability.

(a) This part applies to a PHA acting as a contract administrator under an annual contributions contract with HUD in any section 8 housing assistance payments program. To be eligible to retain section 8 tenant or owner fraud recoveries, the PHA must be the principal party initiating or sustaining an action to recover amounts from families.

(b) This part applies only to those instances when a tenant or owner committed fraud, and the fraud recoveries are obtained through litigation brought by the PHA (including settlement of the lawsuit), a court-ordered restitution pursuant to a criminal proceeding, or an administrative repayment agreement with the family or owner as a result of a PHA administrative grievance procedure pursuant to, or incorporating the requirements of, §982.555 of this title. This part does not apply to cases of owner fraud in PHA-owned or controlled units, or where incorrect payments were made or benefits received because of calculation errors instead of willful fraudulent activities.

(c) This part applies to all tenant and owner fraud recoveries resulting from litigation brought by the PHA (including settlement of the lawsuit), or a court-ordered restitution pursuant to a

criminal proceeding obtained on or after October 8, 1986, and to all tenant and owner fraud recoveries obtained through administrative repayment agreements signed on or after October 28, 1992.

[59 FR 9409, Feb. 28, 1994, as amended at 64 FR 26640, May 14, 1999]

§ 792.103 Definitions.

Fraud and abuse. Fraud and abuse means a single act or pattern of actions:

(1) That constitutes false statement, omission, or concealment of a substantive fact, made with intent to deceive or mislead; and

(2) That results in payment of section 8 program funds in violation of section 8 program requirements.

The terms *Public Housing Agency (PHA)* and *Indian Housing Authority (IHA)* are defined in 24 CFR part 5.

Judgment. Judgment means a provision for recovery of section 8 program funds obtained through fraud and abuse, by order of a court in litigation or by a settlement of a claim in litigation, whether or not stated in a court order.

Litigation. A lawsuit brought by a PHA to recover section 8 program funds obtained as a result of fraud and abuse.

Principal party in initiating or sustaining an action to recover. Principal party in initiating or sustaining an action to recover means the party that incurs more than half the costs incurred in:

(1) Recertifying tenants who fraudulently obtained section 8 rental assistance;

(2) Recomputing the correct amounts owed by tenants; and

(3) Taking needed actions to recoup the excess benefits received, such as initiating litigation.

Costs incurred to detect potential excessive benefits in the routine day-to-day operations of the program are excluded in determining the principal party in initiating or sustaining an action to recover. For example, the cost of income verification during an annual recertification would not be counted in determining the principal party in initiating or sustaining an action to recover.

Public housing agency (PHA). A public housing agency as defined in § 791.102.

Repayment agreement. Repayment agreement means a formal document signed by a tenant or owner and provided to a PHA in which a tenant or owner acknowledges a debt, in a specific amount, and agrees to repay the amount due at specific time period(s).

[59 FR 9409, Feb. 28, 1994, as amended at 61 FR 5212, Feb. 9, 1996; 64 FR 26640, May 14, 1999]

Subpart B—Recovery of Section 8 Funds

§ 792.201 Conduct of litigation.

The PHA must obtain HUD approval before initiating litigation in which the PHA is requesting HUD assistance or participation.

§ 792.202 PHA retention of proceeds.

(a) Where the PHA is the principal party initiating or sustaining an action to recover amounts from tenants that are due as a result of fraud and abuse, the PHA may retain, the greater of:

(1) Fifty percent of the amount it actually collects from a judgment, litigation (including settlement of lawsuit) or an administrative repayment agreement pursuant to, or incorporating the requirements of, § 982.555 of this title; or

(2) Reasonable and necessary costs that the PHA incurs related to the collection from a judgment, litigation (including settlement of lawsuit) or an administrative repayment agreement pursuant to, or incorporating the requirements of, § 982.555 of this title. Reasonable and necessary costs include the costs of the investigation, legal fees and collection agency fees.

(b) If HUD incurs costs on behalf of the PHA in obtaining the judgment, these costs must be deducted from the amount to be retained by the PHA.

[59 FR 9409, Feb. 28, 1994, as amended at 64 FR 26640, May 14, 1999]

§ 792.203 Application of amounts recovered.

(a) The PHA may only use the amount of the recovery it is authorized to retain in support of the section 8 program in which the fraud occurred.

(b) The remaining balance of the recovery proceeds (i.e., the portion of recovery the PHA is not authorized to retain) must be applied as directed by HUD.

§ 792.204 Recordkeeping and reporting.

To permit HUD to audit amounts retained under this part, an PHA must maintain all records required by HUD, including:

(a) Amounts recovered on any judgment or repayment agreement;

(b) The nature of the judgment or repayment agreement; and

(c) The amount of the legal fees and expenses incurred in obtaining the judgment or repayment agreement and recovery.

(Approved by the Office of Management and Budget under Control Number 2577–0053)

PARTS 793–798 [RESERVED]

CHAPTER VIII—OFFICE OF THE ASSISTANT SECRETARY FOR HOUSING-FEDERAL HOUSING COMMISSIONER, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (SECTION 8 HOUSING ASSISTANCE PROGRAMS, SECTION 202 DIRECT LOAN PROGRAM, SECTION 202 SUPPORTIVE HOUSING FOR THE ELDERLY PROGRAM AND SECTION 811 SUPPORTIVE HOUSING FOR PERSONS WITH DISABILITIES PROGRAM)

EDITORIAL NOTE: Nomenclature changes to chapter VIII appear at 59 FR 14090, Mar. 25, 1994.

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PARTS 800–810 [RESERVED]

PART 811—TAX EXEMPTION OF OBLIGATIONS OF PUBLIC HOUSING AGENCIES AND RELATED AMENDMENTS

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811.106 Default under the contract.
811.107 Financing documents and data.
811.108 Debt service reserve.
811.109 Trust indenture provisions.
811.110 Refunding of obligations issued to finance Section 8 projects.

AUTHORITY: Sec. 7(d), Dept. of HUD Act (42 U.S.C. 3535(d)); secs. 3(6), 5(b), 8, 11(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, and 1437).

SOURCE: 44 FR 12360, Mar. 6, 1979, unless otherwise noted.

§ 811.101 Purpose and scope.

(a) The purpose of this part is to provide a basis for determining tax exemption of obligations issued by public housing agencies pursuant to Section 11(b) of the United States Housing Act of 1937 (42 U.S.C. 1437i) to refund bonds for Section 8 new construction or substantial rehabilitation projects.

(b) This part does not apply to tax exemption pursuant to Section 11(b) for low-income housing projects developed pursuant to 24 CFR parts 950 and 941.

[61 FR 14460, Apr. 1, 1996]

§ 811.102 Definitions.

The terms *HUD* and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

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

Agency or Instrumentality PHA. A not-for-profit private or public organization that is authorized to engage in or assist in the development or operation of low-income housing and that has the relationship to a parent entity PHA required by this subpart.

Agreement. An Agreement to Enter Into Housing Assistance Payments Contract as defined in the applicable Section 8 regulations. The form of agreement for projects financed with tax-exempt obligations shall be amended in accordance with this subpart.

Annual Contributions Contract (ACC). An Annual Contributions Contract as defined in the applicable Section 8 regulations. The form of ACC for projects financed with tax-exempt obligations shall be amended in accordance with this subpart.

Applicable Section 8 Regulations. The provisions of 24 CFR parts 880, 881, or 883 that apply to the project.

Contract. A Housing Assistance Payments Contract as defined in the applicable Section 8 regulations. The form of contract for projects financed with tax-exempt obligations shall be amended in accordance with this subpart.

Cost of issuance. Ordinary, necessary, and reasonable costs in connection with the issuance of obligations. These costs shall include attorney fees, rating agency fees, trustee fees, printing costs, bond counsel fees, feasibility studies (for non-FHA-insured projects only), consultant fees and other fees or expenses approved by HUD.

Debt service reserve. A fund maintained by the trustee as a supplemental source of money for the payment of debt service on the obligations.

Financing Agency. The PHA (parent entity PHA or agency or instrumentality PHA) that issues the tax-exempt obligations for financing of the project.

Low-income Housing Project. Housing for families and persons of low-income developed, acquired or assisted by a PHA under Section 8 of the Act and the improvement of any such housing.

Obligations. Bonds or other evidence of indebtedness that are issued to provide permanent financing of a low-income housing project. Pursuant to Section 319(b) of the Housing and Community Development Act of 1974, the term obligation shall not include any obligation secured by a mortgage insured under Section 221(d)(3) of the National Housing Act (12 U.S.C. 1715l) and issued by a public agency as mortgagor in connection with the financing of a project assisted under Section 8 of the Act. This exclusion does not apply to a public agency as mortgagee.

Owner. An owner as defined in the applicable Section 8 regulations.

Parent Entity PHA. Any state, county, municipality or other governmental entity or public body that is authorized to engage in or assist in the development or operation of low-income housing and that has the relationship to an agency or instrumentality PHA required by this subpart.

Servicing fees. The annual costs of servicing the obligations 0including any debt service reserve), including trustee fees, mortgage servicing fees, PHA expenses in connection with annual reviews, maintenance of books and accounts, audit expenses, agent fees and other costs of servicing the obligations.

Trust indenture. A contract setting forth the rights and obligations of the issuer, bondholders, owner and trustee in connection with the tax-exempt obligations. The trust indenture may also include provisions regarding the loan to the owner or these may be set forth in a separate mortgage.

Trustee. The entity that has legal responsibility under the trust indenture for disposition of the proceeds of a bond issuance and servicing of the debt represented by the obligations. The trustee must be a bank or other financial institution that is legally qualified and experienced in performing fiduciary responsibilities with respect to the care and investment of funds of a magnitude comparable to those involved in the financing.

Yield. That percentage rate at which the present worth of all payments of principal and interest to be paid on the obligations is equal to the purchase price.

[44 FR 12360, Mar. 6, 1979, as amended at 61 FR 5212, Feb. 9, 1996; 61 FR 14460, Apr. 1, 1996]

§ 811.103 General.

(a) In order for obligations to be tax-exempt under this subpart the obligations must be issued by a PHA in connection with a low-income housing project approved by HUD under the Act and the applicable Section 8 regulations.

(1) Except as needed for a resident manager or similar requirement, all dwelling units in a low-income housing project that is to be financed with obligations issued pursuant to this subpart must be Section 8 contract units.

(2) A low-income housing project that is to be financed with obligations issued pursuant to this subpart may include necessary appurtenances. Such appurtenances may include commerical space not to exceed 10% of the total net rentable area.

(b) Where the parent entity PHA is not the owner of the project, the parent entity PHA or other PHA approvable under § 811.104 must agree to administer the contract pursuant to an ACC with HUD, and such a PHA must agree that in the event there is a default under the contract it will pursue all available remedies to achieve correction of the default, including operation and possession of the project, if called upon by HUD to do so. If the field office finds that the PHA does not have the capacity to perform these functions, the Assistant Secretary may approve alternative contractual arrangements for performing these functions.

§ 811.104 Approval of Public Housing Agencies (other than agency or instrumentality PHAS).

(a)(1) An application to the field office for approval as a Public Housing Agency, other than an agency or instrumentality PHA, for purposes of this subpart shall be supported by evidence satisfactory to HUD to establish that:

(i) The applicant is a PHA as defined in this subpart, and has the legal authority to meet the requirements of this subpart and applicable Section 8 regulations, as described in its application. This evidence shall be supported by the opinion of counsel for the applicant.

(ii) The applicant has or will have the administrative capability to carry out the responsibilities described in its application.

(2) The evidence shall include any facts or documents relevant to the determinations required by paragraph (a)(1) of this section, including identification of any pending application the applicant has submitted under the Act. In the absence of evidence indicating the applicant may not be qualified, the

field office may accept as satisfactory evidence:

(i) Identification of any previous HUD approval of the applicant as a PHA pursuant to this section;

(ii) Identification of any prior ACC with the applicant under the Act; or

(iii) A statement, where applicable, that the applicant is an approved participating agency under 24 CFR Part 883 (State Housing Finance and Development Agencies).

(b) The applicant shall receive no compensation in connection with the financing of a project, except for its expenses. Such expenses shall be subject to approval by HUD in determining the development cost, cost of issuance and servicing fee, as appropriate. Should the applicant receive any compensation in excess of such expenses, the excess is to be placed in the debt service reserve.

(c) Where the applicant acts as the financing agency, the applicant shall be required to furnish to HUD an audit by an independent public accountant of its books and records in connection with the financing of the project within 90 days after the execution of the contract or final endorsement and at least biennially thereafter.

(d) Any subsequent amendments to the documents submitted to HUD pursuant to this section must be approved by HUD.

§811.105 Approval of agency or instrumentality PHA.

(a) An application to the field office for approval as an agency or instrumentality PHA for purposes of this subpart shall:

(1) Identify the parent entity PHA.

(2) Establish by evidence satisfactory to HUD that:

(i) The parent entity PHA meets the requirements of §811.104.

(ii) The applicant was properly created pursuant to state law as a not-for-profit entity; is an agency or instrumentality PHA, as defined in this subpart; has the legal authority to meet the requirements of this subpart and applicable Section 8 regulations, as described in its application; and the actions required to establish the legal relationship with the parent entity PHA prescribed by paragraph (c) of this section have been taken and are not prohibited by State law. This evidence shall be supported by the opinion of counsel for the applicant and counsel for the parent entity PHA.

(iii) The applicant has, or will have, the administrative capability to carry out the responsibilities described in its application.

(b) The charter or other organic document establishing the applicant shall limit the activities to be performed by the applicant, and funds and assets connected therewith, to carrying out or assisting in carrying out Section 8 projects and other low-income housing projects approved by the Secretary. Such organic documents shall provide that the applicant shall receive no compensation in connection with the financing of a project, except for its expenses. Such expenses shall be subject to approval by HUD in determining the development cost, cost of issuance and servicing fee, as appropriate. Should the applicant receive any compensation in excess of such expenses, the excess is to be placed in the debt service reserve.

(c) The documents submitted by the applicant shall include the following with respect to the relationship between the parent entity PHA and the agency or instrumentality PHA:

(1) Provisions requiring approval by the parent entity PHA of the charter or other organic instrument and of the bylaws of the applicant, which organic instrument and bylaws shall specify that any amendments are subject to approval by the parent entity PHA and by HUD.

(2) Provisions requiring approval by the parent entity PHA of each project and of the program and expenditures of the applicant.

(3) Provisions requiring approval by the parent entity PHA of each issue of obligations by the applicant not more than 60 days prior to the date of issue and approval of any substantive changes to the terms and conditions of the issuance prior to date of issue.

(4) Provisions requiring the applicant to furnish an audit of all its books and records by an independent public accountant to the parent entity PHA within 90 days after execution of the contract or final endorsement and at

least bennially thereafter; and provisions requiring the parent entity PHA to perform an annual review of the applicant's performance and to provide HUD with a copy of such review together with any audits performed during the reporting period.

(5) Provisions giving the parent entity PHA right of access at any time to all books and records of the applicant.

(6) Provisions that upon dissolution of the applicant, title to or other interest in any real or personal property that is owned by such applicant at the time of dissolution shall be transferred to the parent entity PHA or to another PHA or to another not-for-profit entity as determined by the parent entity PHA and approved by HUD, to be used only for purposes approved by HUD.

(7) Evidence of agreement by the parent entity PHA, or other entity as may be provided for in alternative contractual arrangements pursuant to § 811.103(b), to accept title to any real or personal property pursuant to paragraph (c)(6) of this section.

(d) Any subsequent amendments to the documents submitted to HUD pursuant to this section must be approved by HUD.

(e) Members, officers, or employees of the parent entity PHA may be directors or officers of the applicant unless this is contrary to state law.

[44 FR 12360, Mar. 6, 1979, as amended at 61 FR 14461, Apr. 1, 1996]

§ 811.106 Default under the contract.

If HUD finds there is a default under the Contract, the field office shall so notify the trustee and give the trustee a specified reasonable time to take action to require the owner to correct such default prior to any suspension or termination of payments under the contract. In the event of a default under the contract, HUD may terminate or suspend payments under the contract, may seek specific performance of the contract and may pursue other remedies.

[44 FR 12360, Mar. 6, 1979, as amended at 61 FR 14461, Apr. 1, 1996]

§ 811.107 Financing documents and data.

(a) The financing agency shall assure that any official statement or prospectus or other disclosure statement prepared in connection with the financing shall state on the first page that:

(1) In addition to any security cited in the statement, the bonds may be secured by a pledge of an Annual Contributions Contract and a Housing Assistance Payments Contract, executed by HUD;

(2) The faith of the United States is solemnly pledged to the payment of annual contributions pursuant to the Annual Contributions Contact or to the payment of housing assistance payments pursuant to the Housing Assistance Payments Contract, and funds have been obligated by HUD for such payments;

(3) Except as provided in any contract of mortgage insurance, the bonds are not insured by HUD;

(4) The bonds are not to be construed as a debt or indebtedness of HUD or the United States, and payment of the bonds is not guaranteed by the United States;

(5) Nothing in the text of a disclosure statement is to be interpreted to conflict with the above; and

(6) HUD has not reviewed or approved and bears no responsibility for the content of disclosure statements.

(b) The financing agency shall retain in its files the documentation relating to the financing. A copy of this documentation shall be furnished to HUD upon request.

[61 FR 14461, Apr. 1, 1996]

§ 811.108 Debt service reserve.

(a) *FHA-Insured projects.* (1) The debt service reserve shall be invested and the income used to pay principal and interest on that portion of the obligations which is attributable to the funding of the debt service reserve. Any excess investment income shall be added to the debt service reserve. In the event such investment income is insufficient, surplus cash or residual receipts, to the extent approved by the field office, may be used to pay such principal and interest costs.

(2) The debt service reserve and its investment income shall be available only for the purpose of paying principal or interest on the obligations. The use of the debt service reserve for this purpose shall not be a cure for any failure by the owner to make required payments.

(3) Upon full payment of the principal and interest on the obligations (including that portion of the obligations attributable to the funding of the debt service reserve), any funds remaining in the debt service reserve shall be remitted to HUD.

(b) *Non-FHA-insured projects.* (1) Investment income from the debt service reserve, up to the amount required for debt service on the bonds attributable to the debt service reserve, shall be credited toward the owner's debt service payment. Any excess investment income shall be added to and become part of the debt service reserve.

(2) The debt service reserve and investment income thereon shall be available only for the purpose of paying principal or interest on the obligations. The use of the debt service reserve for this purpose shall not be a cure for any failure by the owner to make required payments.

(3) Upon full payment of the principal and interest on the obligations (including that portion of the obligations attributable to the funding of the debt service reserve), any funds remaining in the debt service reserve shall be remitted to HUD.

[61 FR 14461, Apr. 1, 1996]

§811.109 Trust indenture provisions.

Obligations shall be prepaid only under such conditions as HUD shall require, including reduction of contract rents and continued operation of the project for the housing of low-income families.

[44 FR 12360, Mar. 6, 1979. Redesignated at 61 FR 14461, Apr. 1, 1996]

§811.110 Refunding of obligations issued to finance Section 8 projects.

(a) This section states the terms and conditions under which HUD will approve refunding or defeasance of certain outstanding debt obligations which financed new construction or substantial rehabilitation of Section 8 projects, including fully and partially assisted projects.

(b) In the case of bonds issued by State Agencies qualified under 24 CFR part 883 to refund bonds which financed projects assisted pursuant to 24 CFR part 883, HUD requires compliance with the prohibition on duplicative fees contained in 24 CFR part 883 and with paragraphs (f) and (h) of this section, as applicable to the projects to be refunded.

(c) No agency shall issue obligations to refund outstanding 11(b) obligations until the Office of the Assistant Secretary for Housing sends the financing agency a Notification of Tax Exemption based on approval of the proposed refunding's terms and conditions as conforming to this part's requirements, including continued operation of the project as housing for low-income families, and where possible, reduction of Section 8 assistance payments through lower contract rents or an equivalent cash rebate to the U.S. Treasury (i.e. Trustee Sweep). The agency shall submit such documentation as HUD determines is necessary for review and approval of the refunding transaction. Upon conclusion of the closing of refunding bonds, written confirmation must be sent to the Office of Multifamily Housing by bond counsel, or other acceptable closing participant, including a schedule of the specific amount of savings in Section 8 assistance where applicable, CUSIP number information, and a final statement of Sources and Uses.

(d)(1) HUD approval of the terms and conditions of a Section 8 refunding proposal requires evaluation by HUD's Office of Multifamily Housing of the reasonableness of the terms of the Agency's proposed financing plan, including projected reductions in project debt service where warranted by market conditions and bond yields. This evaluation shall determine that the proposed amount of refunding obligations is the amount needed to: pay off outstanding bonds; fund a debt service reserve to the extent required by credit enhancers or bond rating agencies, or bond underwriters in the case of unrated refunding bonds; pay credit enhancement fees acceptable to HUD; and

pay transaction costs as approved by HUD according to a sliding scale ceiling based on par amount of refunding bond principal. Exceptions may be approved by HUD, if consistent with applicable statutes, in the event that an additional issue amount is required for project purposes.

(2) The stated maturity of the refunding bonds may not exceed by more than one year the remaining term of the project mortgage, or in the case of an uninsured loan, the later of expiration date of the Housing Assistance Payments Contract (the ''HAPC'') or final maturity of the refunded bonds.

(3) The bond yield may not exceed by more than 75 basis points the 20 Bond General Obligation Index published by the Daily Bond Buyer for the week immediately preceding the sale of the bonds, except as otherwise approved by HUD. An amount not to exceed one-fourth of one percent annually of the bonds' outstanding principal balance may be allowed for servicing and trustee fees.

(e) For projects for which the Agreement to enter into the HAPC was executed between January 1, 1979, and December 31, 1984 (otherwise known as ''McKinney Act Projects''), for which a State or local agency initiates a refunding, the Secretary shall make available to an eligible issuing agency 50 percent of the Section 8 savings of a refunding, as determined by HUD on a project-by-project basis, to be used by the agency in accordance with the terms of a Refunding Agreement executed by the Agency and HUD which incorporates the Agency's Housing Plan for use of savings to provide decent, safe, and sanitary housing for very low-income households. In determining the amount of savings recaptured on a project-by-project basis, as authorized by section 1012(b) of the McKinney Act, HUD will take into account the physical condition of the projects participating in the refunding which generate the McKinney Act savings and, if necessary, HUD will finance in refunding bond debt service correction of existing deficiencies which cannot be funded completely by existing project replacement reserves or by a portion of reserves released from the refunded bond's indenture. For McKinney Act refundings of projects which did not receive a Financing Adjustment Factor (''FAF''), HUD will allow up to 50 percent of debt service savings to be allocated to the project account; in which case, the remainder will be shared equally by the Agency and the U.S. Treasury.

(f) For refundings of Section 8 projects other than McKinney Act Projects, and for all transactions which substitute collateral for, but do not redeem, outstanding obligations, and for which a HUD approval is needed (such as assignment of a HAPC or insured mortgage note), the Office of Multifamily Housing in consultation with HUD Field Office Counsel will review the HAPC, the Trust Indenture for the outstanding obligations, applicable HUD regulations, and reasonableness of proposed financing terms. In particular, HUD review should be obtained for the release of reserves from the trust indenture of the outstanding 11(b) bonds that are being refunded, defeased, or pre-paid. A proposal to distribute to a non-Federal entity the benefits of a refinancing, such as debt service savings and/or balances in reserves held under the original Trust Indenture, should be referred to the Office of Multifamily Housing for further review. In proposals submitted for HUD approval, HUD will consent to release reserves, as provided by the Trust Indenture, in an amount remaining after correction of project physical deficiencies and/or replenishment of replacement reserves, where needed. In the case of a refunding of 11(b) bonds by a public agency issuer which is the owner of the project and is entitled to reserves held under the Trust Indenture, HUD requires execution by the project owner of a use agreement, and amendment of a regulatory agreement, if applicable, to extend low-income tenant occupancy for ten years after expiration of the original HAPC term. In the case of HAP contracts with renewable 5-year terms, the Use Agreement shall extend for 10 years after the project owners first opt-out date. The Use Agreement may also be required of private entity owners, unless the refunding is incidental to a transfer of project ownership or a transaction which provides a substantial public

benefit, as determined by the Office of Multifamily Housing. Proposed use of benefits shall be consistent with applicable appropriations law, the HAPC, and other requirements applicable to the original project financing, and the proposed financing terms must be reasonable in relation to bond market yields and transaction fees, as approved by the HUD Office of Multifamily Housing.

(g) Agencies shall have wide latitude in the design of specific delivery vehicles for use of McKinney Act savings, subject to HUD audit of each Agency's performance in serving the targeted income eligible population. Savings may be used for shelter costs of providing housing, rental, or owner-occupied, to very low-income households through new construction, rehabilitation, repairs, and acquisition with or without rehab, including assistance to very low-income units in mixed-income developments. These include programs designed to assist in obtaining shelter, such as rent or homeownership subsidies. Self-sufficiency services in support of very low-income housing are also eligible, and may include, but are not limited to, homeownership counseling, additional security measures in high-crime areas, construction job training for residents' repair of housing units occupied by very low-income families, and empowerment activities designed to support formation and growth of resident entities. Except for the cost of providing third-party program audit reports to HUD, eligible costs exclude consultant fees or reimbursement of Agency staff expenses, but may include fees for professional services required in the Agency's McKinney Act programs of assistance to very low-income families. Unless otherwise specified by HUD in a McKinney Agreement, savings shall be subject to the above use requirements for 10 years from the date of receipt of the savings.

(h) Refunding bonds, including interest thereon, approved under this Section shall be exempt from all taxation now or hereafter imposed by the United States, and the notification of approval of tax exemption shall not be subject to revocation by HUD. Whether refunding bonds approved under this section meet the requirements of Section 103 or any other provisions of the Internal Revenue Code is not within the responsibilities of HUD to determine. Such bonds shall be prepaid during the HAPC term only under such conditions as HUD shall require.

[61 FR 14461, Apr. 1, 1996]

PART 850—HOUSING DEVELOPMENT GRANTS

Subpart A—General Provisions

Sec.
850.1 Applicability and savings clause.

Subparts B–E [Reserved]

Subpart F—Project Management

850.151 Project restrictions.
850.153 Rent control.
850.155 Securing owner's responsibilities.

AUTHORITY: 42 U.S.C. 1437o, 3535(d).

SOURCE: 49 FR 24641, June 14, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 850.1 Applicability and savings clause.

(a) *Applicability*. This part implements the Housing Development Grant Program contained in section 17 of the United States Housing Act of 1937 (42 U.S.C. 1437o). The Program authorized the Secretary to make housing development grants to support the new construction or substantial rehabilitation of real property to be used primarily for residential rental purposes. Section 289(b)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12839) repealed section 17 effective October 1, 1991. Section 289(a) prohibited new grants under the Housing Development Grant Program except for projects for which binding commitments had been entered into prior to October 1, 1991.

(b) *Savings clause.* Any grant made pursuant to a binding commitment entered into before October 1, 1991 will continue to be governed by subparts A

through E of this part in effect immediately before April 1, 1996, and by subpart F of this part as currently in effect.

[61 FR 7944, Feb. 29, 1996]

Subparts B–E [Reserved]

Subpart F—Project Management

§ 850.151 Project restrictions.

(a) *Owner-grantee agreement.* The grantee and the owner must enter into an agreement that requires the owner (including its successors in interest) to carry out the requirements of this section and of the grant agreement, as appropriate. The grantee-owner agreement must require the grantee to monitor (where required) and to take appropriate legal action to enforce compliance with the owner's responsibilities thereunder. The owner's compliance with its obligations under this section must be secured by a mortgage or other security instrument meeting the requirements of § 850.155. Nothing in this section shall preclude enforcement by the Federal government of grant agreement provisions, civil rights statutes, or other provisions of law that apply to the Housing Development Grant Program.

(b) *Restriction on conversion.* The owner shall not convert the units in the project to condominium ownership or to a form of cooperative ownership that is not eligible to receive a housing development grant, during the 20-year period from the date on which the units in the project are available for occupancy.

(c) *Tenant selection.* The owner shall determine the eligibility of applicants for lower income units in accordance with the requirements of 24 CFR parts 812 and 813, including the provisions of these parts concerning citizenship or eligible immigration status and income limits, and certain assistance to mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status.). The owner shall not, during the 20-year period from the date on which the units in the project are available for occupancy, discriminate against prospective tenants on the basis of their receipt of, or eligibility for, housing assistance under any Federal, State, or local housing assistance program or, except for an elderly housing project, on the basis that they have a minor child or children who will be living with them.

(d) *Restriction on leasing assisted units.* The owner shall assure that the percentage of low-income units specified in the grant agreement is occupied, or is available for occupancy, by low-income households during the period beginning on the date on which the units in the project are available for occupancy through 20 years from the date on which 50 percent of the units are occupied. The owner may lease a low-income unit only to a tenant that is a low-income household at the time of its initial occupancy. An owner may continue to lease a low-income unit to a tenant that ceases to qualify as a low-income household only as provided in paragraph (f) of this section.

(e) *Low-income unit rent.* (1) Section 17(d)(8)(A) of the U.S. Housing Act of 1937 prohibits the rents for low-income units from exceeding ''30 per centum of the adjusted income of a family whose income equals 50 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families.'' This paragraph describes how these maximum rent determinations are made.

(2) The maximum rents that may be charged for low-income units are based on the size of the unit by number of bedrooms, and are calculated in accordance with the following procedure. For each unit size, HUD will provide the Section 8 very low-income limits. HUD will also provide income adjustments for each unit size, consistent with 24 CFR part 813. An adjusted income amount for each unit size is calculated by the owner or grantee by subtracting the income adjustment from the Section 8 limit. The adjusted income amount is multiplied by 30 percent and divided by 12 to obtain the maximum monthly gross rent for each low-income unit. A monthly allowance for the utilities and services (excluding telephone) to be paid by the tenant is subtracted from the maximum monthly gross rent to obtain the maximum

monthly rent that may be charged for low-income units. Information to be provided by HUD will be available from the responsible HUD Field Office.

(3) The initial monthly allowance for utilities and services to be paid by the tenant must be approved by HUD. Subsequent calculations of this allowance must be approved by the grantee in connection with its review and approval of rent schedules under paragraph (e)(4) of this section. The maximum monthly rent must be recalculated annually, and may change as changes in the Section 8 very low-income limit, the income adjustments, or the monthly allowance for utilities and services warrant.

(4) The grantee must review and approve any schedule of rents proposed by the owner for low-income units. Any schedule submitted by an owner within the permissible maximum will be deemed approved, unless the grantee informs the owner, within 60 days after receiving the schedule, that it is disapproved.

(5) Any increase in rents for low-income units is subject to the provisions of outstanding leases, in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.

(f) *Reexamination of tenant income and composition.* (1) The owner shall reexamine the income of each tenant household living in low-income units at least once a year. At the first regular reexamination after June 19, 1995 the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.

(2) If this reexamination indicates that the tenant no longer qualifies as a low-income household, the owner must take one of the following actions, as appropriate: (i) If the unit occupied by the tenant must be leased to a low- income household to maintain the percentage of low-income units specified in the grant agreement, the owner must notify the tenant that it must move when the current lease expires or six months after the date of the notification, whichever is later; (ii) If the owner can meet this percentage without the unit occupied by the tenant (for example, by designating another comparable unit as a low-income unit), the owner may continue to lease to that tenant, but is free to renegotiate the rent at the expiration of the current lease.

(3) For provisions related to termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions related to certain assistance to mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions related to deferral of termination of assistance.

(g) *Affirmative fair housing marketing.* Marketing must be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan, Form HUD–935.2, and all fair housing and equal opportunity requirements. The purpose of the Plan and the requirements is to provide for affirmative marketing through the provision of information regarding the availability of units in projects assisted. Affirmative marketing steps consist of good faith efforts to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market area to the available housing.

(h) *Management and maintenance functions.* The owner must perform all management and maintenance functions in compliance with equal opportunity requirements. These functions include selection of tenants, reexamination of family income, evictions and other terminations of tenancy, and all ordinary and extraordinary maintenance and repairs, including replacement of capital items.

(i) *Residency preferences.* Local residency requirements are prohibited. Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the owner's HUD-

approved AFHM Plan. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment will be treated as residents.

[49 FR 24641, June 14, 1984, as amended at 60 FR 14841, Mar. 20, 1995]

§ 850.153 Rent control.

A project constructed or substantially rehabilitated with a housing development grant is not subject to State or local rent control unless the rent control requirements or agreements (a)(1) were entered into under a State law or local ordinance of general applicability that was enacted and in effect in the jurisdiction before November 30, 1983 and (2) apply generally to rental housing projects not assisted under the Housing Development Grant Program, or (b) are imposed under this subpart. State and local rent controls expressly preempted by this section include, but are not limited to, rent laws or ordinances, rent regulating agreements, rent regulations, occupancy agreements, or financial penalties for failure to achieve certain occupancy or rent projections.

§ 850.155 Securing owner's responsibilities.

Assistance provided under this part shall constitute a debt of the owner (including its successors in interest) to the grantee, and shall be secured by a mortgage or other security instrument. The debt shall be repayable in the event of a substantive, uncorrected violation by an owner of the obligations contained in paragraphs (b), (c), (d) and (e) of § 850.151. The instruments securing this debt shall provide for repayment to the grantee in an amount equal to the total amount of housing development grant assistance outstanding, plus interest which is determined by the Secretary by adding two percent to the average yield on outstanding marketable long-term obligations of the United States during the month preceding the date on which assistance was made available. The amount to be repaid shall be reduced by 10 percent for each full year in excess of 10 years that intervened between the beginning of the term of the owner-grantee agreement and the violation.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

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AUTHORITY: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

SOURCE: 44 FR 59410, Oct. 15, 1979, unless otherwise noted.

Subpart A—Summary and Applicability

§ 880.101 General.

(a) The purpose of the Section 8 program is to provide low-income families with decent, safe and sanitary rental housing through the use of a system of housing assistance payments. This part contains the policies and procedures applicable to the Section 8 new construction program. The assistance may be provided to public housing agency owners or to private owners either directly from HUD or through public housing agencies.

(b) This part does not apply to projects developed under other Section 8 program regulations, including 24 CFR parts 881, 882, 883, 884, and 885, except to the extent specifically stated in those parts. Portions of subparts E and F of this part 880 have been cross-referenced in 24 CFR parts 881 and 883.

[61 FR 13587, Mar. 27, 1996]

§ 880.104 Applicability of part 880.

(a) Part 880, in effect as of November 5, 1979, applies to all proposals for which a notification of selection was not issued before the November 5, 1979 effective date of part 880. (See 24 CFR part 880, revised as of April 1, 1980.) Where a notification of selection was issued for a proposal before the November 5, 1979 effective date, part 880, in effect as of November 5, 1979, applies if the owner notified HUD within 60 calendar days that the owner wished the provisions of part 880, effective November 5, 1979, to apply and promptly brought the proposal into conformance.

(b) Subparts E (Housing Assistance Payments Contract) and F (Management) of this part apply to all projects for which an Agreement was not executed before the November 5, 1979, effective date of part 880. Where an Agreement was so executed:

(1) The owner and HUD may agree to make the revised subpart E of this part applicable and to execute appropriate amendments to the Agreement and/or Contract.

(2) The owner and HUD may agree to make the revised subpart F of this part applicable (with or without the limitation on distributions) and to execute appropriate amendments to the Agreement and/or Contract.

(c) Section 880.607 (Termination of tenancy and modification of leases) applies to all families.

(d) Notwithstanding the provisions of paragraph (b) of this section, the provisions of 24 CFR part 5 apply to all projects, regardless of when an Agreement was executed.

[61 FR 13587, Mar. 27, 1996, as amended at 65 FR 16722, Mar. 29, 2000]

§ 880.105 Applicability to proposals and projects under 24 CFR part 811.

Where proposals and projects are financed with tax-exempt obligations under 24 CFR part 811, the provisions of part 811 will be complied with in addition to all requirements of this part. In the event of any conflict between this part and part 811, part 811 will control.

Subpart B—Definitions and Other Requirements

§ 880.201 Definitions.

Annual Contributions Contract (ACC). As defined in part 5 of this title.

Agency. As defined in 24 CFR part 883.

Agreement. (Agreement to Enter into Housing Assistance Payments Contract) The Agreement between the owner and the contract administrator which provides that, upon satisfactory completion of the project in accordance with the HUD-approved final proposal, the administrator will enter into the Contract with the owner.

Annual income. As defined in part 5 of this title.

Contract. (Housing Assistance Payments Contract) The Contract entered into by the owner and the contract administrator upon satisfactory completion of the project, which sets forth the rights and duties of the parties with respect to the project and the payments under the Contract.

Contract Administrator. The entity which enters into the Contract with the owner and is responsible for monitoring performance by the owner. The contract administrator is a PHA in the

case of private-owner/PHA projects, and HUD in private-owner/HUD and PHA-owner/HUD projects.

Contract rent. The total amount of rent specified in the contract as payable to the owner for a unit.

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

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

Elderly family. As defined in part 5 of this title.

Fair Market Rent (FMR). As defined in part 5 of this title.

Family. As defined in part 5 of this title.

Final proposal. The detailed description of a proposed project to be assisted under this part, which an owner submits after selection of the preliminary proposal, except where a preliminary proposal is not required under § 880.303(c). (The final proposal becomes an exhibit to the Agreement and is the standard by which HUD judges acceptable construction of the project.)

Housing assistance payment. The payment made by the contract administrator to the owner of an assisted unit as provided in the contract. Where the unit is leased to an eligible family, the payment is the difference between the contract rent and the tenant rent. An additional payment is made to the family when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a ''vacancy payment''. may be made to the owner when an assisted unit is vacant, in accordance with the terms of the contract.

HUD. Department of Housing and Urban Development.

Independent Public Accountant. A Certified Public Accountant or a licensed or registered public accountant, having no business relationship with the owner except for the performance of audit, systems work and tax preparation. If not certified, the Independent Public Accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title ''public accountant,'' only Certified Public Accountants may be used.

Low income family. As defined in part 5 of this title.

NOFA. As defined in part 5 of this title.

Owner. Any private person or entity (including a cooperative) or a public entity which qualifies as a PHA, having the legal right to lease or sublease newly constructed dwelling units assisted under this part. The term owner also includes the person or entity submitting a proposal under this part.

Partially-assisted Project. A project for non-elderly families under this part which includes more than 50 units of which 20 percent or fewer are assisted.

PHA-Owner/HUD Project. A project under this part which is owned by a PHA. For this type of project, the Agreement and the Contract are entered into by the PHA, as owner, and HUD, as contract administrator.

Private-Owner/HUD Project. A project under this part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and HUD, as contract administrator.

Private-Owner/PHA Project. A project under this part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and the PHA, as contract administrator, pursuant to an ACC between the PHA and HUD. The term also covers the situation where the ACC is with one PHA and the owner is another PHA.

Project Account. A specifically identified and segregated account for each project which is established in accordance with § 880.503(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC, as applicable, each year.

Public Housing Agency (PHA). As defined in part 5 of this title.

Rent. In the case of an assisted unit in a cooperative project, rent means

the carrying charges payable to the cooperative with respect to occupancy of the unit.

Replacement cost. The estimated construction cost of the project when the proposed improvements are completed. The replacement cost may include the land, the physical improvements, utilities within the boundaries of the land, architect's fees, and miscellaneous charges incident to construction as approved by the Assistant Secretary.

Secretary. The Secretary of Housing and Urban Development (or designee).

Small Project. A project for non-elderly families under this part which includes a total of 50 or fewer (assisted and unassisted) units.

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Vacancy payment. The housing assistance payment made to the owner by the contract administrator for a vacant assisted unit if certain conditions are fulfilled as provided in the Contract. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

Very low income family. As defined in part 5 of this title.

[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 18923, Mar. 24, 1980; 48 FR 12703, Mar. 28, 1983; 49 FR 6714, Feb. 23, 1984; 49 FR 17449, Apr. 24, 1984; 49 FR 19943, May 10, 1984; 61 FR 5212, Feb. 9, 1996; 61 FR 13587, Mar. 27, 1996; 61 FR 47382, Sept. 6, 1996; 63 FR 46578, Sept. 1, 1998; 65 FR 16722, Mar. 29, 2000]

§ 880.205 Limitation on distributions.

(a) Non-profit owners are not entitled to distributions of project funds.

(b) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:

(1) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 6 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the FEDERAL REGISTER.

(2) For projects for non-elderly families, the first year's distribution will be limited to 10 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 10 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the FEDERAL REGISTER.

(c) For the purpose of determining the allowable distribution, an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by HUD at cost certification (see § 880.405) unless the owner justifies a higher equity contribution by cost certification documentation in accordance with HUD mortgage insurance procedures.

(d) Any short-fall in return may be made up from surplus project funds in future years.

(e) If HUD determines at any time that project funds are more than the amount needed for project operations, reserve requirements and permitted distribution, HUD may require the excess to be placed in an account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess funds must be remitted to HUD.

(f) Owners of small projects or partially-assisted projects are exempt from the limitation on distributions contained in paragraphs (b) through (d) of this section.

(g) In the case of HUD-insured projects, the provisions of this section

will apply instead of the otherwise applicable mortgage insurance program provisions.

(h) HUD may permit increased distributions of surplus cash, in excess of the amounts otherwise permitted, to profit-motivated owners who participate in a HUD-approved initiative or program to preserve below-market housing stock. The increased distributions will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the owner is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the owner.

(i) Any State or local law or regulation that restricts distributions to an amount lower than permitted by this section or permitted by the Commissioner under this paragraph (i) is preempted to the extent provided by section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997.

[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 18923, Mar. 24, 1980; 49 FR 6714, Feb. 23, 1984; 61 FR 5212, Feb. 9, 1996; 65 FR 61074, Oct. 13, 2000]

§ 880.207 Property standards.

Projects must comply with:

(a) [Reserved]

(b) In the case of manufactured homes, the Federal Manufactured Home Construction and Safety Standards, pursuant to Title VI of the Housing and Community Development Act of 1974, and 24 CFR part 3280;

(c) In the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards;

(d) HUD requirements pursuant to section 209 of the Housing and Community Development Act of 1974 for projects for the elderly or handicapped;

(e) HUD requirements pertaining to noise abatement and control; and

(f) Applicable State and local laws, codes, ordinances and regulations.

(g) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

[44 FR 59410, Oct. 15, 1979, as amended at 50 FR 9269, Mar. 7, 1985; 57 FR 33851, July 30, 1992; 63 FR 46578, Sept. 1, 1998]

§ 880.208 Financing.

(a) *Types of financing.* Any type of construction financing and long-term financing may be used, including:

(1) Conventional loans from commercial banks, savings banks, savings and loan associations, pension funds, insurance companies or other financial institutions;

(2) Mortgage insurance programs under the National Housing Act;

(3) Mortgage and loan programs of the Farmers' Home Administration of the Department of Agriculture compatible with the Section 8 program; and

(4) Financing by tax-exempt bonds or other obligations.

(b) *HUD approval.* HUD must approve the terms and conditions of the financing to determine consistency with these regulations and to assure they do not purport to pledge or give greater rights or funds to any party than are provided under the Agreement, Contract, and/or ACC. Where the project is financed with tax-exempt obligations, the terms and conditions will be approved in accordance with the following:

(1) An issuer of obligations that are tax-exempt under any provision of Federal law or regulation, the proceeds of the sale of which are to be used to purchase GNMA mortgage-backed securities issued by the mortgagee of the Section 8 project, will be subject to 24 CFR part 811, subpart B.

(2) Issuers of obligations that are tax-exempt under Section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR part 811, subpart A if paragraph (b)(1) of this section is not applicable.

(3) Issuers of obligations that are tax-exempt under any provision of Federal law or regulation other than section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR part 811, subpart A if paragraph (b)(1) of this section is not applicable, except that such issuers that are State Agencies qualified under 24 CFR part 883 are not subject to 24 CFR part 811 subpart A and are subject solely to the requirements of 24 CFR part 883 with regard to the approval of tax-exempt financing.

(c) *Pledge of Contracts.* An owner may pledge, or offer as security for any loan or obligation, an Agreement, Contract or ACC entered into pursuant to this part: *Provided, however,* That such financing is in connection with a project constructed pursuant to this part and approved by HUD. Any pledge of the Agreement, Contract, or ACC, or payments thereunder, will be limited to the amounts payable under the Contract or ACC in accordance with its terms. If the pledge or other document provides that all payments will be paid directly to the mortgagee or the trustee for bondholders, the mortgagee or trustee will make all payments or deposits required under the mortgage or trust indenture or HUD regulations and remit any excess to the owner.

(d) *Foreclosure and other transfers.* In the event of foreclosure, assignment or sale approved by HUD in lieu of foreclosure, or other assignment or sale approved by HUD:

(1) The Agreement, the Contract and the ACC, if applicable, will continue in effect, and

(2) Housing assistance payments will continue in accordance with the terms of the Contract.

(e) *Financing of manufactured home parks.* In the case of a newly constructed manufactured home park, the principal amount of any mortgage attributable to the rental spaces in the park may not exceed an amount per space determined in accordance with § 207.33(b) of this title.

[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 62797, Sept. 22, 1980; 48 FR 12704, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984]

§ 880.211 Audit.

(a) Where a State or local government is the eligible owner of a project or a contract administrator under § 880.505 receiving financial assistance under this part, the audit requirements in 24 CFR part 44 shall apply.

(b) Where a nonprofit organization is the eligible owner of a project, receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.

[50 FR 39091, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986; 57 FR 33256, July 27, 1992]

Subparts C–D [Reserved]

Subpart E—Housing Assistance Payments Contract

§ 880.501 The contract.

(a) *Contract.* The Housing Assistance Payments Contract sets forth rights and duties of the owner and the contract administrator with respect to the project and the housing assistance payments. The owner and contract administrator execute the Contract in the form prescribed by HUD upon satisfactory completion of the project.

(b) [Reserved]

(c) *Housing Assistance Payments to Owners under the Contract.* The housing assistance payments made under the Contract are:

(1) Payments to the owner to assist eligible families leasing assisted units, and

(2) Payments to the owner for vacant assisted units (''vacancy payments'') if the conditions specified in § 880.610 are satisfied.

The housing assistance payments are made monthly by the contract administrator upon proper requisition by the owner, except payments for vacancies of more than 60 days, which are made semi-annually by the contract administrator upon requisition by the owner.

(d) *Amount of Housing Assistance Payments to Owner.* (1) The amount of the housing assistance payment made to the owner of a unit being leased by an eligible family is the difference between the contract rent for the unit and the tenant rent payable by the family.

(2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the

first 60 days of vacancy, subject to the conditions in § 880.611. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as HUD directs.

(3) For a vacancy that exceeds 60 days, a housing assistance payment for the vacant unit will be made, subject to the conditions in § 880.611, in an amount equal to the principal and interest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.

(e) *Payment of utility reimbursement.* Where applicable, the owner will pay a utility reimbursement in accordance with § 5.632 of this title. HUD will provide funds for the utility reimbursement to the owner in trust solely for the purpose of paying the utility reimbursement.

[44 FR 59410, Oct. 15, 1979, as amended at 49 FR 19943, May 10, 1984; 61 FR 13587, Mar. 27, 1996; 65 FR 16722, Mar. 29, 2000]

§ 880.502 Term of contract.

(a) *Term (except for Manufactured Home Parks).* The term of the contract will be as follows:

(1) For assisted units in a project financed with the aid of a loan insured or co-insured by the Federal government or a loan made, guaranteed or intended for purchase by the Federal government, the term will be 20 years.

(2) For assisted units in a project financed other than as described in paragraph (a)(1) of this section, the term will be the lesser of (i) the term of the project's financing (but not less than 20 years), or (ii) 30 years, or 40 years if (A) the project is owned or financed by a loan or loan guarantee from a state or local agency, (B) the project is intended for occupancy by non-elderly families and (C) the project is located in an area designated by HUD as one requiring special financing assistance.

(b) *Term for Manufactured Home Parks.* For manufactured home units or spaces in newly constructed manufactured home parks, the term of the Contract will be 20 years.

(c) *Staged Projects.* If the project is completed in stages, the term of the Contract must relate separately to the units in each stage. The total Contract term for the units in all stages, beginning with the effective date of the Contract for the first stage, may not exceed the overall maximum term allowable for any one unit under this section, plus two years.

[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 18924, Mar. 24, 1980; 48 FR 12705, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984]

§ 880.503 Maximum annual commitment and project account.

(a) *Maximum Annual Commitment.* Where HUD is the contract administrator, the maximum annual amount that may be committed under the Contract is the total of the contract rents and utility allowances for all assisted units in the project. Where the PHA is the contract administrator, the maximum annual contribution that may be contracted for in the ACC is the total of the contract rents and utility allowances for all assisted units plus an administrative fee for the PHA as approved by HUD.

(b) *Project Account.* (1) A project account will be established and maintained by HUD as a specifically identified and segregated account for each project. The account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC each year. Payments will be made from this account for housing assistance payments (and fees for PHA administration, if appropriate) when needed to cover increases in contract rents or decreases in tenant rents and for other cost specifically approved by the Secretary.

(2) Whenever a HUD-approved estimate of required annual payments under the Contract or ACC for a fiscal year exceeds the maximum annual commitment and would cause the amount in the project account to be less than 40 percent of the maximum, HUD will, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the U.S. Housing Act of 1937, as may be necessary, to assure that payments under the Contract or ACC will be adequate to cover increases in Contract rents and decreases in tenant rents.

§ 880.504 Leasing to eligible families.

(a) *Availability of units for occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 880.601(a); (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to the contract administrator. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of the contract administrator in accordance with HUD guidelines. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by Contract.* (1) *Part 880 and 24 CFR part 881 projects.* HUD (or the PHA at the direction of HUD, as appropriate) may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(i) The owner fails to comply with the requirements of paragraph (a) of this section; or

(ii) Notwithstanding any prior approval by the contract administrator to lease such units to ineligible families, HUD (or the PHA at the direction of HUD, as appropriate) determines that the inability to lease units to eligible families is not a temporary problem.

(2) *For 24 CFR part 883 projects.* HUD and the Agency may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(i) The owner fails to comply with the requirements of paragraph (a) of this section; or

(ii) Notwithstanding any prior approval by the Agency to lease such units to ineligible families, HUD and the Agency determine that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* For this part 880 and 24 CFR part 881 projects, HUD will agree to an amendment of the ACC or the Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section, and for 24 CFR part 883 projects, HUD will agree to an amendment of the ACC and the Agency may agree to an amendment to the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section, if:

(1) HUD determines (for 24 CFR part 883 projects, HUD and the Agency determine) that the restoration is justified by demand,

(2) The owner otherwise has a record of compliance with his obligations under the Contract, and

(3) Contract and budget authority is available.

(d) *Applicability.* In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all Contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time will continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR part 5 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the

termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR part 5, the owner shall comply with the provisions of 24 CFR part 5 concerning assistance to mixed families, and deferral of termination of assistance.

[44 FR 59410, Oct. 15, 1979, as amended at 49 FR 31397, Aug. 7, 1984; 51 FR 11224, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988; 53 FR 6601, Mar. 2, 1988; 59 FR 13652, Mar. 23, 1994; 60 FR 14841, Mar. 20, 1995; 61 FR 13587, Mar. 27, 1996]

§ 880.505 Contract administration and conversions.

(a) *Contract administration.* For private-owner/PHA projects, the PHA is primarily responsible for administration of the Contract, subject to review and audit by HUD. For private-owner/HUD and PHA-owner/HUD projects, HUD is responsible for administration of the Contract.The PHA or HUD may contract with another entity for the performance of some or all of its contract administration functions.

(b) *PHA fee for Contract administration.* A PHA will be entitled to a reasonable fee, determined by HUD, for administering a Contract except under certain circumstances (see 24 CFR part 883) where a state housing finance agency is the PHA and finances the project.

(c) *Conversion of Projects from one Ownership/Contractual arrangement to another.* Any project may be converted from one ownership/contractual arrangement to another (for example, from a private-owner/HUD to a private-owner/PHA project) if:

(1) The owner, the PHA and HUD agree,

(2) HUD determines that conversion would be in the best interest of the project, and

(3) In the case of conversion from a private-owner/HUD to a private-owner/PHA project, contract authority is available to cover the PHA fee for administering the Contract.

§ 880.506 Default by owner (private-owner/HUD and PHA-owner/HUD projects).

The Contract will provide:

(a) That if HUD determines that the owner is in default under the Contract, HUD will notify the owner and the lender of the actions required to be taken to cure the default and of the remedies to be applied by HUD including specific performance under the Contract, reduction or suspension of housing assistance payments and recovery of overpayments, where appropriate; and

(b) That if the owner fails to cure the default, HUD has the right to terminate the Contract or to take other corrective action.

§ 880.507 Default by PHA and/or owner (private-owner/PHA projects).

(a) *Rights of Owner if PHA defaults under Agreement or Contract.* The ACC, the Agreement and the Contract will provide that, in the event of failure of the PHA to comply with the Agreement or Contract with the owner, the owner will have the right, if he is not in default, to demand that HUD investigate. HUD will first give the PHA a reasonable opportunity to take corrective action. If HUD determines that a substantial default exists, HUD will assume the PHA's rights and obligations under the Agreement or Contract and meet the obligations of the PHA under the Agreement or Contract including the obligations to enter into the Contract.

(b) *Rights of HUD if PHA defaults under ACC.* The ACC will provide that, if the PHA fails to comply with any of its obligations, HUD may determine that there is a substantial default and require the PHA to assign to HUD all of its rights and interests under the Contract; however, HUD will continue to pay annual contributions in accordance with the terms of the ACC and the Contract. Before determining that a PHA is in substantial default, HUD will give the PHA a reasonable opportunity to take corrective action.

(c) *Rights of PHA and HUD if Owner defaults under Contract.* (1) The Contract will provide that if the PHA determines that the owner is in default under the Contract, the PHA will notify the owner and lender, with a copy to HUD, (i) of the actions required to be taken to cure the default, (ii) of the remedies to be applied by the PHA including specific performance under the

Contract, abatement of housing assistance payments and recovery of overpayments, where appropriate, and (iii) that if he fails to cure the default, the PHA has the right to terminate the Contract or to take other corrective action, in its discretion or as directed by HUD.

(2) If the PHA is the lender, the Contract will also provide that HUD has an independent right to determine whether the owner is in default and to take corrective action and apply appropriate remedies, except that HUD will not have the right to terminate the Contract without proceeding in accordance with paragraph (b) of this section.

§ 880.508 Notice upon contract expiration.

(a) The Contract will provide that the owner will notify each assisted family, at least 90 days before the end of the Contract term, of any increase in the amount the family will be required to pay as rent which may occur as a result of its expiration. If the Contract is to be renewed but with a reduction in the number of units covered by it, this notice shall be given to each family who will no longer be assisted under the Contract.

(b) The notice provided for in paragraph (a) of this section shall be accomplished by: (1) Sending a letter by first class mail, properly stamped and addressed, to the family at its address at the project, with a proper return address; and (2) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not considered to be effective until both required notices have been accomplished. The date on which the notice shall be considered to be received by the family shall be the date on which the owner mails the first class letter provided for in this paragraph, or the date on which the notice provided for in this paragraph is properly given, whichever is later.

(c) The notice shall advise each affected family that, after the expiration date of the Contract, the family will be required to bear the entire cost of the rent and that the owner will be free (to the extent the project is not otherwise regulated by HUD) to alter the rent without HUD approval, but subject to any applicable requirements or restrictions under the lease or under State or local law. The notice shall also state: (1) The actual (if known) or the estimated rent which will be charged following the expiration of the Contract; (2) the difference between the rent and the Total Tenant Payment toward rent under the Contract; and (3) the date the Contract will expire.

(d) The owner shall give HUD a certification that families have been notified in accordance with this section with an example of the text of the notice attached.

(e) This section applies to all Contracts entered into pursuant to an Agreement executed on or after October 1, 1981, or entered into pursuant to an Agreement executed before October 1, 1981, but renewed or amended on or after October 1, 1984.

[49 FR 31283, Aug. 6, 1984]

Subpart F—Management

§ 880.601 Responsibilities of owner.

(a) *Marketing.* (1) The owner must commence diligent marketing activities in accordance with the Agreement not later than 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.

(2) Marketing must be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan and all Fair Housing and Equal Opportunity requirements. The purpose of the Plan and requirements is to assure that eligible families of similar income in the same housing market area have an equal opportunity to apply and be selected for a unit in projects assisted under this part regardless of their race, color, creed, religion, sex or national origin.

(3) With respect to non-elderly family units, the owner must undertake marketing activities in advance of marketing to other prospective tenants in order to provide opportunities to reside in the project to non-elderly families who are least likely to apply, as determined in the Affirmative Fair Housing Marketing Plan, and to non-elderly

families expected to reside in the community by reason of current or planned employment.

(4) At the time of Contract execution, the owner must submit a list of leased and unleased units, with justification for the unleased units, in order to qualify for vacancy payments for the unleased units.

(b) *Management and maintenance.* The owner is responsible for all management functions, including determining eligibility of applicants, selection of tenants, reexamination and verification of family income and composition, determination of family rent (total tenant payment, tenant rent and utility reimbursement), collection of rent, termination of tenancy and eviction, and performance of all repair and maintenance functions (including ordinary and extraordinary maintenance), and replacement of capital items. (See part 5 of this title.) All functions must be performed in accordance with applicable equal opportunity requirements.

(c) *Contracting for services.* (1) For this part 880 and 24 CFR part 881 projects, with HUD approval, the owner may contract with a private or public entity (except the contract administrator) for performance of the services or duties required in paragraphs (a) and (b) of this section.

(2) For 24 CFR part 883 projects, with approval of the Agency, the owner may contract with a private or public entity (but not with the Agency unless temporarily necessary for the Agency to protect its financial interest and to uphold its program responsibilities where no alternative management agent is immediately available) for performance of the services or duties required in paragraphs (a) and (b) of this section.

(3) However, such an arrangement does not relieve the owner of responsibility for these services and duties.

(d) *Submission of financial and operating statements.* After execution of the Contract, the owner must submit to the contract adminstrator:

(1) Financial information in accordance with 24 CFR part 5, subpart H; and

(2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to administration of the Contract and monitoring of project operations.

(e) *Use of project funds.* (1) Project funds must be used for the benefit of the project, to make required deposits to the replacement reserve in accordance with § 880.602 and to provide distributions to the owner as provided in § 880.205, § 881.205 of this chapter, or § 883.306 of this chapter, as appropriate.

(2) For this part 880 and 24 CFR part 881 projects:

(i) Any remaining project funds must be deposited with the mortgagee or other HUD-approved depository in an interest-bearing residual receipts account. Withdrawals from this account will be made only for project purposes and with the approval of HUD.

(ii) Partially-assisted projects are exempt from the provisions of this section.

(iii) In the case of HUD-insured projects, the provisions of this paragraph (e) will apply instead of the otherwise applicable mortgage insurance provisions.

(3) For 24 CFR part 883 projects:

(i) Any remaining project funds must be deposited with the Agency, other mortgagee or other Agency-approved depository in an interest-bearing account. Withdrawals from this account may be made only for project purposes and with the approval of the Agency.

(ii) In the case of HUD-insured projects, the provisions of this paragraph will apply instead of the otherwise applicable mortgage insurance provisions, except in the case of partially-assisted projects which are subject to the applicable mortgage insurance provisions.

(Approved by the Office of Management and Budget under control number 2502–0204)

[44 FR 59410, Oct 15, 1979, as amended at 45 FR 18924, Mar. 24, 1980; 51 FR 11224, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988; 53 FR 1145, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39702, Sept. 27, 1989; 56 FR 7536, Feb. 22, 1991; 60 FR 14841, Mar. 20, 1995; 61 FR 13588, Mar. 27, 1996; 63 FR 46593, Sept. 1, 1998; 65 FR 16722, Mar. 29, 2000]

§ 880.602 Replacement reserve.

(a) A replacement reserve must be established and maintained in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items.

(1) *Part 880 and 24 CFR part 881 projects.* (i) For this part 880 and 24 CFR part 811 projects, an amount equivalent to .006 of the cost of total structures, including main buildings, accessory buildings, garages and other buildings, or any higher rate as required by HUD from time to time, will be deposited in the replacement reserve annually. This amount will be adjusted each year by the amount of the automatic annual adjustment factor.

(ii) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.

(iii) All earnings including interest on the reserve must be added to the reserve.

(iv) Funds will be held by the mortgagee or trustee for bondholders, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

(v) Partially-assisted part 880 and 24 CFR part 881 projects are exempt from the provisions of this section.

(2) *Part 883 of this chapter projects.* (i) For 24 CFR part 883 projects, an amount equivalent to at least .006 of the cost of total structures, including main buildings, accessory buildings, garages and other buildings, or any higher rate as required from time to time by:

(A) The Agency, in the case of projects approved under 24 CFR part 883, subpart D; or

(B) HUD, in the case of all other projects, will be deposited in the replacement reserve annually. For projects approved under 24 CFR part 883, subpart D, this amount may be adjusted each year by up to the amount of the automatic annual adjustment factor. For all projects not approved under 24 CFR part 883, subpart D, this amount must be adjusted each year by the amount of the automatic annual adjustment factor.

(ii) The reserve must be built up to and maintained at a level determined to be sufficient by the Agency to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of the Agency.

(iii) All earnings, including interest on the reserve, must be added to the reserve.

(iv) Funds will be held by the Agency, other mortgagee or trustee for bondholders, as determined by the Agency, and may be drawn from the reserve and used only in accordance with Agency guidelines and with the approval of, or as directed by, the Agency.

(v) The Agency may exempt partially-assisted projects approved under 24 CFR part 883, subpart D, from the provisions of this section. All partially-assisted projects not approved under the Fast Track Procedures formerly in 24 CFR part 883, subpart D, are exempt from the provisions of this section.

(b) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance provisions, except in the case of partially-assisted insured projects which are subject to the applicable mortgage insurance provisions.

[61 FR 13588, Mar. 27, 1996]

§ 880.603 Selection and admission of assisted tenants.

(a) *Application.* The owner must accept applications for admission to the project in the form prescribed by HUD. Both the owner (or designee) and the applicant must complete and sign the application. For this part 880 and 24 CFR part 881 projects, on request, the owner must furnish copies of all applications to HUD and the PHA, if applicable. For 24 CFR part 883 projects, on request, the owner must furnish to the Agency or HUD copies of all applications received.

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income, and evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 5, to determine whether the applicant is eligible for assistance in accordance with the requirements of 24 CFR part 5, and to select families for admission to the program, which includes giving selection preferences in

accordance with 24 CFR part 5, subpart D.

(1) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, provided the owner complies with the procedures for informing applicants about admission preferences as provided in 24 CFR part 5, subpart D.

(2) If the owner determines that an applicant is ineligible on the basis of income or family composition, or because of failure to meet the disclosure and verification requirements for Social Security Numbers (as provided by 24 CFR part 5), or because of failure by an applicant to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR parts 5 and 813), or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request HUD review of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. See 24 CFR part 5 for the informal review provisions for the denial of a Federal preference or the failure to establish citizenship or eligible immigration status and for notice requirements where assistance is terminated, denied, suspended, or reduced based on wage and claim information obtained by HUD from a State Wage Information Collection Agency.

(3) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) *Reexamination of family income and composition*—(1) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least every 12 months. After consultation with the family and upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 5 of this title and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose the verify Social Security Numbers, as provided by 24 CFR part 5. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5. At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 5 and verify the immigration status of any new family member.

(2) *Interim reexaminations.* The family must comply with provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total

Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified. See 24 CFR part 5 for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5. At any interim reexamination after June 19, 1995, when a new family member has been added, the owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of the citizenship or eligible immigration status of any new family member.

(3) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the contract rent plus any utility allowance. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements, for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, or failure to sign and submit consent forms for the obtaining wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5. See 24 CFR part 5 for provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status and also for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

(Approved by the Office of Management and Budget under control number 2502–0204)

[61 FR 13589, Mar. 27, 1996, as amended at 65 FR 16722, Mar. 29, 2000]

§ 880.604 Tenant rent.

The eligible Family pays the Tenant Rent directly to the Owner.

[49 FR 19943, May 10, 1984]

§ 880.605 Overcrowded and underoccupied units.

If the contract administrator determines that because of change in family size an assisted unit is smaller than appropriate for the eligible family to which it is leased, or that the unit is larger than appropriate, housing assistance payments with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate alternative unit. If possible, the owner will, as promptly as possible, offer the family an appropriate unit. The owner may receive vacancy payments for the vacated unit if he complies with the requirements of § 880.611.

§ 880.606 Lease requirements.

(a) *Term of Lease.* The term of the lease will be for not less than one year. The lease may, or in the case of a lease for a term of more than one year must, contain a provision permitting termination on 30 days advance written notice by the family.

(b) *Form.* (1) *Part 880 and 24 CFR part 881 projects.* For this part 880 and 24 CFR part 881 projects, the form of lease must contain all required provisions, and none of the prohibited provisions specified in the developer's packet, and must conform to the form of lease included in the approved final proposal.

(2) *24 CFR part 883 projects.* For 24 CFR part 883 projects, the form of lease must contain all required provisions, and none of the prohibited provisions specified below.

(i) *Required provisions (Addendum to lease).*

Addendum to Lease

The following additional Lease provisions are incorporated in full in the Lease between

____ (Landlord) and ____ (Tenant) for the following dwelling unit: ____. In case of any conflict between these and any other provisions of the Lease, these provisions will prevail.

a. The total rent will be $____ per month.

b. Of the total rent, $____ will be payable by the State Agency (Agency) as housing assistance payments on behalf of the Tenant and $____ will be payable by the Tenant. These amounts will be subject to change by reason of changes in the Tenant's family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD-established schedules and criteria; or by reason of adjustment by the Agency of any applicable Utility Allowance; or by reasons of changes in program rules. Any such change will be effective as of the date stated in a notification to the Tenant.

c. The Landlord will not discriminate against the Tenant in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

d. The Landlord will provide the following services and maintenance: _____

e. A violation of the Tenant's responsibilities under the Section 8 Program, as determined by the Agency, is also a violation of the lease.

Landlord _____

By _____

Date _____

Tenant _____

Date _____

[End of addendum]

(ii) *Prohibited provisions.* Lease clauses which fall within the classifications listed below must not be included in any Lease.

Lease Clauses

a. *Confession of Judgment.* Consent by the tenant to be sued, to admit guilt, or to accept without question any judgment favoring the landlord in a lawsuit brought in connection with the lease.

b. *Seize or Hold Property for Rent or Other Charges.* Authorization to the landlord to take property of the tenant and/or hold it until the tenant meets any obligation which the landlord has determined the tenant has failed to perform.

c. *Exculpatory Clause.* Prior agreement by the tenant not to hold the landlord or landlord's agents legally responsible for acts done improperly or for failure to act when the landlord or landlord's agent was required to do so.

d. *Waiver of Legal Notice.* Agreement by the tenant that the landlord need not give any notices in connection with (1) a lawsuit against the tenant for eviction, money damages, or other purposes, or (2) any other action affecting the tenant's rights under the lease.

e. *Waiver of Legal Proceeding.* Agreement by the tenant to allow eviction without a court determination.

f. *Waiver of Jury Trial.* Authorization to the landlord's lawyer to give up the tenant's right to trial by jury.

g. *Waiver of Right to Appeal Court Decision.* Authorization to the landlord's lawyer to give up the tenant's right to appeal a decision on the ground of judicial error or to give up the tenant's right to sue to prevent a judgment being put into effect.

h. *Tenant Chargeable with Cost of Legal Actions Regardless of Outcome of Lawsuit.* Agreement by the tenant to pay lawyer's fees or other legal costs whenever the landlord decides to sue the tenant whether or not the tenant wins. (Omission of such a clause does not mean that the tenant, as a party to a lawsuit, may not have to pay lawyer's fees or other costs if the court so orders.)

[End of clauses]

[44 FR 59410, Oct. 15, 1979, as amended at 61 FR 13590, Mar. 27, 1996]

§ 880.607 Termination of tenancy and modification of lease.

(a) *Applicability.* The provisions of this section apply to all decisions by an owner to terminate the tenancy of a family residing in a unit under Contract during or at the end of the family's lease term.

(b) *Entitlement of Families to occupancy*—(1) *Grounds.* The owner may not terminate any tenancy except upon the following grounds:

(i) Material noncompliance with the lease;

(ii) Material failure to carry out obligations under any State landlord and tenant act;

(iii) Criminal activity by a covered person in accordance with sections 5.858 and 5.859, or alcohol abuse by a covered person in accordance with section 5.860. If necessary, criminal records can be obtained for lease enforcement purposes under section 5.903(d)(3).

(iv) Other good cause, which may include the refusal of a family to accept an approved modified lease form (see paragraph (d) of this section). No termination by an owner will be valid to the extent it is based upon a lease or a provisions of State law permitting termination of a tenancy solely because of

expiration of an initial or subsequent renewal term. All terminations must also be in accordance with the provisions of any State and local landlord tenant law and paragraph (c) of this section.

(2) *Notice of good cause.* The conduct of a tenant cannot be deemed ''other good cause'' under paragraph (b)(1)(iv) of this section unless the owner has given the family prior notice that the grounds constitute a basis for termination of tenancy. The notice must be served on the family in the same manner as that provided for termination notices under paragraph (c) of this section and State and local law.

(3) *Material noncompliance.* (i) Material noncompliance with the lease includes:

(A) One or more substantial violations of the lease; or

(B) Repeated minor violations of the lease that disrupt the livability of the building; adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities; interfere with the management of the building or have an adverse financial effect on the building.

(ii) Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 5), failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 5), failure to sign and submit consent forms (as provided by 24 CFR part 5), or knowingly providing incomplete or inaccurate information, shall constitute a substantial violation of the lease.

(c) *Termination notice.* (1) The owner must give the family a written notice of any proposed termination of tenancy, stating the grounds and that the tenancy is terminated on a specified date and advising the family that it has an opportunity to respond to the owner.

(2) When a termination notice is issued for other good cause (paragraph (b)(1)(iv) of this section), the notice will be effective, and it will so state, at the end of a term and in accordance with the termination provisions of the lease, but in no case earlier than 30 days after receipt by the family of the notice. Where the termination notice is based on material noncompliance with the lease or material failure to carry out obligations under a State landlord and tenant act pursuant to paragraph (b)(1)(i) or (b)(1)(ii) of this section, the time of service must be in accord with the lease and State law.

(3) In any judicial action instituted to evict the family, the owner may not rely on any grounds which are different from the reasons set forth in the notice.

(4) See 24 CFR part 5 for provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including informal hearing procedures and also for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

(d) *Modification of Lease form.* The owner, with the prior approval of HUD or, for a 24 CFR part 883 project, the Agency, may modify the terms and conditions of the lease form effective at the end of the initial term or a successive term, by serving an appropriate notice on the family, together with the offer of a revised lease or an addendum revising the existing lease. This notice and offer must be received by the family at least 30 days prior to the last date on which the family has the right to terminate the tenancy without being bound by the modified terms and conditions. The family may accept the modified terms and conditions by executing the offered revised lease or addendum, or may reject the modified terms and conditions by giving the owner written notice in accordance with the lease that the family intends to terminate the tenancy. Any increase in rent must in all cases be governed

by § 880.609 and other applicable HUD regulations.

(Approved by the Office of Management and Budget under control number 2502–0204)

[44 FR 59410, Oct. 15, 1979, as amended at 51 FR 11225, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39703, Sept. 27, 1989; 56 FR 7537, Feb. 22, 1991; 60 FR 14842, Mar. 20, 1995; 61 FR 13590, Mar. 27, 1996; 61 FR 47382, Sept. 6, 1996; 66 FR 28797, May 24, 2001]

§ 880.608 Security deposits.

(a) At the time of the initial execution of the lease, the owner will require each family to pay a security deposit in an amount equal to one month's Total Tenant Payment or $50, whichever is greater. The family is expected to pay the security deposit from its own resources and/or other public sources. The owner may collect the security deposit on an installment basis.

(b) The owner must place the security deposits in a segregated, interest-bearing account. The balance of this account must at all times be equal to the total amount collected from the families then in occupancy, plus any accrued interest. The owner must comply with any applicable State and local laws concerning interest payments on security deposits.

(c) In order to be considered for the return of the security deposit, a family which vacates its unit will provide the owner with its forwarding address or arrange to pick up the refund.

(d) The owner, subject to State and local law and the requirements of this paragraph, may use the security deposit, plus any accrued interest, as reimbursement for any unpaid family contribution or other amount which the family owes under the lease. Within 30 days (or shorter time if required by State, or local law) after receiving notification of the family's forwarding address, the owner must:

(1) Refund to a family owing no rent or other amount under the lease the full amount of the security deposit, plus accrued interest;

(2) Provide to a family owing rent or other amount under the lease a list itemizing any unpaid rent, damages to the unit, and estimated costs for repair, along with a statement of the family's rights under State and local law. If the amount which the owner claims is owed by the family is less than the amount of the security deposit, plus accrued interest, the owner must refund the unused balance to the family. If the owner fails to provide the list, the family will be entitled to the refund of the full amount of the security deposit plus accrued interest.

(e) In the event a disagreement arises concerning reimbursement of the security deposit, the family will have the right to present objections to the owner in an informal meeting. The owner must keep a record of any disagreements and meetings in a tenant file for inspection by the contract administrator. The procedures of this paragraph do not preclude the family from exercising its rights under State and local law.

(f) If the security deposit, including any accrued interest, is insufficient to reimburse the owner for any unpaid tenant rent or other amount which the family owes under the lease, and the owner has provided the family with the list required by paragraph (d)(2) of this section, the owner may claim reimbursement from the contract administrator, as appropriate, for an amount not to exceed the lesser of:

(1) The amount owed the owner, or

(2) One month's contract rent, minus the amount of the security deposit plus accrued interest. Any reimbursement under this section will be applied first toward any unpaid tenant rent due under the lease. No reimbursement may be claimed for unpaid rent for the period after termination of the tenancy.

[44 FR 59410, Oct. 15, 1979, as amended at 49 FR 19943, May 10, 1984; 61 FR 13591, Mar. 27, 1996]

§ 880.609 Adjustment of contract rents.

(a) *Automatic annual adjustment of Contract Rents.* Upon request from the owner to the contract administrator, contract rents will be adjusted on the anniversary date of the contract in accordance with 24 CFR part 888.

(b) *Special additional adjustments.* For all projects, special additional adjustments will be granted, to the extent determined necessary by HUD (for 24 CFR part 883 projects, by the Agency and HUD), to reflect increases in the actual and necessary expenses of owning and

maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, and utilities not covered by regulated rates, and which are not adequately compensated for by annual adjustments under paragraph (a) of this section. The owner must submit to the contract administrator required supporting data, financial statements and certifications.

(c) *Overall limitation.* Any adjustments of contract rents for a unit after Contract execution or cost certification, where applicable, must not result in material differences between the rents charged for assisted units and comparable unassisted units except to the extent that the differences existed with respect to the contract rents set at Contract execution or cost certification, where applicable.

[44 FR 59410, Oct. 15, 1979, as amended at 59 FR 22755, May 3, 1994; 61 FR 13591, Mar. 27, 1996]

§ 880.610 Adjustment of utility allowances.

In connection with annual and special adjustments of contract rents, the owner must submit an analysis of the project's Utility Allowances. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the project owner must advise the contract administrator and request approval of new Utility Allowances. Whenever a Utility Allowance for a unit is adjusted, the owner will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment for the unit.

(Approved by the Office of Management and Budget under control number 2502–0161)

[50 FR 39097, Sept. 27, 1985]

§ 880.611 Conditions for receipt of vacancy payments.

(a) *General.* Vacancy payments under the Contract will not be made unless the conditions for receipt of these housing assistance payments set forth in this section are fulfilled.

(b) *Vacancies during Rent-up.* For each assisted unit that is not leased as of the effective date of the Contract, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Conducted marketing in accordance with § 880.601(a) and otherwise complied with § 880.601;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to the contract administrator.

(c) *Vacancies after Rent-Up.* If an eligible family vacates a unit, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Certifies that he did not cause the vacancy by violating the lease, the Contract or any applicable law;

(2) Notified the contract administrator of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 880.601(a) (2) and (3) and paragraph (b) (2) and (3) of this section; and

(4) For any vacancy resulting from the owner's eviction of an eligible family, certifies that he has complied with § 880.607.

(d) *Vacancies for longer than 60 days.* If an assisted unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the owner may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up to 12 additional months for the unit if:

(1) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed;

(2) The owner has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and

(3) The owner has (for 24 CFR part 883 projects, the owner and the Agency have) demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the owner with revenues at least equal to project expenses (exclusive of depreciation), and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit, and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* The owner is not entitled to vacancy payments for vacant units to the extent he can collect for the vacancy from other sources (such as security deposits, payments under § 880.608(f), and governmental payments under other programs).

[44 FR 59410, Oct. 15, 1979, as amended at 61 FR 13591, Mar. 27, 1996]

§ 880.612 Reviews during management period.

(a) After the effective date of the Contract, the contract administrator will inspect the project and review its operation at least annually to determine whether the owner is in compliance with the Contract and the assisted units are in decent, safe and sanitary condition.

(b) In addition:

(1)(i) For this part 880 and 24 CFR part 881 private-owner/PHA projects, HUD will review the PHA's administration of the Contract at least annually to determine whether the PHA is in compliance with the ACC; and

(ii) For 24 CFR part 883 projects, HUD will periodically review the Agency's administration of the Contract to determine whether it is in compliance with the Contract.

(2) HUD may independently inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

[44 FR 59410, Oct. 15, 1979, as amended at 61 FR 13591, Mar. 27, 1996]

§ 880.612a Preference for occupancy by elderly families.

(a) *Election of preference for occupancy by elderly families*—(1) *Election by owners of eligible projects.* (i) An owner of a project assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an ''eligible project'') may, at any time, elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.

(ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an ''elderly project.'' ''Elderly families'' refers to families whose heads of household, their spouses or sole members are 62 years or older.

(iii) An owner who elects to provide a preference to elderly families in accordance with this section is required to notify families on the waiting list who are not elderly that the election has been made and how the election may affect them if:

(A) The percentage of disabled families currently residing in the project who are neither elderly nor near-elderly (hereafter, collectively referred to as ''non-elderly disabled families'') is equal to or exceeds the minimum required percentage of units established for the elderly project in accordance with paragraph (c)(1) of this section, and therefore non-elderly families on the waiting list (including non-elderly disabled families) may be passed over for covered section 8 units; or

(B) The project, after making the calculation set forth in paragraph (c)(1) of this section, will have no units set aside for non-elderly disabled families.

(iv) An owner who elects to give a preference for elderly families in accordance with this section shall not remove an applicant from the project's waiting list on the basis of having made the election.

(2) *HUD approval of election not required.* (i) An owner is not required to solicit or obtain the approval of HUD

before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project's eligibility through the production of all relevant documentation in the possession of the owner that pertains to the original design of the project.

(ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations under the Fair Housing Act (42 U.S.C. 3601 through 3619), or compliance reviews and complaint investigations under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

(b) *Determining projects eligible for preference for occupancy by elderly families*—(1) *Evidence supporting project eligibility*. Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this section, shall consist of at least one item from the sources (''primary'' sources) listed in paragraph (b)(1)(i) of this section, or at least two items from the sources (''secondary'' sources) listed in paragraph (b)(1)(ii) of this section:

(i) *Primary sources.* Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: The application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan commitment; the bid invitation; the owner's management plan, or any underwriting or financial document collected at or before loan closing; *or*

(ii) *Secondary sources.* Two or more sources of evidence such as: lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older; evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with more than fifty percent of efficiency and one-bedroom units [a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of ''elderly families'') from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of ''elderly families'' which includes disabled families]; or any other relevant type of historical data, unless clearly contradicted by other comparable evidence.

(2) *Sources in conflict.* If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of preferences for elderly families as provided by this section based upon primary sources alone. In any case where primary sources do not provide *clear evidence* of original design of the project for occupancy primarily by elderly families, including those cases where primary sources conflict, secondary sources may be used to establish the use for which the project was originally designed.

(c) *Reservation of units in elderly projects for non-elderly disabled families.* The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph (c)(1) of this section for occupancy by non-elderly disabled families.

(1) *Minimum number of units to be reserved for non-elderly disabled families.* The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:

(i) The number of units equivalent to the higher of—

(A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and

(B) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families upon January 1, 1992; *or*

(ii) 10 percent of the number of units assisted under this part in the eligible project.

(2) *Option to reserve greater number of units for non-elderly disabled families.* The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.

(d) *Secondary preferences.* An owner of an elderly project also may elect to establish secondary preferences in accordance with the provisions of paragraph (d) of this section.

(1) *Preference for near-elderly disabled families in units reserved for elderly families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c) of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.

(2) *Preference for near-elderly disabled families in units reserved for non-elderly disabled families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units to disabled families who are near-elderly families.

(e) *Availability of units to families without regard to preference.* An owner shall make vacant units in an elderly project generally available to otherwise eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section if either:

(1) The owner has adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, reserve preference, and secondary preference has been given, to fill all the vacant units; or

(2) The owner has *not* adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, and reserve preference has been given to fill all the vacant units.

(f) *Determination of insufficient number of applicants qualifying for preference.* To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:

(1) Conduct marketing in accordance with § 880.601(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section; and

(2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.

(g) *Prohibition of evictions.* An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

[59 FR 65850, Dec. 21, 1994, as amended at 61 FR 9046, Mar. 6, 1996; 65 FR 16722, Mar. 29, 2000]

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

Subpart A—Summary and Applicability

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AUTHORITY: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

SOURCE: 45 FR 7085, Jan. 31, 1980, unless otherwise noted.

Subpart A—Summary and Applicability

§ 881.101 General.

(a) The purpose of the Section 8 program is to provide low-income families with decent, safe and sanitary rental housing through the use of a system of housing assistance payments. This part contains the policies and procedures applicable to the Section 8 substantial rehabilitation program. The assistance may be provided to public housing agency owners or to private owners either directly from HUD or through public housing agencies.

(b) This part does not apply to projects developed under other Section 8 program regulations, including 24 CFR parts 880, 882, 883, 884, and 885, except to the extent specifically stated in those parts.

[61 FR 13591, Mar. 27, 1996]

§ 881.104 Applicability of part 881.

(a) Part 881, in effect as of February 20, 1980, applies to all proposals for which a notification of selection was not issued before the February 20, 1980 effective date of part 881. (See 24 CFR part 881, revised as of April 1, 1980). Where a notification of selection was issued for a proposal before the February 20, 1980, effective date, part 881 in effect as of February 20, 1980 applies if the owner notified HUD within 60 calendar days that the owner wished the provisions of part 881, effective February 20, 1980, to apply and promptly brought the proposal into conformance.

(b) Subparts E (Housing Assistance Payments Contract) and F (Management) of this part apply to all projects for which an Agreement was not executed before the February 20, 1980, effective date of part 881. Where an Agreement was so executed:

(1) The owner and HUD may agree to make the revised subpart E of this part applicable and to execute appropriate amendments to the Agreement and/or Contract.

(2) The owner and HUD may agree to make the revised subpart F of this part applicable (with or without the limitation on distributions) and to execute appropriate amendments to the Agreement and/or Contract.

(c) Section 881.607 (Termination of tenancy and modification of leases) applies to all families.

(d) Notwithstanding the provisions of paragraph (b) of this section, the provisions of 24 CFR part 5 apply to all projects, regardless of when an Agreement was executed.

[61 FR 13591, Mar. 27, 1996, as amended at 65 FR 16722, Mar. 29, 2000]

§ 881.105 Applicability to proposals and projects under 24 CFR part 811.

Where proposals and projects are financed with tax-exempt obligations under 24 CFR part 811, the provisions of part 811 will be complied with in addition to all requirements of this part. In the event of any conflict between this part and part 811, part 811 will control.

Subpart B—Definitions and Other Requirements

§ 881.201 Definitions.

Agreement. (Agreement to Enter into Housing Assistance Payments Contract) The Agreement between the owner and the contract administrator which provides that, upon satisfactory completion of the project in accordance with the HUD-approved final proposal, the administrator will enter into the Contract with the owner.

Annual Contributions Contract (ACC). As defined in part 5 of this title.

Annual income. As defined in part 5 of this title.

Assisted unit. A dwelling unit eligible for assistance under a Contract.

Contract. (Housing Assistance Payments Contract) The Contract entered into by the owner and the contract administrator upon satisfactory completion of the project, which sets forth the rights and duties of the parties with respect to the project and the payments under the Contract.

Contract Administrator. The entity which enters into the Contract with the owner and is responsible for monitoring performance by the owner. The contract administrator is a PHA in the case of private-owner/PHA projects, and HUD is private-owner/HUD and PHA-owner/HUD projects.

Contract rent. The total amount of rent specified in the contract as payable to the owner for a unit.

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

Elderly family. As defined in part 5 of this title.

Fair Market Rent (FMR). As defined in part 5 of this title.

Family. As defined in part 5 of this title.

Final proposal. The detailed description of a proposed project to be assisted under this part, which an owner submits after selection of the preliminary proposal, except where a preliminary proposal is not required under § 881.303(c). The final proposal becomes an exhibit to the Agreement and is the standard by which HUD judges acceptable construction of the project.

Housing assistance payment. The payment made by the contract administrator to the owner of an assisted unit as provided in the contract. Where the unit is leased to an eligible family, the payment is the difference between the contract rent and the tenant rent. An additional payment is made to the family when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a ''vacancy payment''. may be made to the owner when an assisted unit is vacant, in accordance with the terms of the contract.

HUD. Department of Housing and Urban Development.

Independent Public Accountant. A Certified Public Accountant or a licensed or registered public accountant, having no business relationship with the owner except for the performance of audit, systems work and tax preparation. If not certified, the Independent Public Accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title ''public accountant,'' only Certified Public Accountants may be used.

Low income family. As defined in part 5 of this title.

NOFA. As defined in part 5 of this title.

Owner. Any private person or entity (including a cooperative) or a public entity which qualifies as a PHA, having the legal right to lease or sublease substantially rehabilitated dwelling units assisted under this part. The term owner also includes the person or entity submitting a proposal under this part.

Partially-assisted Project. A project for non-elderly families under this part which includes more than 50 units of which 20 percent or fewer are assisted.

PHA-Owner/HUD Project. A project under this part which is owned by a PHA. For this type of project, the Agreement and the Contract are entered into by the PHA, as owner, and HUD, as contract administrator.

Private-Owner/HUD Project. A project under this part which is owned by a private owner. For this type of project,

the Agreement and Contract are entered into by the private owner, as owner, and HUD, as contract administrator.

Private-Owner/PHA Project. A project under this part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and the PHA, as contract administrator, pursuant to an ACC between the PHA and HUD. The term also covers the situation where the ACC is with one PHA and the owner is another PHA.

Project Account. A specifically identified and segregated account for each project which is established in accordance with § 881.503(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC, as applicable, each year.

Public Housing Agency (PHA). As defined in part 5 of this title.

Rent. In the case of an assisted unit in a cooperative project, rent means the carrying charges payable to the cooperative with respect to occupancy of the unit.

Replacement cost. The sum of the ''as is'' value before rehabilitation of the property as determined by HUD and the estimated cost of rehabilitation, including carrying and finance charges.

Secretary. The Secretary of Housing and Urban Development (or designee).

Single Room Occupancy (SRO) Housing. A unit for occupancy by a single eligible individual capable of independent living, which does not contain food preparation and/or sanitary facilities and is located within a multifamily structure consisting of more than 12 units.

Small project. A project for non-elderly families under this part which includes a total of 50 or fewer (assisted and unassisted) units.

Substantial rehabilitation. (a) The improvement of a property to decent, safe and sanitary condition in accordance with the standards of this part from a condition below those standards. Substantial rehabilitation may vary in degree from gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as substantial rehabilitation under this definition.

(b) Substantial rehabilitation may also include renovation, alteration or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part or the repair or replacement of major building systems or components in danger of failure.

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Vacancy payment. The housing assistance payment made to the owner by the contract administrator for a vacant assisted unit if certain conditions are fulfilled as provided in the Contract. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

Very low income family. As defined in part 5 of this title.

[45 FR 7085, Jan. 31, 1980, as amended at 48 FR 12705, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 49 FR 19944, May 10, 1984; 61 FR 5212, Feb. 9, 1996; 61 FR 13591, Mar. 27, 1996; 63 FR 46578, Sept. 1, 1998; 65 FR 16722, Mar. 29, 2000]

§ 881.205 Limitation on distributions.

(a) Non-profit owners are not entitled to distributions of project funds.

(b) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:

(1) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 6

percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the FEDERAL REGISTER.

(2) For projects for non-elderly families, the first year's distribution will be limited to 10 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 10 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the FEDERAL REGISTER.

(c) For the purpose of determining the allowable distribution, an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by HUD at cost certification (see § 881.405), unless the owner justifies a higher equity contribution by cost certification documentation in accordance with HUD mortgage insurance procedures.

(d) Any short-fall in return may be made up from surplus project funds in future years.

(e) If HUD determines at any time that project funds are more than the amount needed for project operations, reserve requirements and permitted distribution, HUD may require the excess to be placed in an account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess funds must be remitted to HUD.

(f) Owners of small projects or partially-assisted projects are exempt from the limitation on distributions contained in paragraphs (b) through (d) of this section.

(g) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance program provisions.

(h) HUD may permit increased distributions of surplus cash, in excess of the amounts otherwise permitted, to profit-motivated owners who participate in a HUD-approved initiative or program to preserve below-market housing stock. The increased distributions will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the owner is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the owner.

(i) Any State or local law or regulation that restricts distributions to an amount lower than permitted by this section or permitted by the Commissioner under this paragraph (i) is preempted to the extent provided by section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997.

[45 FR 7085, Jan. 31, 1980, as amended at 65 FR 61074, Oct. 13, 2000]

§ 881.207 Property standards.

Projects must comply with:

(a) [Reserved]

(b) In the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards;

(c) HUD requirements pursuant to section 209 of the Housing and Community Development Act of 1974 for projects for the elderly or handicapped;

(d) HUD requirements pertaining to noise abatement and control;

(e) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title; and

(f) Applicable State and local laws, codes, ordinances and regulations.

(g) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an

alarm system connected to the smoke detector installed in the hallway.

[45 FR 7085, Jan. 31, 1980, as amended at 52 FR 1893, Jan. 15, 1987; 57 FR 33851, July 30, 1992; 63 FR 46578, Sept. 1, 1998; 64 FR 50227, Sept. 15, 1999]

§ 881.208 Financing.

(a) *Types of financing.* Any type of construction financing and long-term financing may be used, including:

(1) Conventional loans from commercial banks, savings banks, savings and loan associations, pension funds, insurance companies or other financial institutions;

(2) Mortgage insurance programs under the National Housing Act; and

(3) Financing by tax-exmpt bonds or other obligations.

(b) *HUD approval.* HUD must approve the terms and conditions of the financing to determine consistency with these regulations and to assure they do not purport to pledge or give greater rights or funds to any party than are provided under the Agreement, Contract, and/or ACC. Where the project is financed with tax-exempt obligations, the terms and conditions will be approved in accordance with the following:

(1) An issuer of obligations that are tax-exempt under any provision of Federal law or regulation, the proceeds of the sale of which are to be used to purchase GNMA mortgage-backed securities issued by the mortgagee of the Section 8 project, will be subject to 24 CFR part 811, subpart B.

(2) Issuers of obligations that are tax-exempt under Section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR part 811, subpart A if paragraph (b)(1) of this section is not applicable.

(3) Issuers of obligations that are tax-exempt under any provision of Federal law or regulation other than Section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR 811, subpart A if paragraph (b)(1) of this section is not applicable, except that such issuers that are State Agencies qualified under 24 CFR part 883 are not subject to 24 CFR part 811, subpart A and are subject solely to the requirements of 24 CFR part 883 with regard to the approval of tax-exempt financing.

(c) *Pledge of contracts.* An owner may pledge, or offer as security for any loan or obligation, an Agreement, Contract or ACC entered into pursuant to this part: *Provided, however,* That such financing is in connection with a project constructed pursuant to this part and approved by HUD. Any pledge of the Agreement, Contract, or ACC, or payments thereunder, will be limited to the amounts payable under the Contract or ACC in accordance with its terms. If the pledge or other document provides that all payments will be paid directly to the mortgagee or the trustee for bondholders, the mortgagee or trustee will make all payments or deposits required under the mortgage, trust indenture of HUD regulations and remit any excess to the owner.

(d) *Foreclosure and other transfers.* In the event of foreclosure, assignment or sale approved by HUD in lieu of foreclosure, or other assignment or sale approved by HUD:

(1) The Agreement, the Contract and the ACC, if applicable, will continue in effect, and

(2) Housing assistance payments will continue in accordance with the terms of the Contract.

(e) *Financing of manufactured home parks.* In the case of a substantially rehabilitated manufactured home park, the principal amount of any mortgage attributable to the rental spaces in the park may not exceed an amount per space determined in accordance with § 207.33(b) of this Title.

[45 FR 7085, Jan. 31, 1980, as amended at 45 FR 62797, Sept. 22, 1980; 48 FR 12706, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984]

§ 881.211 Audit.

(a) Where a State or local government is the eligible owner of a project or a contract administrator under § 881.505 receiving financial assistance under this part, the audit requirements in 24 CFR part 44 shall apply.

(b) Where a nonprofit organization is the eligible owner of a project, receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.

[50 FR 39091, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986, as amended at 57 FR 33257, July 27, 1992; 59 FR 2738, Jan. 19, 1994]

Subparts C–D [Reserved]

Subpart E—Housing Assistance Payments Contract

§ 881.501 The contract.

(a) *Contract.* The Housing Assistance Payments Contract sets forth rights and duties of the owner and the contract administrator with respect to the project and the housing assistance payments. The owner and contract administrator execute the Contract in the form prescribed by HUD upon satisfactory completion of the project.

(b) [Reserved]

(c) *Housing assistance payments to owners under the contract.* The housing assistance payments made under the Contract are:

(1) Payments to the owner to assist eligible families leasing assisted units, and

(2) Payments to the owner for vacant assisted units (''vacancy payments'') if the conditions specified in § 881.611 are satisfied.

The housing assistance payments are made monthly by the contract administrator upon proper requisition by the owner, except payments for vacancies of more than 60 days, which are made semi-annually by the contract administrator upon requisition by the owner.

(d) *Amount of housing assistance payments to owner.* (1) The amount of the housing assistance payment made to the owner of a unit being leased by an eligible family is the difference between the contract rent for the unit and the tenant rent payable by the family.

(2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the first 60 days of vacancy, subject to the conditions in § 881.611. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as HUD directs.

(3) For a vacancy that exceeds 60 days, a housing assistance payment for the vacant unit will be made, subject to the conditions in § 881.611, in an amount equal to the principal and interest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.

(e) *Payment of utility reimbursement.* Where applicable, the Utility Reimbursement will be paid to the Family as an additional Housing Assistance Payment. The Contract will provide that the Owner will make this payment on behalf of the contract administrator. Funds for this purpose will be paid to the Owner in trust solely for the purpose of making the additional payment. If the Family and the utility company consent, the Owner may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

[45 FR 7085, Jan. 31, 1980, as amended at 49 FR 19944, May 10, 1984; 61 FR 13591, Mar. 27, 1996]

§ 881.502 Term of contract.

(a) *Term (except for Manufactured Home Parks).* The term of the Contract will be as follows:

(1) Where the estimated cost of the rehabilitation is less than 25 percent of the estimated value of the project after completion of the rehabilitation, the contract will be for a term of 20 years for any dwelling unit.

(2) Where the estimated cost of rehabilitation is 25 percent or more of the estimated value of the project after completion of rehabilitation, the contract may be for a term which:

(i) Will cover the longest term, but not less than 20 years, of a single credit instrument covering:

(A) The cost of rehabilitation, or

(B) The existing indebtedness, or

(C) The cost of rehabilitation and the refinancing of the existing indebtedness, or

(D) The cost of rehabilitation and the acquisition of the property; and

(ii) For assisted units in a project financed with the aid of a loan insured or co-insured by the Federal government or a loan made, guaranteed or intended for purchase by the Federal government, will be 20 years for any dwelling unit; or

(iii) For units in a project financed other than as described in paragraph (a)(2)(ii) of this section will not exceed 30 years for any dwelling unit except

that this limit will be 40 years if (A) the project is owned or financed by a loan or loan guarantee from a state or local agency, (B) the project is intended for occupancy by non-elderly families and (C) the project is located in an area designated by HUD as one requiring special financing assistance.

(b) *Term for manufactured home parks.* For manufactured home units or spaces in substantially rehabilitated manufactured home parks, the term of the Contract will be 20 years.

(c) *Staged projects.* If the project is completed in stages, the term of the Contract must relate separately to the units in each stage. The total Contract term for the units in all stages, beginning with the effective date of the Contract for the first stage, may not exceed the overall maximum term allowable for any one unit under this section, plus two years.

[48 FR 12707, Mar. 28, 1983, and 49 FR 17449, Apr. 24, 1984]

§ 881.503 Cross-reference.

All of the provisions of §§880.503, 880.504, 880.505, 880.506, 880.507, and 880.508 of this chapter apply to projects assisted under this part, subject to the requirements of § 881.104.

[61 FR 13592, Mar. 27, 1996]

Subpart F—Management

§ 881.601 Cross-reference.

All of the provisions of part 880, subpart F, of this chapter apply to projects assisted under this part, subject to the requirements of § 881.104.

[61 FR 13592, Mar. 27, 1996]

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

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

SOURCE: 43 FR 61246, Dec. 29, 1978, unless otherwise noted.

Subpart A—Applicability, Scope and Basic Policies

§ 882.101 Applicability.

(a) The provisions of this part apply to the Section 8 Moderate Rehabilitation program.

(b) This part states the policies and procedures to be used by a PHA in administering a Section 8 Moderate Rehabilitation program. The purpose of this program is to upgrade substandard rental housing and to provide rental subsidies for low-income families.

(c) Subpart H of this part only applies to the Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals.

[63 FR 23853, Apr. 30, 1998]

§ 882.102 Definitions.

(a) *Terms found elsewhere.* The following terms are defined in part 5, subpart A of this title: *1937 Act, covered person, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, MSA, other person under the tenant's control, public housing agency (PHA), Section 8, and violent criminal activity.*

(b) In addition, the following definitions apply to this part:

ACC reserve account (or ''project account''). The account established and maintained in accordance with § 882.403(b).

Agreement to enter into Housing Assistance Payments Contract (''Agreement''). A written agreement between the Owner and the PHA that, upon satisfactory completion of the rehabilitation in accordance with requirements specified in the Agreement, the PHA will enter into a Housing Assistance Payments Contract with the Owner.

Annual Contributions Contract (''ACC''). The written agreement between HUD and a PHA to provide annual contributions to the PHA to cover housing assistance payments and other expenses pursuant to the 1937 Act.

Assisted lease (or ''lease''). A written agreement between an Owner and a Family for the leasing of a unit by the Owner to the Family with housing assistance payments under a Housing Assistance Payments Contract between the Owner and the PHA.

Congregate housing. Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing.

Contract. See definition of Housing Assistance Payments Contract.

Contract rent. The total amount of rent specified in the Housing Assistance Payments Contract as payable to the Owner by the Family and by the PHA to the Owner on the Family's behalf.

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition standards in 24 CFR part 5, subpart G.

Gross rent. The total monthly cost of housing an eligible Family, which is the sum of the Contract Rent and any utility allowance.

Group home. A dwelling unit that is licensed by a State as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide).

Housing Assistance Payment. The payment made by the PHA to the Owner of a unit under lease by an eligible Family, as provided under the Contract. The payment is the difference between the Contract Rent and the tenant rent. An additional payment (the ''utility reimbursement'') is made by the PHA when the utility allowance is greater than the total tenant payment.

Housing Assistance Payments Contract (''Contract''). A written contract between a PHA and an Owner for the purpose of providing housing assistance payments to the Owner on behalf of an eligible Family.

Moderate rehabilitation. Rehabilitation involving a minimum expenditure of $1000 for a unit, including its prorated share of work to be accomplished on common areas or systems, to:

(1) Upgrade to decent, safe and sanitary condition to comply with the Housing Quality Standards or other standards approved by HUD, from a condition below these standards (improvements being of a modest nature and other than routine maintenance); or

(2) Repair or replace major building systems or components in danger of failure.

Owner. Any person or entity, including a cooperative, having the legal right to lease or sublease existing housing.

Single room occupancy housing (SRO). A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities.

Statement of Family responsibility. An agreement in the form prescribed by HUD, between the PHA and a Family to be assisted under the Program, stating the obligations and responsibilities of the Family.

[63 FR 23853, Apr. 30, 1998, as amended at 63 FR 46578, Sept. 1, 1998; 66 FR 28797, May 24, 2001]

§§ 882.103–882.122 [Reserved]

§ 882.123 Conversion of Section 23 Units to Section 8 and Section 23 monitoring.

(a)–(d) [Reserved]

(e) *Section 23 policies for units planned for conversion on or before September 30, 1981.* (1) PHAs shall not enter into new leases with owners for additional units nor shall they renew or extend leases with owners except consistent with the conversion schedules.

(2) Subject to the rights of families under existing leases, PHAs may continue to lease units to families under Section 23 only on a month-to-month basis.

(3) PHAs shall conduct annual inspections of all units to determine whether the units are decent, safe and sanitary.

(4) PHAs shall certify with their requisitions to HUD for payments under the ACC that the units are decent, safe and sanitary, or the PHA shall furnish HUD with a report of the nature of the deficiencies of the units which are not so certified. If an owner's units are not decent, safe and sanitary.

(i) Where the owner is responsible under the terms of the lease for correcting the deficiencies, the PHA shall send the owner written notification requiring the owner to take specified corrective action within a specified time. The notification shall also state that, if the owner fails to comply, rent payments will be suspended. If the owner fails to comply with the first notification, he shall be notified by the PHA of the noncompliance and rent payments shall be suspended immediately. In the event of such suspension of rent payments, the PHA shall requisition a correspondingly lower ACC payment.

(ii) Where the PHA is responsible under the terms of the lease for correcting the deficiencies, the Field Office shall send written notification requiring the PHA to take specified corrective action within a specified time. The notification shall also state that, if the PHA fails to comply, HUD will make reduced payments to the PHA only in the amount of the rent due the owner. If the PHA fails to comply with the first notification, the PHA shall be notified of the noncompliance, and the PHA shall not receive any fees for performing management functions until the PHA has complied with the Field Office request and has corrected the noted deficiencies.

(f) [Reserved]

(g) *Section 23 policies for units not planned to be converted.* (1) PHAs shall not enter into new leases with owners for additional units nor shall they renew or extend leases with owners for more than one year.

(2) The provisions contained in paragraphs (e) (3) and (4) of this section shall apply.

(h) *Request for rent increases.* An owner may submit to the PHA a request for rent increase because of increases in operating cost, when the rents to the owner, after adjustments based on provisions in the lease, are insufficient to provide decent, safe and sanitary housing. Such a request shall be supported by an audited financial statement, and the data shall clearly show that failure to obtain additional revenue will result in deterioriation of units and loss of decent, safe and sanitary housing for low-income families. The PHA shall inspect the units to determine whether the units are decent, safe and sanitary. Where the need for an adjustment under this paragraph is shown:

(1) Subject to available contract authority and prior approval by the HUD Field Office, the PHA may grant an adjustment to the extent documented and

justified for those items of expenses (excluding debt service) for which the owner is responsible under the lease.

(2) The amount of the adjustment must be reasonable when compared with similar items under the Section 8 Existing Housing program.

(3) The adjusted amount for expenses shall not exceed the result of applying the appropriate Section 8 Existing Housing Annual Adjustment Factor (24 CFR part 888) most recently published by HUD in the FEDERAL REGISTER to the appropriate expense base in effect under the lease prior to this adjustment.

(4) The adjustment shall not be retroactive to pay for costs that the owner had previously incurred.

(5) The adjustment shall be effective for a period not to exceed one year.

[44 FR 28276, Nov. 14, 1979, as amended at 60 FR 34694, July 3, 1995]

§ 882.124 Audit.

PHAs receiving financial assistance under this part are subject to audit requirements in 24 CFR part 44.

[50 FR 39091, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986]

Subparts B–C [Reserved]

Subpart D—Special Procedures for Moderate Rehabilitation—Basic Policies

SOURCE: 47 FR 34379, Aug. 9, 1982, unless otherwise noted.

§ 882.401 Eligible properties.

(a) *Eligible properties.* Except as provided in paragraph (b) of this section, housing suitable for moderate rehabilitation as defined in § 882.102 is eligible for inclusion under the Moderate Rehabilitation Program. Existing structures of various types may be appropriate for this program, including single-family houses, multi-family structures and group homes.

(b) *Ineligible properties.* (1) Nursing homes, units within the grounds of penal, reformatory, medical, mental and similar public or private institutions, and facilities providing continual psychiatric, medical or nursing services are not eligible for assistance under the Moderate Rehabilitation Program.

(2) Housing owned by a State or unit of general local government is not eligible for assistance under this program.

(3) High rise elevator projects for families with children may not be utilized unless HUD determines there is no practical alternative. (HUD may make this determination for a locality's Moderate Rehabilitation Program in whole or in part and need not review each building on a case-by-case basis.)

(4) Single room occupancy (SRO) housing may not be utilized unless:

(i) The property is located in an area in which there is a significant demand for such units as determined by the HUD Field Office; and

(ii) The PHA and the unit of general local government in which the property is located approve of such units being utilized for such purpose.

(5) No Section 8 assistance may be provided with respect to any unit occupied by an Owner; however, cooperatives will be considered as rental housing for purposes of the Moderate Rehabilitation Program.

[63 FR 23854, Apr. 30, 1998, as amended at 64 FR 14832, Mar. 29, 1999]

§ 882.402 [Reserved]

§ 882.403 ACC, housing assistance payments contract, and lease.

(a) *Maximum Total ACC Commitments.* The maximum total annual contribution that may be contracted for is the total of the Moderate Rehabilitation Fair Market Rents for all the units. The fee for the costs of PHA administration is payable out of the annual contribution.

(b) *Project account.* (1) A project account will be established and maintained by HUD as a specifically identified and segregated account for each project. The account will contain the sum of the amounts by which the maximum annual commitment exceeds the amount actually paid out for the project under the ACC each year. Payments will be made from this account when needed to cover increases in Contract Rents or decreases in Gross Family Contributions for (i) housing assistance (including vacancy) payments, (ii)

the amount of the fee for PHA costs of administration, and (iii) other costs specifically approved by the Secretary.

(2) When a HUD-approved estimate of required payments under the ACC for a fiscal year exceeds the maximum annual commitment, and would cause the amount in the project account to be less than 40 percent of the maximum, HUD will, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the U.S. Housing Act of 1937, as may be necessary, to assure that payments under the ACC will be adequate to cover increases in Contract Rents and decreases in Gross Family Contributions.

(c) *Term of Housing Assistance Payments Contract.* The Contract for any unit rehabilitated in accordance with the Program must be for a term of 15 years.

(d) *Term of Lease.* (1) The initial lease between the family and the Owner must be for at least one year or the term of the HAP contract, whichever is shorter. In cases where there is less than one year remaining on the HAP contract, the owner and the PHA may mutually agree to terminate the unit from the HAP contract instead of leasing the unit to an eligible family.

(2) Any renewal or extension of the lease term for any unit must in no case extend beyond the remaining term of the HAP contract.

[47 FR 34379, Aug. 9, 1982, as amended at 64 FR 53869, Oct. 4, 1999]

§ 882.404 Physical condition standards; physical inspection requirements.

(a) *Compliance with physical condition standards.* Housing in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, a dwelling unit used in the Section 8 moderate rehabilitation program that is not SRO housing must have a living room, a kitchen area, and a bathroom. Such a dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(c) *Special housing types.* The following provisions in 24 CFR part 982, subpart M (Special Housing Types) apply to the Section 8 moderate rehabilitation program:

(1) 24 CFR 982.605(b) (for SRO housing). For the Section 8 moderate rehabilitation SRO program under subpart H of this part 882, see also § 882.803(b).

(2) 24 CFR 982.609(b) (for congregate housing).

(3) 24 CFR 982.614(c) (for group homes).

(d) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to the Section 8 moderate rehabilitation program.

[63 FR 46579, Sept. 1, 1998; 64 FR 50227, Sept. 15, 1999]

§ 882.405 Financing.

(a) *Types.* Any type of public or private financing may be utilized with the exception of the rehabilitation loan program under Section 312 of the Housing Act of 1964.

(b) *Use of Contract as security for financing.* An Owner may pledge, or offer as security for any loan or obligation, an Agreement or Contract entered into pursuant to this Program, *Provided* That (1) such security is in connection with a unit(s) rehabilitated pursuant to this Program and (2) the terms of the financing or any refinancing must be approved by the PHA in accordance with standards provided by HUD. Any pledge of the Agreement or Contract, or payments thereunder, will be limited to the amounts payable under the Contract in accordance with its terms.

§ 882.406 [Reserved]

§ 882.407 Other Federal requirements.

The moderate rehabilitation program is subject to applicable federal requirements in 24 CFR 5.105.

[63 FR 23855, Apr. 30, 1998]

§ 882.408 Initial contract rents.

(a) *Fair Market Rent limitation.* The Fair Market Rent Schedule for Moderate Rehabilitation is 120 percent of the Existing Housing Fair Market Rent Schedule, except that the Fair Market

Rent limitation applicable to single room occupancy housing is 75 percent of the Moderate Rehabilitation Fair Market Rent for a 0-bedroom unit. The initial Gross Rent for any Moderate Rehabilitation unit must not exceed the Moderate Rehabilitation Fair Market Rent applicable to the unit on the date that the Agreement is executed except by up to 10 percent as provided in paragraph (b) of this section. Additionally, to the extent provided in paragraph (d) of this section, the PHA may approve changes in the Contract Rent subsequent to execution of the Agreement which result in an initial Gross Rent which exceeds the Moderate Rehabilitation Fair Market Rent applicable to the unit by up to 20 percent.

(b) *Exception rents.* With HUD Field Office approval, the PHA may approve initial Gross Rents which exceed the applicable Moderate Rehabilitation Fair Market Rents by up to 10 percent for all units of a given size in specified areas where HUD has determined that the rents for standard units suitable for the Existing Housing Program are more than 10 percent higher than the Existing Housing Fair Market Rents. The PHA must submit documentation demonstrating the necessity for such exception rents in the area to the HUD Field Office. In areas where HUD has approved the use of exception rents for 0-bedroom units, the single room occupancy housing exception rent will be 75 percent of the exception rent applicable to Moderate Rehabilitation 0-bedroom units.

(c) *Determination Initial Contract Rents.* (1) The initial Contract Rent and base rent for each unit must be computed in accordance with HUD requirements. These amounts may be determined in accordance with paragraph (c)(2), or in accordance with an alternative method prescribed by HUD. However, the initial Contract Rent may in no event be more than—

(i) The Moderate Rehabilitation Fair Market Rent or exception rent applicable to the unit on the date that the Agreement is executed, minus

(ii) Any applicable allowance for utilities and other services attributable to the unit.

(2) When the initial Contract Rent is computed under this paragraph, the rent will be equal to the base rent plus the monthly cost of a rehabilitation loan (but not more than the maximum stated in paragraph (c)(1)). The base rent must be calculated using the rent charged for the unit or the estimated costs to the Owner of owning, managing and maintaining the rehabilitated unit. The monthly cost of a rehabilitation loan must be calculated using:

(i) The actual interest rate on the portion of the rehabilitation costs borrowed by the Owner,

(ii) The HUD-FHA maximum interest rate for multifamily housing (or another rate prescribed by HUD) for rehabilitation costs paid by the Owner out of nonborrowed funds, and

(iii) At least a 15 year loan term, except that if the total amount of rehabilitation is less than $15,000, the actual loan term will be used for the portion of the rehabilitation costs borrowed by the Owner. (HUD Field Offices may authorize loan terms which differ from the above in accordance with HUD requirements.)

(d) *Changes in Initial Contract Rents during rehabilitation.* (1) The initial Contract Rents established pursuant to paragraph (c) of this section will be the Contract Rents on the effective date of the Contract except under the following circumstances:

(i) When, during rehabilitation, work items (including substantial and necessary design changes) which (A) could not reasonably have been anticipated or are necessitated by a change in local codes or ordinances, and (B) were not listed in the work write-up prepared or approved by the PHA, are subsequently required and approved by the PHA.

(ii) When the actual cost of the rehabilitation performed is less than that estimated in the calculation of Contract Rents for the Agreement or the actual, certified costs are more than estimated due to unforeseen factors beyond the owner's control (e.g., strikes, weather delays or unexpected delays caused by local governments).

(iii) When the PHA (or HUD) approves changes in financing.

(iv) When the actual relocation payments made by the Owner to temporarily relocated Families varies from

the cost estimated in the calculation of Contract Rents for the Agreement.

(v) When necessary to correct errors in computation of the base and Contract Rents to comply with the HUD requirements.

(2) Should changes occur as specified in paragraph (d)(1) (either an increase or decrease), the PHA will approve any necessary change in work and amendment of the work write-up and cost estimate, recalculate the initial Contract Rents in accordance with paragraph (d)(3) of this section, and amend the Contract or Agreement, as appropriate, to reflect the revised rents.

(3) In establishing the revised Contract Rents, the PHA must determine that the resulting Gross Rents do not exceed the Moderate Rehabilitation Fair Market Rent or the exception rent in effect at the time of execution of the Agreement. The Fair Market Rent or exception rent, as appropriate, may only be exceeded when the PHA determines in accordance with paragraph (d)(1) of this section that it will be necessary for the revised Gross Rent to exceed the Moderate Rehabilitation Fair Market Rent or exception rent. Should this determination be made, the PHA may not execute a revised Agreement or Contract for Gross Rents exceeding the Fair Market Rents by more than 10 percent until it receives HUD Field Office approval. The HUD Field Office may approve revised Gross Rents which exceed the Fair Market Rents by up to 20 percent for reasons specified in paragraph (d)(1) of this section upon proper justification by the PHA of the necessity for the increase.

[47 FR 34379, Aug. 9, 1982, as amended at 52 FR 19725, May 27, 1987]

§ 882.409 Contract rents at end of rehabilitation loan term.

For a Contract where the initial Contract Rent was based upon a loan term shorter than 15 years, the Contract must provide for reduction of the Contract Rent effective with the rent for the month following the end of the term of the rehabilitation loan. The amount of the reduction will be the monthly cost of amortization of the rehabilitation loan. This reduction should result in a new Contract Rent equal to the base rent established pursuant to § 882.408(c) plus all subsequent adjustments.

§ 882.410 Rent adjustments.

(a) *Annual and special adjustments.* Contract Rents will be adjusted as provided in paragraphs (a) (1) and (2) of this section upon submittal to the PHA by the Owner of a revised schedule of Contract Rents, provided that the unit is in decent, safe, and sanitary condition and that the Owner is otherwise in compliance with the terms of the Lease and Contract. Subject to the foregoing, adjustments of Contract Rents will be as follows:

(1) The Annual Adjustment Factors which are published annually by HUD (see Schedule C, 24 CFR part 888) will be utilized. On or after each annual anniversary date of the Contract, the Contract Rents may be adjusted in accordance with HUD procedures, effective for the month following the submittal by the Owner of a revised schedule of Contract Rents. The changes in rent as a result of the adjustment cannot exceed the amount established by multiplying the Annual Adjustment Factor by the base rents. However, if the amounts borrowed to finance the rehabilitation costs or to finance purchase of the property are subject to a variable rate or are otherwise renegotiable, Contract Rents may be adjusted in accordance with other procedures as prescribed by HUD, and specified in the Contract, provided that the adjusted Contract Rents cannot exceed the rents established by multiplying the Annual Adjustment Factor by the Contract Rents. Adjusted Contract Rents must then be examined in accordance with paragraph (b) of this section and may be adjusted accordingly. Contract Rents may be adjusted upward or downward, as may be appropriate.

(2) *Special Adjustments.* (i) A special adjustment, to the extent determined by HUD to reflect increases in the actual and necessary expenses of owning and maintaining the unit which have resulted from substantial general increases in real property taxes, assessments, utility rates and utilities not covered by regulated rates, may be recommended by the PHA for approval by

HUD. Subject to appropriations, a special adjustment may also be recommended by the PHA for approval by HUD when HUD determines that a project is located in a community where drug-related criminal activity is generally prevalent, and not specific to a particular project, and the project's operating, maintenance, and capital repair expenses have substantially increased primarily as a result of the prevalence of such drug-related activity. HUD may, on a project-by-project basis, provide adjustments to the maximum monthly rents, to a level no greater than 120 percent of the current gross rents for each unit size under a Housing Assistance Payments Contract, to cover the costs of maintenance, security, capital repairs and reserves required for the Owner to carry out a strategy acceptable to HUD for addressing the problem of drug-related criminal activity. Prior to approval of a special adjustment to cover the cost of physical improvements, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(ii) The aforementioned special rent adjustments will only be approved if and to the extent the Owner clearly demonstrates that these general increases have caused increases in the owners operating costs which are not adequately compensated for by annual adjustments.

(iii) The Owner must submit financial information to the PHA which clearly supports the increase. For Contracts of more than twenty units, the Owner must submit audited financial information.

(b) *Overall limitation.* Notwithstanding any other provisions of this part, adjustments as provided in this section must not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph (a)(2) of this section). However, unless the rents have been adjusted in accordance with § 882.409, this limitation should not be construed to prohibit differences in rents between assisted and comparable unassisted units to the extent that differences existed with respect to the initial Contract Rents.

(Approved by the Office of Management and Budget under OMB approval number 2577–0196)

[47 FR 34379, Aug. 9, 1982, as amended at 59 FR 47773, Sept. 16, 1994]

§ 882.411 Payments for vacancies.

(a) *Vacancies from execution of Contract to initial occupancy.* If a Contract unit which has been rehabilitated in accordance with this Program is not leased within 15 days of the effective date of the Contract, the Owner will be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract, provided that the Owner (1) has complied with §§ 882.506(d) and 882.508(c); (2) has taken and continues to take all feasible actions to fill the vacancy; and (3) has not rejected any eligible applicant except for good cause acceptable to the PHA.

(b) *Vacancies after initial occupancy.* (1) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner may receive the housing assistance payments due under the Contract for so much of the month in which the Family vacates the unit as the unit remains vacant. Should the unit continue to remain vacant, the Owner may receive from the PHA a housing assistance payment in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding an additional month. However, if the Owner collects any of the Family's share of the rent for this period, the payment must be reduced to an amount which, when added to the Family's payment, does not exceed 80 percent of the Contract Rent. Any such excess must be reimbursed by the Owner to the PHA. The Owner will not be entitled to any payment under this paragraph (b)(1) of this section unless the Owner:

(i) Immediately upon learning of the vacancy, has notified the PHA of the vacancy or prospective vacancy, and

(ii) has taken and continues to take all feasible actions specified in paragraphs (a) (2) and (3) of this section.

(2) If the Owner evicts an Eligible Family, the Owner will not be entitled to any payment under paragraph (b)(1) of this section unless the PHA determines that the Owner complied with all requirements of the Contract.

(c) *Prohibition of double compensation for vacancies.* The Owner will not be entitled to housing assistance payments with respect to vacant units under this section if the Owner is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the HCD Act of 1974 or payments for unpaid rent under § 882.414 (Security and Utility Deposits)).

[47 FR 34379, Aug. 9, 1982, as amended at 63 FR 23855, Apr. 30, 1998]

§ 882.412 Subcontracting of owner services.

(a) *General.* Any Owner may contract with any private or public entity to perform for a fee the services required by the Agreement, Contract or Lease, provided that such contract may not shift any of the Owner's responsibilities or obligations.

(b) *PHA management.* If the Owner and a PHA wish to enter into a management contract, they may do so provided that:

(1) The Housing Assistance Payments Contract with respect to the housing involved is administered by another PHA, or

(2) Should another PHA not be available and willing to administer the Housing Assistance Payments Contract and no other management alternative exists, the HUD Field Office may authorize PHA management of units administered by the PHA in accordance with specified criteria.

(3) Notwithstanding the provisions of § 882.408 (b) and (c), a PHA may not approve, without prior HUD approval, rents which exceed the appropriate Moderate Rehabilitation Fair Market Rent for a unit for which it provides the management functions under this section.

§ 882.413 Responsibility of the Family.

(a) A family receiving housing assistance under this Program must fulfill all of its obligations under the Lease and Statement of Family Responsibility.

(b) No family member may engage in drug-related criminal activity or violent criminal activity. Failure of the Family to meet its responsibilities under the Lease, the Statement of Family Responsibility, or this section shall constitute rounds for termination of assistance by the PHA. Should the PHA determine to terminate assistance to the Family, the provisions of § 882.514(f) must be followed.

[55 FR 28546, July 11, 1990, as amended at 63 FR 23855, Apr. 30, 1998]

§ 882.414 Security and utility deposits.

(a) If at the time of the initial execution of the Lease the Owner wishes to collect a security deposit, the maximum amount shall be the greater of one month's Total Tenant Payment or $50. However, this amount shall not exceed the maximum amount allowable under State or local law. For units leased in place, security deposits collected prior to the execution of a Contract which are in excess of this maximum amount do not have to be refunded until the Family vacates the unit subject to the lease terms. The Family is expected to pay security deposits and utility deposits from its resources and/or other public or private sources.

(b) If a Family vacates the unit, the Owner, subject to State and local law, may use the security deposit as reimbursement for any unpaid Tenant Rent or other amount which the Family owes under the Lease. If a Family vacates the unit owing no rent or other amount under the Lease consistent with State or local law or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance to the Family.

(c) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. The Owner shall comply with all State

and local laws regarding interest payments on security deposits.

(d) If the security deposit is insufficient to reimburse the Owner for the unpaid Tenant Rent or other amounts which the Family owes under the Lease, or if the Owner did not collect a security deposit, the Owner may claim reimbursement from the PHA for an amount not to exceed the lesser of:

(1) The amount owed the Owner, or

(2) Two month's Contract Rent; minus, in either case, the greater of the security deposit actually collected or the amount of security deposit the Owner could have collected under the program (pursuant to paragraph (a) of this section). Any reimbursement under this section must be applied first toward any unpaid Tenant Rent due under the Lease and then to any other amounts owed. No reimbursement may be claimed for unpaid rent for the period after the Family vacates.

[43 FR 61246, Dec. 29, 1978, as amended at 44 FR 31176, May 31, 1979; 49 FR 19945, May 10, 1984. Redesignated at 63 FR 23854, Apr. 30, 1998]

Subpart E—Special Procedures for Moderate Rehabilitation—Program Development and Operation

SOURCE: 47 FR 34383, Aug. 9, 1982, unless otherwise noted.

§§ 882.501–882.506 [Reserved]

§ 882.507 Completion of rehabilitation.

(a) *Notification of completion.* The Owner must notify the PHA when the work is completed and submit to the PHA the evidence of completion and certifications described in paragraphs (b) and (c) of this section.

(b) *Evidence of completion.* Completion of the unit(s) must be evidenced by furnishing the PHA with the following:

(1) A certificate of occupancy and/or other official approvals as required by the locality.

(2) A certification by the Owner that:

(i) The unit(s) has been completed in accordance with the requirements of the Agreement;

(ii) The unit(s) is in good and tenantable condition;

(iii) The unit(s) has been rehabilitated in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials;

(iv) The unit(s) are in compliance with part 35, subparts A, B, H, and R of this title.

(iv) Any unit(s) built prior to 1973 are in compliance with § 882.404(c)(3) and § 882.404(c)(4).

(v) If applicable, the Owner has complied with the provisions of the Agreement relating to the payment of not less than prevailing wage rates and that to the best of the Owner's knowledge and belief there are no claims of underpayment concerning alleged violations of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the Owner, PHA or HUD, the Owner will be required to place sufficient amount in escrow, as determined by the PHA or HUD, to assure such payments.

(c) *Actual cost and rehabilitation loan certifications.* The Owner must provide the PHA with a certification of the costs incurred for the rehabilitation and any temporary relocation as well as the interest rate and term of any rehabilitation loan. The Owner must certify that these are the actual costs, interest rate, and term.

The PHA must review for completeness and accuracy and accept these certifications subject to the right of post audit. The PHA must then establish the Contract Rents as provided in § 882.408 which will be subject to reduction based on a post audit.

(d) *Review and inspections.* The PHA must review the evidence of completion for compliance with paragraph (b) of this section. The PHA also must inspect the unit(s) to be assisted to determine that the unit(s) has been completed in accordance with the Agreement and meets the Housing Quality Standards or other standards approved by HUD for the Program. If the inspection discloses defects or deficiencies, the inspector must report these in detail.

(e) *Acceptance.* (1) If the PHA determines from the review and inspection that the unit(s) has been completed in

accordance with the Agreement, the unit(s) will be accepted.

(2) If there are any items of delayed completion which are minor items or which are incomplete because of weather conditions, and in any case which do not preclude or affect occupancy, and all other requirements of the Agreement have been met, the unit(s) must be accepted. An escrow fund determined by the PHA to be sufficient to assure completion for items of delayed completion must be required, as well as a written agreement between the PHA and the Owner, to be included as an exhibit to the Contract, specifying the schedule for completion. If the items are not completed within the agreed time period, the PHA may terminate the Contract or exercise other rights under the Contract.

(3) If other deficiencies exist, the PHA must determine whether and to what extent the deficiencies are correctable, and whether the Contract Rents should be reduced. The Owner must be notified of the PHA's decision. If the corrections required by the PHA are possible, the PHA and the Owner must enter into an agreement for the correction of the deficiencies within a specified time. If the deficiencies are corrected within the agreed period of time, the PHA must accept the unit(s).

(4) Otherwise, the unit(s) may not be accepted, and the Owner must be notified with a statement of the reasons for nonacceptance.

[47 FR 34383, Aug. 9, 1982, as amended at 52 FR 1895, Jan. 15, 1987; 64 FR 50227, Sept. 15, 1999]

§ 882.508 [Reserved]

§ 882.509 Overcrowded and under occupied units.

If the PHA determines that a Contract unit is not decent, safe, and sanitary by reason of increase in Family size, or that a Contract unit is larger than appropriate for the size of the Family in occupancy, housing assistance payments with respect to the unit will not be abated; *However,* the Owner must offer the Family a suitable alternative unit should one be available and the Family will be required to move. If the Owner does not have a suitable available unit, the PHA must assist the Family in locating other standard housing in the locality within the Family's ability to pay and require the Family to move to such a unit as soon as possible. In no case will a Family be forced to move nor will housing assistance payments under the Contract be terminated unless the Family rejects without good reason the offer of a unit which the PHA judges to be acceptable.

§ 882.510 Adjustment of utility allowance.

The PHA must determine, at least annually, whether an adjustment is required in the Utility Allowance applicable to the dwelling units in the Program, on grounds of changes in utility rates or other change of general applicability to all units in the Program. The PHA may also establish a separate schedule of allowances for each building of 20 or more assisted units, based upon at least one year's actual utility consumption data following rehabilitation under the Program. If the PHA determines that an adjustment should be made in its Schedule of Allowances or if it establishes a separate schedule for a building which will change the allowance, the PHA must then determine the amounts of adjustments to be made in the amount of rent to be paid by affected Families and the amount of housing assistance payments and must notify the Owners and Families accordingly. Any adjustment to the Allowance must be implemented no later than at the Family's next reexamination or at lease renewal, whichever is earlier.

[47 FR 34383, Aug. 9, 1982, as amended at 49 FR 19946, May 10, 1984]

§ 882.511 Lease and termination of tenancy.

(a) *Lease.* (1) The lease must include all provisions required by HUD, and must not include any provisions prohibited by HUD.

(2) The lease must provide that drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control is grounds for the owner to terminate tenancy. In addition, the lease must provide that the owner may

terminate the tenancy of a family when the owner determines that a household member is illegally using a drug or when the owner determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(b) *Applicability.* The provisions of this section apply to decisions by an Owner to terminate the tenancy of a Family during or at the end of the Family's lease term.

(c) *Grounds for termination of or refusal to renew the lease.* The Owner must not terminate or refuse to renew the lease except upon the following grounds:

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

(2) Violation of applicable Federal, State or local law.

(3) Other good cause.

(d) *Notice of termination of tenancy.* (1) The Owner must serve a written notice of termination of tenancy on the Family which states the date the tenancy shall terminate. Such date must be in accordance with the following:

(i) When termination is based on failure to pay rent, the date of termination must be not less than five working days after the Family's receipt of the notice.

(ii) When termination is based on serious or repeated violation of the terms and conditions of the lease or on violation of applicable Federal, State or local law, the date of termination must be in accordance with State and local law.

(iii) When termination is based on other good cause, the date of termination must be no earlier than 30 days after the notice is served on the Family.

(2) The notice of termination must:

(i) State the reasons for such termination with enough specificity to enable the Family to prepare a defense.

(ii) Advise the Family that if a judicial proceeding for eviction is instituted, the tenant may present a defense in that proceeding.

(iii) Be served on the Family by sending a prepaid first class properly addressed letter (return receipt requested) to the tenant at the dwelling unit or by delivering a copy of the notice to the dwelling unit.

(3) *Substitution of State and local requirements.* In the case of failure to pay rent, a notice of termination which is issued pursuant to State or local law or is common practice in the locality and which satisfies paragraph (c)(2) may be substituted for or run concurrently with the notice required herein.

(e) *Eviction.* All evictions must be carried out through judical process under State and local law. ''Eviction'' means the dispossession of the Family from the dwelling unit pursuant to State or local court action.

(f) *Lease.* The requirements of this section shall be incorporated into the dwelling lease between the Owner and the Family.

[47 FR 34383, Aug. 9, 1982, as amended at 63 FR 23855, Apr. 30, 1998; 66 FR 28797, May 24, 2001]

§ 882.512 Reduction of number of units covered by contract.

(a) *Limitation on leasing to ineligible Families.* Owners must lease all assisted units under Contract to Eligible Families. Leasing of vacant, assisted units to ineligible tenants is a violation of the Contract and grounds for all available legal remedies, including suspension or debarment from HUD programs and reduction of the number of units under the Contract, as set forth in paragraph (b) of this section. Once the PHA has determined that a violation exists, the PHA must notify HUD of its determination and the suggested remedies. At the direction of HUD, the PHA must take the appropriate action.

(b) *Reduction for failure to lease to Eligible Families.* If, at any time beginning six months after the effective date of the Contract, the Owner fails for a period of six continuous months to have at least 90 percent of the assisted units leased or available for leasing by Eligible Families (because families initially eligible have become ineligible), the PHA may, on at least 30 days' notice, reduce the number of units covered by the Contract. The PHA may reduce the number of units to the number of units actually leased or available for leasing by Eligible Families plus 10 percent (rounded up). If the Owner has only one unit under Contract and if one year has

elapsed since the date of the last housing assistance payment, the Contract may be terminated with the consent of the Owner.

(c) *Restoration.* The PHA will agree to an amendment of the Contract, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) if:

(1) The PHA determines that the restoration is justified by demand,

(2) The Owner otherwise has a record of compliance with obligations under the Contract, and

(3) Contract authority is available.

§ 882.513 Public notice to low-income families; waiting list.

(a) *Public notice to low-income Families.* (1) If the PHA does not have a waiting list which is sufficient to provide applicants for the units under the Moderate Rehabilitation Program, the PHA must, promptly after receiving the executed ACC, make known to the public the availability of the Program.

(i) The notice must state that assistance under this Program will be available only in specified units which have been rehabilitated under the Program.

(ii) The notice must be made in accordance with the PHA's HUD-approved application and with the HUD guidelines for fair housing requiring the use of the equal housing opportunity logotype, statement and slogan.

(b) *Waiting list.* The PHA must maintain a waiting list for applicants for the Moderate Rehabilitation Program. This requirement may be met through the use of waiting lists for other subsidized housing programs such as the Existing Housing Program.

§ 882.514 Family participation.

(a) *Initial determination of family eligibility.* (1) The PHA is responsible for receipt and review of applications, and determination of family eligibility for participation in accordance with HUD regulations (see 24 CFR parts 5, 750 and 760). The PHA is responsible for verifying the sources and amount of the family's income and other information necessary for determining income eligibility and the amount of the assistance payments.

(2) PHA records on applicants and Families selected to participate must be maintained so as to provide HUD with racial, gender, and ethnic data.

(b) *Selection of Families for participation.* When vacancies occur, the PHA will refer to the Owner one or more appropriate size Families on its waiting list. The PHA must select Families for participation in accordance with the provisions of the Program and in accordance with the PHA's application, including any PHA requirement or preferences as approved by HUD. The PHA must select Families eligible for housing assistance payments currently residing in units that are designated for rehabilitation under the Program without requiring that these Families be placed on the waiting list. Notwithstanding the fact that the PHA may not be accepting additional applications for participation because of the length of the waiting list, the PHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for partcipation and claims that he or she qualifies for a Federal preference as provided in 24 CFR part 5, unless the PHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions under this part, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the PHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

(c) *Owner selection of Families.* All vacant units under Contract must be rented to Eligible Families referred by the PHA from its waiting list. However, if the PHA is unable to refer a sufficient number of interested applicants on the waiting list to the Owner within 30 days of the Owner's notification to the PHA of a vacancy, the Owner may advertise or solicit applications from Low-Income Families and refer such Families to the PHA to determine eligibility. Since the Owner is responsible for tenant selection, the Owner may refuse any Family provided

that the Owner does not unlawfully discriminate. Should the Owner reject a Family, and should the Family believe that the Owner's rejection was the result of unlawful discrimination, the Family may request the assistance of the PHA in resolving the issue. If the issue cannot be resolved promptly, the Family may file a complaint with HUD, and the PHA may refer the Family to the next available Moderate Rehabilitation unit.

(d) *Briefing of Families.* (1) When a Family is initially determined to be eligible for housing assistance payments or is selected for participation in accordance with this section, the PHA must provide the Family with information as to the Tenant Rent and the PHA's schedule of Utility Allowances. Each Family must also, either in group or individual sessions, be provided with a full explanation of the following:

(i) Family and Owner responsibilities under the Lease and Contract;

(ii) Significant aspects of the applicable State and local laws;

(iii) Significant aspects of Federal, State and local fair housing laws;

(iv) The fact that the subsidy is tied to the unit and the Family must occupy a unit rehabilitated under the Program;

(v) The Family's options under the Program should the Family be required to move due to an increase or decrease in Family size; and

(vi) The advisability and availability of blood lead level screening for children under 6 years of age and HUD's lead-based paint requirements in part 35, subparts A, B, H, and R of this title.

(2) For all Families to be temporarily relocated, the briefing must include a discussion of the relocation policies.

(e) *Continued participation of Family when Contract is terminated.* If an Owner evicts an assisted family in violation of the Contract or otherwise breaches the Contract, and the Contract for the unit is terminated, and if the Family was not at fault and is eligible for continued assistance, the Family may continue to receive housing assistance through the conversion of the Moderate Rehabilitation assistance to tenant-based assistance under the Section 8 certificate or voucher program. The Family must then be issued a certificate or voucher, and treated as any participant in the tenant-based programs under 24 CFR part 982, and must be assisted by the PHA in finding a suitable unit. All requirements of 24 CFR part 982 will be applicable except that the term of any housing assistance payments contract may not extend beyond the term of the initial Moderate Rehabilitation Contract. If the Family is determined ineligible for continued assistance, the certificate or voucher may be offered to the next Family on the PHA's waiting list. The unit will remain under the Moderate Rehabilitation ACC which provides for such a conversion of the units; therefore no amendment to the ACC will be necessary to convert to the Section 8 tenant-based assistance programs.

(f) *Families determined by the PHA to be ineligible.* If a Family is determined to be ineligible in accordance with the PHA's HUD-approved application, either at the application stage or after assistance has been provided on behalf of the Family, the PHA shall promptly notify the Family by letter of the determination and the reasons for it and the letter shall state that the Family has the right within a reasonable time (specified in the letter) to request an informal hearing. If, after conducting such an informal hearing, the PHA determines, based on a preponderance of the evidence, that the Family is ineligible, it shall notify the Family in writing. The procedures of this paragraph do not preclude the Family from exercising its other rights if it believes it is being discriminated against on the basis of race, color, religion, sex, age, handicap, familial status, or national origin. The informal review provisions for the denial of a Federal selection preference under § 882.517 are contained in paragraph (k) of that section. The informal hearing requirements for denial and termination 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 2502–0123)

[47 FR 34383, Aug. 9, 1982, as amended at 49 FR 19945, May 10, 1984; 51 FR 11226, Apr. 1, 1986; 52 FR 1895, Jan. 15, 1987; 53 FR 847, Jan. 13, 1988; 53 FR 1155, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39705, Sept. 27, 1989; 55 FR 28547, July 11, 1990; 56 FR 7539, Feb. 22, 1991; 60 FR 14844, Mar. 20, 1995; 61 FR 9046, Mar. 6, 1996; 61 FR 13625, Mar. 27, 1996; 63 FR 23855, Apr. 30, 1998; 64 FR 50227, Sept. 15, 1999; 66 FR 28797, May 24, 2001]

§ 882.515 Reexamination of family income and composition.

(a) *Regular reexaminations.* The PHA must reexamine the income and composition of all families at least once every 12 months. After consultation with the family and upon verification of the information, the PHA must make appropriate adjustments in the Total Tenant Payment in accordance with part 813 of this chapter and determine whether the family's unit size is still appropriate (see § 882.213). The PHA must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment. At the time of the annual reexamination of family income and composition, the PHA must require the family to disclose and verify Social Security Numbers. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see part 5, subpart B, of this title. At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 5 concerning verification of immigration status of any new family member.

(b) *Interim reexaminations.* If the PHA receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the PHA must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See part 5, subpart B, of this title for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see part 5, subpart B, of this title. At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) *Obligation to supply information.* The family must supply such certification, release, information or documentation as the PHA or HUD determine to be necessary, including submission of required evidence of citizenship or eligible immigration status, submission of social security numbers and verifying documentation, submission of signed consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, and submissions required for an annual or interim reexamination of family income and composition. See 24 CFR part 5.

(d) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments shall continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by part 5, subpart B, of this

title, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by part 5, subpart B, of this title. For provisions requiring termination of assistance when the PHA determines that a family member is not a U.S. citizen or does not have eligible immigration status, see 24 CFR parts 5 and 982 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

[56 FR 7539, Feb. 22, 1991, as amended at 60 FR 14844, Mar. 20, 1995; 61 FR 11118, Mar. 18, 1996; 61 FR 13625, Mar. 27, 1996; 63 FR 23855, Apr. 30, 1998]

§ 882.516 Maintenance, operation and inspections.

(a) *Maintenance and operation.* The Owner must provide all the services, maintenance and utilities as agreed to under the Contract, subject to abatement of housing assistance payments or other applicable remedies if the Owner fails to meet these obligations.

(b) *Periodic inspection.* In addition to the inspections required prior to execution of the Contract, the PHA must inspect or cause to be inspected each dwelling unit under Contract at least annually and at such other times as may be necessary to assure that the Owner is meeting the obligations to maintain the unit in decent, safe and sanitary condition and to provide the agreed upon utilities and other services. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

(c) *Units not decent, safe and sanitary.* If the PHA notifies the Owner that the unit(s) under Contract are not being maintained in decent, safe and sanitary condition and the Owner fails to take corrective action (including corrective action with respect to the Family where the condition of the unit is the fault of the Family) within the time prescribed in the notice, the PHA may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments (even if the Family continues in occupancy), termination of the Contract on the affected unit(s) and assistance to the Family in accordance with § 882.514(e).

(d) *PHA management.* Where the PHA is managing units on which it is also administering the Housing Assistance Payments Contract pursuant to a management contract approved by HUD in accordance with § 882.412, HUD will make reviews of project operations, including inspections, in addition to required PHA reviews. These HUD reviews will be sufficient to assure that the Owner and the PHA are in full compliance with the terms and conditions of the Contract and the ACC. Should HUD determine that there are deficiencies, it may exercise any rights or remedies specified for the PHA under the Contract or reserved for HUD in the ACC, require termination of the management contract, or take other appropriate action.

(e) Periodic PHA audits must be conducted as required by HUD, in accordance with guidelines prescribed by 24 CFR part 44.

[47 FR 34383, Aug. 9, 1982, as amended at 53 FR 8065, Mar. 11, 1988]

§ 882.517 HUD review of contract compliance.

HUD will review program operations at such intervals as it deems necessary to ensure that the Owner and the PHA are in full compliance with the terms and conditions of the Contract and the ACC. Equal Opportunity review may be conducted with the scheduled HUD review or at any time deemed appropriate by HUD.

[43 FR 61246, Dec. 29, 1978. Redesignated at 63 FR 23854, Apr. 30, 1998]

§ 882.518 Denial of admission and termination of assistance for criminals and alcohol abusers.

(a) *Requirement to deny admission.*—(1) *Prohibiting admission of drug criminals.* (i) The PHA must prohibit admission to the program of an applicant for three years from the date of termination of tenancy if any household member's federally assisted housing tenancy has been terminated for drug-related criminal activity. However, the

PHA may admit the household if the PHA determines:

(A) The household member who engaged in drug-related criminal activity and whose tenancy was terminated has successfully completed an approved supervised drug rehabilitation program, or

(B) The circumstances leading to the termination of tenancy no longer exist (for example, the criminal household member has died or is imprisoned).

(ii) The PHA must establish standards that permanently prohibit admission to the program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(iii) The PHA must establish standards that prohibit admission of a household to the program if the PHA determines that any household member is currently engaging in illegal use of a drug or that it has reasonable cause to believe that a household member's pattern of illegal use of a drug, as defined in §5.100 of this title, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(2) *Prohibiting admission of sex offenders.* The PHA must establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In this screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the State where the housing is located and in other States where household members are known to have resided.

(b) *Authority to deny admission.*—(1) *Prohibiting admission of other criminals.* The PHA may prohibit admission of a household to the program under standards established by the PHA if the PHA determines that any household member is currently engaged in or has engaged in during a reasonable time before the admission decision:

(i) Drug-related criminal activity;

(ii) Violent criminal activity;

(iii) Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents;

(iv) Other criminal activity which may threaten the health or safety of the owner or any employee, contractor, subcontractor or agent of the owner who is involved in the owner's housing operations.

(2) *Reasonable time.* The PHA may establish a period before the admission decision during which an applicant must not have engaged in the activities specified in paragraph (b)(1) of this section ''reasonable time''.

(3) *Sufficient evidence.* If the PHA has denied admission to an applicant because a member of the household engaged in criminal activity in accordance with paragraph (b)(1) of this section, the PHA may reconsider the applicant if the PHA has sufficient evidence that the members of the household are not currently engaged in, and have not engaged in criminal activity during a reasonable period, as determined by the PHA, before the admission decision.

(i) The PHA would have ''*sufficient evidence*'' if the household member submitted a certification that she or he is not currently engaged in and has not engaged in such criminal activity during the specified period and provided supporting information from such sources as a probation officer, a landlord, neighbors, social service agency workers and criminal records, which the PHA verified.

(ii) For purposes of this section, a household member is ''currently engaged in'' criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current.

(4) *Prohibiting admission of alcohol abusers.* The PHA must establish standards that prohibit admission to the program if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(c) *Terminating assistance.*—(1) *Terminating assistance for drug criminals.* (i) The PHA may terminate assistance for

drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control. In addition, the PHA may terminate assistance if the PHA determines that a household member is illegally using a drug or when the PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) The PHA must immediately terminate assistance for a family under the program if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Terminating assistance for other criminals.* (i) The PHA must establish standards that allow the PHA to terminate assistance for a family if the PHA determines that any household member is engaged in criminal activity that threatens the health, safety, or right of peaceful enjoyment of the premises by other residents or by persons residing in the immediate vicinity of the premises.

(ii) The PHA may terminate assistance for a family if the PHA determines that a member of the household is:

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

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

(3) *Evidence of criminal activity.*

(i) The PHA may terminate assistance for criminal activity in accordance with this section if the PHA determines, based on a preponderance of the evidence, that a covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity.

(ii) See part 5, subpart J, of this title for provisions concerning access to criminal records.

(4) *Terminating assistance for alcohol abusers.* The PHA must establish standards that allow termination of assistance for a family if the PHA determines that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

[66 FR 28797, May 24, 2001]

Subparts F–G [Reserved]

Subpart H—Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals

SOURCE: 61 FR 48057, Sept. 11, 1996, unless otherwise noted.

§ 882.801 Purpose.

The purpose of the Section 8 Moderate Rehabilitation Program for Single Room Occupancy (SRO) Dwellings for Homeless Individuals is to provide rental assistance for homeless individuals in rehabilitated SRO housing. The Section 8 assistance is in the form of rental assistance payments. These payments equal the rent for the unit, including utilities, minus the portion of the rent payable by the tenant under the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.).

§ 882.802 Definitions.

In addition to the definitions set forth in 24 CFR part 5 and § 882.102 (except for the definition of ''*Single Room Occupancy (SRO) Housing*'' therein) the following will apply:

Agreement to enter into housing assistance payments contract (Agreement). A written agreement between the owner and the HA that, upon satisfactory completion of the rehabilitation in accordance with requirements specified in the Agreement, the HA will enter into a housing assistance payments contract with the owner.

Applicant. A public housing agency or Indian housing authority (collectively

referred to as HAs), or a private nonprofit organization that applies for assistance under this program. HUD will require private nonprofit applicants to subcontract with public housing agencies to administer their rental assistance.

Eligible individual (''individual''). An individual who is capable of independent living and is authorized for admission to assisted housing under 24 CFR part 5.

Homeless individual. An individual as described in section 103 of the McKinney Act (42 U.S.C. 11302).

McKinney Act. The Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.).

Moderate rehabilitation. Rehabilitation involving a minimum expenditure of $3,000 for a unit, including its prorated share of work to be accomplished on common areas or systems, to upgrade to decent, safe, and sanitary condition to comply with the Housing Quality Standards or other standards approved by HUD, from a condition below those standards (improvements being of a modest nature and other than routine maintenance).

Private nonprofit organization. An organization, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual. The organization must:

(1) Have a voluntary board;

(2) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and

(3) Practice nondiscrimination in the provision of assistance.

Single room occupancy (SRO) housing. A unit for occupancy by one person, which need not but may contain food preparation, sanitary facilities, or both.

Statement of individual responsibility. An agreement, in the form prescribed by HUD, between the HA and an individual to be assisted under the program, stating the obligations and responsibilities of the two parties.

[61 FR 48057, Sept. 11, 1996, as amended at 63 FR 23855, Apr. 30, 1998]

§ 882.803 Project eligibility and other requirements.

(a) *Eligible and ineligible properties.* (1) Except as otherwise provided in paragraph (a) of this section, housing suitable for moderate rehabilitation is eligible for inclusion under this program. Existing structures of various types may be appropriate for this program, including single family houses and multifamily structures.

(2) Housing is not eligible for assistance under this program if it is receiving Federal funding for rental assistance or operating costs under other HUD programs.

(3) Nursing homes and related facilities such as intermediate care or board and care homes; units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions; and facilities providing continual psychiatric, medical, or nursing services are not eligible for assistance under this program.

(4) No Section 8 assistance may be provided with respect to any unit occupied by an owner.

(5) Housing located in the Coastal Barrier Resources System designated under the Coastal Barriers Resources Act is not eligible.

(6) Single-sex facilities are allowable under this program, provided that the HA determines that because of the physical limitations or configuration of the facility, considerations of personal privacy require that the facility (or parts of the facility) be available only to members of a single sex.

(b)(1) *Physical condition standards.* Section 882.404 applies to this program.

(2) *Site standards.* (i) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed; adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with local law, may be considered adequate utilities.)

(ii) The site must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–19), E.O. 11063

(as amended by E.O. 12259; 3 CFR, 1959–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307), and HUD regulations issued pursuant thereto.

(iii) The site must be accessible to social, recreational, educational, commercial, and health facilities, and other appropriate municipal facilities and services.

(c) *Financing.* Section 882.405 applies to this program.

(d) *Relocation.* Section 882.406 applies to a project assisted under this program.

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

(i) The unit is not ineligible under § 882.803(a); and

(ii) HUD approves the base and contract rent calculations prior to execution of the Agreement and prior to execution of the HAP contract.

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

[61 FR 48057, Sept. 11, 1996, as amended at 63 FR 46579, Sept. 1, 1998; 64 FR 50227, Sept. 15, 1999]

§ 882.804 Other Federal requirements.

(a) Participation in this program requires compliance with the Federal requirements set forth in 24 CFR 5.105, and with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.).

(b) For agreements covering nine or more assisted units, the following requirements for labor standards apply:

(1) Not less than the wages prevailing in the locality, as determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a through 276a–5), must be paid to all laborers and mechanics employed in the development of the project, other than volunteers under the conditions set out in 24 CFR part 70;

(2) The employment of laborers and mechanics is subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333); and

(3) HAs, owners, contractors, and subcontractors must comply with all related rules, regulations, and requirements.

(c) The environmental review requirements of 24 CFR part 58, implementing the National Environmental Policy Act and related environmental laws and authorities, apply to this program.

§ 882.805 HA application process, ACC execution, and pre-rehabilitation activities.

(a) *Review.* When funds are made available for assistance, HUD will publish a notice of funding availability (NOFA) in the FEDERAL REGISTER in accordance with the requirements of 24 CFR part 4. HUD will review and screen applications in accordance with the guidelines, rating criteria, and procedures published in the NOFA.

(b) *ACC Execution.* (1) Before execution of the annual contributions contract (ACC), the HA must submit to the appropriate HUD field office the following:

(i) Estimates of Required Annual Contributions, Forms HUD–52672 and HUD–52673;

(ii) Administrative Plan, which should include:

(A) Procedures for tenant outreach;

(B) A policy governing temporary relocation; and

(C) A mechanism to monitor the provision of supportive services.

(iii) Proposed Schedule of Allowances for Tenant-Furnished Utilities and Other Services, Form HUD–52667, with a justification of the amounts proposed;

(iv) If applicable, proposed variations to the acceptability criteria of the Housing Quality Standards (see § 882.803(b)); and

(v) The fire and building code applicable to each structure.

(2) After HUD has approved the HA's application, the review and comment requirements of 24 CFR part 791 have been complied with, and the HA has submitted (and HUD has approved) the items required by paragraph (b)(1) of this section, HUD and the HA must execute the ACC in the form prescribed by HUD. The initial term of the ACC must be 11 years. This term allows one year to rehabilitate the units and place them under a 10-year HAP contract. The ACC must give HUD the option to

renew the ACC for an additional 10 years.

(3) Section 882.403(a) (Maximum Total ACC Commitments) applies to this program.

(4) Section 882.403(b) (Project account) applies to this program.

(c)(1) If an owner is proposing to accomplish at least $3000 per unit of rehabilitation by including work to make the unit(s) accessible to a person with disabilities occupying the unit(s) or expected to occupy the unit(s), the PHA may approve such units not to exceed 5 percent of the units under its Program, provided that accessible units are necessary to meet the requirements of 24 CFR part 8, which implements section 504 of the Rehabilitation Act of 1973. The rehabilitation must make the unit(s), and access and egress to the unit(s), barrier-free with respect to the disability of the individual in residence or expected to be in residence.

(2) The PHA must take the applications and determine the eligibility of all tenants residing in the approved units who wish to apply for the Program. After eligibility of all the tenants has been determined, the Owner must be informed of any adjustment in the number of units to be assisted. In order to make the most efficient use of housing assistance funds, an Agreement may not be entered into covering any unit occupied by a family which is not eligible to receive housing assistance payments. Therefore, the number of units approved by the PHA for a particular proposal must be adjusted to exclude any unit(s) determined by the PHA to be occupied by a family not eligible to receive housing assistance payments. Eligible Families must also be briefed at this stage as to their rights and responsibilities under the Program.

(3) Should the Owner agree with the assessment of the PHA as to the work that must be accomplished, the preliminary feasibility of the proposal, and the number of units to be assisted, the Owner, with the assistance of the PHA where necessary, must prepare detailed work write-ups including specifications and plans (where necessary) so that a cost estimate may be prepared. The work write-up will describe how the deficiencies eligible for amortization through the Contract Rents are to be corrected including minimum acceptable levels of workmanship and materials. From this work write-up, the Owner, with the assistance of the PHA, must prepare a cost estimate for the accomplishment of all specified items.

(4) The owner is responsible for selecting a competent contractor to undertake the rehabilitation. The PHA must propose opportunities for minority contractors to participate in the program.

(5) The PHA must discuss with the Owner the various financing options available. The terms of the financing must be approved by the PHA in accordance with standards prescribed by HUD.

(6) Before execution of the Agreement, the HA must:

(i)(A) Inspect the structure to determine the specific work items that need to be accomplished to bring the units to be assisted up to the Housing Quality Standards (see § 882.803(b)) or other standards approved by HUD;

(B) Conduct a feasibility analysis, and determine whether cost-effective energy conserving improvements can be added;

(C) Ensure that the owner prepares the work write-ups and cost estimates required by paragraph (c)(3) of this section;

(D) Determine initial base rents and contract rents;

(ii) Assure that the owner has selected a contractor in accordance with paragraph (c)(4) of this section;

(iii) After the financing and a contractor are obtained, determine whether the costs can be covered by initial contract rents, computed in accordance with paragraph (d) of this section; and, if a structure contains more than 50 units to be assisted, submit the base rent and contract rent calculations to the appropriate HUD field office for review and approval in sufficient time for execution of the Agreement in a timely manner;

(iv) Obtain firm commitments to provide necessary supportive services;

(v) Obtain firm commitments for other resources to be provided;

(vi) Determine that the $3,000 minimum amount of work requirement and

other requirements in paragraph (c)(1) of this section are met;

(vii) Determine eligibility of current tenants, and select the units to be assisted, in accordance with paragraph (c)(2) of this section;

(viii) Comply with the financing requirements in paragraph (c)(5) of this section;

(ix) Assure compliance with all other applicable requirements of this subpart; and

(x) If the HA determines that any structure proposed in its application is infeasible, or the HA proposes to select a different structure for any other reason, the HA must submit information for the proposed alternative structure to HUD for review and approval. HUD will rate the proposed structure in accordance with procedures in the applicable notice of funding availability. The HA may not proceed with processing for the proposed structure or execute an Agreement until HUD notifies the HA that HUD has approved the proposed alternative structure and that all requirements have been met.

(d) *Initial contract rents.* Section 882.408 (Initial contract rents), including the establishment of fair market rents for SRO units at 75 percent of the O-bedroom Moderate Rehabilitation Fair Market Rent, applies to this program, except as follows:

(1)(i) In determining the monthly cost of a rehabilitation loan, in accordance with § 882.408(c)(2), a loan term of a least 10 years (instead of 15 years) may be used. The exception in § 882.408(c)(2)(iii) for using the actual loan term if the total amount of the rehabilitation is less than $15,000 continues to apply. In addition, the cost of the rehabilitation that may be included for the purpose of calculating the amount of the initial contract rent for any unit must not exceed the lower of:

(A) The projected cost of rehabilitation; or

(B) The per unit cost limitation that is established by FEDERAL REGISTER notice, plus the cost of the fire and safety improvements required by 24 CFR 982.605(b)(4). HUD may, however, increase the limitation in paragraph (d)(1)(i)(B) of this section by an amount HUD determines is reasonable and necessary to accommodate special local conditions, including high construction costs or stringent fire or building codes. HUD will publish future cost limitation changes in the FEDERAL REGISTER in the Notice of Funding Availability issued each year.

(ii) If the Federal Housing Administration (FHA) believes that high construction costs warrant an increase in the per unit cost limitation in paragraph (d)(1)(i)(B) of this section, the HA must demonstrate to HUD's satisfaction that a higher average per unit amount is necessary to conduct this program, and that every appropriate step has been taken to contain the amount of the rehabilitation within the published per unit cost limitation established at that time, plus the cost of the required fire and safety improvements. These higher amounts will be determined as follows:

(A) HUD may approve a higher per unit amount up to, but not to exceed, an amount computed by multiplying the HUD-approved High Cost Percentage for Base Cities (used for computing FHA high cost area adjustments) for the area, by the current published cost limitation plus the cost of the required fire and safety improvements.

(B) HUD may, on a structure-by-structure basis, increase the level approved in paragraph (d)(1)(i) of this section to up to an amount computed by multiplying 2.4 by the current published cost limitation plus the cost of the required fire and safety improvements.

(2) In approving changes to initial contract rents during rehabilitation in accordance with § 882.408(d), the revised initial contract rents may not reflect an average per unit rehabilitation cost that exceeds the limitation specified in paragraph (d)(1) of this section.

(3) If the structure contains four or fewer SRO units, the Fair Market Rent for that size structure (the Fair Market Rent for a 1–, 2–, 3–, or 4–bedroom unit, as applicable) must be used to determine the Fair Market Rent limitation instead of using the separate Fair Market Rent for each SRO unit. To determine the Fair Market Rent limitation for each SRO unit, the Fair Market Rent for the structure must be apportioned equally to each SRO unit.

(4) Contract rents must not include the costs of providing supportive services, transportation, furniture, or other nonhousing costs, as determined by HUD. SRO program assistance may be used for efficiency units selected for rehabilitation under this program, but the gross rent (contract rent plus any Utility Allowance) for these units will be no higher than for SRO units (i.e., 75 percent of the 0-bedroom Moderate Rehabilitation Fair Market Rent).

(Approved by the Office of Management and Budget under control number 2506–0131)

[61 FR 48057, Sept. 11, 1996, as amended at 63 FR 23855, Apr. 30, 1998]

§ 882.806 Agreement to enter into housing assistance payments contract.

(a) *Rehabilitation period.* (1) *Agreement.* Before the owner begins any rehabilitation, the HA must enter into an Agreement with the owner in the form prescribed by HUD.

(2) *Timely performance of work.* (i) After execution of the Agreement, the Owner must promptly proceed with the rehabilitation work as provided in the Agreement. If the work is not so commenced, diligently continued, or completed, the PHA will have the right to rescind the Agreement, or take other appropriate action.

(ii) The Agreement must provide that the work must be completed and the contract executed within 12 months of execution of the ACC. HUD may reduce the number of units or the amount of the annual contribution commitment if, in HUD's determination, the HA fails to demonstrate a good faith effort to adhere to this schedule or if other reasons justify reducing the number of units.

(3) *Inspections.* The PHA must inspect, as appropriate, during rehabilitation to ensure that work is proceeding on schedule and is being accomplished in accordance with the terms of the Agreement, particularly that the work meets the acceptable levels of workmanship and materials specified in the work write-up.

(4) *Changes.* (i) The Owner must submit to the PHA for approval any changes from the work specified in the Agreement which would alter the design or the quality of the required rehabilitation. The PHA may condition its approval of such changes on a reduction of the Contract Rents. If changes are made without prior PHA approval, the PHA may determine that Contract Rents must be reduced or that the Owner must remedy any deficiency as a condition for acceptance of the unit(s).

(ii) Contract rents may not be increased except in accordance with §§ 882.408(d) and 882.805(d)(2).

(b) *Completion of rehabilitation.* (1) *Notification of completion.* Section 882.507(a) applies to this program.

(2) *Evidence of completion.* Section 882.507(b) applies to this program, except that § 882.507(b)(2)(iv), concerning lead-based paint requirements, does not apply.

(3) *Actual cost and rehabilitation loan certifications.* Section 882.507(c) applies to this program, except that contract rents must be established in accordance with § 882.805(d).

(4) *Review and inspections.* Section 882.507(d) applies to this program.

(5) *Acceptance.* Section 882.507(e) applies to this program.

(Approved by the Office of Management and Budget under control number 2502–0367)

[61 FR 48057, Sept. 11, 1996, as amended at 63 FR 23856, Apr. 30, 1998]

§ 882.807 Housing assistance payments contract.

(a) *Time of execution.* Upon PHA acceptance of the unit(s) and certifications pursuant to § 882.507, the Contract will be executed by the Owner and the PHA. The effective date must be no earlier than the PHA inspection which provides the basis for acceptance as specified in § 882.507(e).

(b) *Term of contract.* The contract for any unit rehabilitated in accordance with this program must be for a term of 10 years. The contract must give the HA the option to renew the contract for an additional 10 years.

(c) *Changes in contract rents from agreement.* The contract rents may be higher or lower than those specified in the Agreement, in accordance with § 882.805(d).

(d) *Unleased unit(s).* At the time of execution of the Contract, the Owner will be required to submit a list of

dwelling unit(s) leased and not leased as of the effective date of the Contract.

(e) *Contract rents at end of rehabilitation loan term.* For a contract in which the initial contract rent was based upon a loan term shorter than 10 years, the contract must provide for reduction of the contract rent effective with the rent for the month following the end of the term of the rehabilitation loan. The amount of the reduction will be the monthly cost of amortization of the rehabilitation loan. This reduction should result in a new contract rent equal to the base rent plus all subsequent adjustments.

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[61 FR 48057, Sept. 11, 1996, as amended at 63 FR 23856, Apr. 30, 1998]

§ 882.808 Management.

(a) *Outreach to homeless individuals and appropriate organizations.* (1) The HA or the owner must undertake outreach efforts to homeless individuals so that they may be brought into the program. The outreach effort should include notification to emergency shelter providers and other organizations that could provide referrals of homeless individuals. If the owner conducts the outreach effort, the owner must notify the HA so that it may provide referrals of homeless individuals.

(2) *Additional outreach concerns.* If the procedures that the HA or owner intends to use to publicize the availability of this program are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, or mental or physical disability who may qualify for admission to the program, the HA or owner must establish additional procedures that will ensure that such persons are made aware of the availability of the program. The HA or owner must also adopt and implement procedures to ensure that interested persons can obtain information concerning the existence and location of services and facilities that are accessible to persons with disabilities.

(3) *First priority for homeless individuals.* Homeless individuals must have the first priority for occupancy of housing rehabilitated under this program.

(b) *Individual participation.* (1) *Initial determination of individual eligibility.* Section 882.514(a) applies to this program.

(2) *Owner selection of individuals.* The owner must rent all vacant units under contract to homeless individuals located through HA or owner outreach efforts and determined by the HA to be eligible. The owner is responsible for tenant selection and may refuse any individual, provided the owner does not unlawfully discriminate. If the owner rejects an individual, and the individual believes that the owner's rejection was the result of unlawful discrimination, the individual may request the assistance of the HA in resolving the issue and may also file a complaint with HUD's Office of Fair Housing and Equal Opportunity in accordance with 24 CFR 103.25. If the individual requests the assistance of the HA, and if the HA cannot resolve the complaint promptly, the HA should advise the individual that he or she may file a complaint with HUD, and provide the individual with the address of the nearest HUD Office of Fair Housing and Equal Opportunity.

(3) *Briefing of individuals.* Section 882.514(d) applies to this program, except that § 882.514(d)(1)(vi) does not apply.

(4) *Continued participation of individual when contract is terminated.* Section 882.514(e) applies to this program.

(5) *Individuals determined by the HA to be ineligible.* Section 882.514(f) applies to this program. In addition, individuals are not precluded from exercising other rights if they believe they have been discriminated against on the basis of age.

(c) *Lease.* Sections 882.403(d) and 882.511(a) apply to this program. In addition, the lease must limit occupancy to one eligible individual.

(d) *Security and utility deposits.* Section 882.414 applies to this program.

(e) *Rent adjustments.* Section 882.410 applies to this program.

(f) *Payments for vacancies.* Section 882.411 applies to this program.

(g) *Subcontracting of owner services.* Section 882.412 applies to this program.

(h) *Responsibility of the individual.* Section 882.413 applies to this program.

(i) *Reexamination of individual income.* (1) *Regular reexaminations.* The HA must reexamine the income of all individuals at least once every 12 months. After consultation with the individual and upon verification of the information, the HA must make appropriate adjustments in the Total Tenant Payment in accordance with 24 CFR part 5, subpart F, and verify that only one individual is occupying the unit. The HA must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment. At each regular reexamination, the HA must follow the requirements of 24 CFR part 5, subpart E concerning verification of immigration status of any new family member.

(2) *Interim reexaminations.* The individual shall supply such certification, release, information, or documentation as the PHA or HUD determines to be necessary, including submissions required for interim reexaminations of individual income and determinations as to whether only one individual is occupying the unit. In addition § 882.515(b) shall apply.

(3) *Continuation of Housing Assistance Payments.* Section 882.515(d) applies to this program.

(j) *Overcrowded units.* If the HA determines that anyone other than, or in addition to, the eligible individual is occupying an SRO unit assisted under this program, the HA must take all necessary action, as soon as reasonably feasible, to ensure that the unit is occupied by only one eligible individual.

(k) *Adjustment of utility allowance.* Section 882.510 applies to this program.

(l) *Termination of tenancy.* Section 882.511 applies to this program. For provisions requiring termination of assistance when the HA determines that a family member is not a U.S. citizen or does not have eligible immigration status, see 24 CFR part 5, subpart E for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, or for provisions concerning deferral of termination of assistance.

(m) *Reduction of number of units covered by contract.* Section 882.512 applies to this program.

(n) *Maintenance, operation, and inspections.* Section 882.516 applies to this program.

(o) *HUD review of contract compliance.* Section 882.517 applies to this program.

(p) *Records and reports.* Each recipient of assistance under this subpart must keep any records and make any reports that HUD may require within the timeframe required.

(q) *Participation of homeless individuals.* (1) Each approved applicant receiving assistance under this program, except HAs, must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policymaking entity of such applicant, to the extent that the entity considers and makes policies and decisions regarding the rehabilitation of any housing with assistance under this subpart. This requirement is waived if the applicant is unable to meet this requirement and presents a plan that HUD approves to consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(2) To the maximum extent practicable, each approved applicant must involve homeless individuals and families, through employment, volunteer services, or otherwise, in rehabilitating and operating facilities assisted under this subpart, and in providing services for occupants of such facilities.

(Approved by the Office of Management and Budget under control number 2506–0131)

[61 FR 48057, Sept. 11, 1996, as amended at 63 FR 23857, Apr. 30, 1998]

§ 882.809 Waivers.

Section 5.405(b) of this title does not apply to this program.

§ 882.810 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* (1) Consistent with the other goals and objectives of this part, owners must assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this

part. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the project upon its completion.

(2) Whenever a building/complex is rehabilitated, and some but not all of the rehabilitated units will be assisted upon completion of the rehabilitation, the relocation requirements described in this section apply to the occupants of each rehabilitated unit, whether or not Section 8 assistance will be provided for the unit.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation;

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the project upon completion; and

(iv) The assistance required under paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A ''displaced person'' (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations in 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19) and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority is located in an area of minority concentration, such person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the HA's determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the HA. A person who is dissatisfied with the HA's determination on his or her appeal may submit a written request for review of that determination to the HUD field office.

(f) *Responsibility of HA.* (1) The HA must certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations in 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the HA to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs may be paid for with local public funds or funds available from other sources. The cost of HA advisory services for temporary relocation of tenants to be assisted under the program also may be paid from preliminary administrative funds.

(3) The HA must maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The HA must maintain data on the racial, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term *displaced person* includes, but may not be limited to:

(i) A person who moves permanently from the real property after receiving notice requiring such move, if the move occurs on or after the date the owner submits to the HA the owner proposal that is later approved;

(ii) A person, including a person who moves from the property before the date the owner submits the proposal to the HA, if the HA or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the execution of the Agreement between the owner and the HA (or, for projects assisted under subpart H of this part, after the ''initiation of negotiations'' (see paragraph (h) of this section)), if the move occurs before the tenant is provided a written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon its completion. Such reasonable terms and conditions must include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before the execution of the agreement and estimated average monthly utility costs; or

(B) Thirty percent of gross household income.

(C) For projects assisted under subpart H of this part, the amount cannot exceed the greater of the tenant's monthly rent before the ''initiation of negotiations'' and estimated average monthly utility costs; or (if the tenant is low-income) the total tenant payment, as determined under 24 CFR 5.613, or (if the tenant is not low-income) 30 percent of gross household income; or

(iv) A tenant-occupant of a dwelling, who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the building/complex, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a displaced person (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, or local law, or other good cause, and the HA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the preliminary proposal (or application, if there is no preliminary proposal), and before signing a lease and commencing occupancy, received written notice of the project and its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a displaced person (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The HA may request, at any time, HUD's determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct

result of private-owner rehabilitation or demolition of the real property, the term *initiation of negotiations* means the execution of the Agreement between the owner and the HA.

(Approved by Office of Management and Budget under OMB control number 2506–0121)

[61 FR 48056, Sept. 11, 1996. Redesignated and amended at 63 FR 23857, Apr. 30, 1998]

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

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AUTHORITY: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

SOURCE: 45 FR 6889, Jan. 30, 1980, unless otherwise noted.

Subpart A—Summary and Guide

§ 883.101 General.

(a) The purpose of the Section 8 program is to provide decent, safe and sanitary housing for low-income families through the use of a system of housing assistance payments. These needs may be met by statewide or special purpose housing agencies established by the various States.

(b) The regulations in this part 883 contain the policies and procedures applicable to the Section 8 program for these State agencies.

[61 FR 13592, Mar. 27, 1996]

§ 883.105 Applicability of part 883 in effect as of February 29, 1980.

(a) Part 883, in effect as of February 29, 1980, applies to projects for which the initial application was submitted on or after the February 29, 1980, effective date. (See 24 CFR part 883, revised as of April 1, 1980.) Projects for which applications or proposals were submitted before the February 29, 1980, effective date of part 883 have been processed under the part 883 regulations and procedures in effect at the date of submission. If, however, the agency notified HUD within 60 calendar days of the February 29, 1980, effective date of the part 883 regulations that they chose to have the provisions of part 883, in effect as of February 29, 1980, apply to a specific case, it must have promptly modified the application(s) and proposal(s) to comply.

(b) Subpart F of this part, dealing with the HAP contract and subpart G of this part, dealing with management, apply to all projects for which an Agreement was not executed before the February 29, 1980, effective date of part 883. In cases where an Agreement has been executed:

(1) The Agency, owner and HUD may agree to make the revised subpart F of this part applicable and execute appropriate amendments to the Agreement or Contract;

(2) The Agency, Owner and HUD may agree to make the revised subpart G of this part applicable (with or without the limitation on distributions) and execute appropriate amendments to the Agreement or Contract.

(c) Section 883.708, Termination of Tenancy and Modifications of Leases, applies to new families who begin occupancy or execute a lease on or after 30 days following the February 29, 1980, effective date of part 883. This section also applies to families not covered by the preceding sentence, including families currently under lease, who have a lease in which a renewal becomes effective on or after the 60th day following the February 29, 1980 effective date of part 883. A lease is considered renewed when both the landlord and the family fail to terminate a tenancy under a lease permitting either to terminate.

(d) Notwithstanding the provisions of paragraph (b) of this section, the provisions of 24 CFR part 5 (concerning preferences for selection of applicants) apply to all projects, regardless of when am Agreement was executed.

[61 FR 13592, Mar. 27, 1996]

§ 883.106 Applicability and relationships between HUD and State agencies.

(a) *Applicability*. This subpart A applies to contract authority set aside for a State Agency.

(b) *General responsibilities and relationships.* Subject to audit and review by HUD to assure compliance with Federal requirements and objectives, Housing Finance Agencies (HFAs) shall assume responsibility for project development and for supervision of the development, management and maintenance functions of owners.

(c) *Certifications and HUD monitoring.* (1) Generally, when reviewing any of the certifications of an HFA required by this part, HUD shall accept the certification as correct. If HUD has substantial reason to question the correctness of any element in a certification, HUD shall promptly bring the matter to the attention of the HFA and ask it to provide documentation supporting the certifications. When the HFA provides such evidence, HUD will act in accordance with the HFA's judgment or evaluation unless HUD determines that the certification is clearly not supported by the documentation.

(2) HUD will periodically monitor the activities of HFA's participating under this part only with respect to Section 8 or other HUD programs. This monitoring is intended primarily to ensure that certifications submitted and projects operated under this part reflect appropriate compliance with Federal law and requirements.

[61 FR 13592, Mar. 27, 1996]

Subpart B [Reserved]

Subpart C—Definitions and Other Requirements

§ 883.301 Applicability.

The provisions of this subpart are applicable to newly constructed and substantially rehabilitated housing allocated contract authority under subpart B of this part and processed and constructed under the Fast Tract Procedures of subpart D. The definitions contained in § 883.302 and the provisions of § 883.307(b) regarding review and approval of financing documents, however, apply to all of this part.

§ 883.302 Definitions.

The terms *Fair Market Rent (FMR), HUD,* and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

ACC (Annual Contributions Contract). The contract between the State Agency and HUD under which HUD commits to provide the Agency with the funds needed to make housing assistance payments to the Owner and to pay the Agency for administrative fees in cases where it is eligible for them.

Agency. See State Agency.

Agreement—(Agreement to enter into Housing Assistance Payments Contract). The agreement between the owner and the State Agency on new construction and substantial rehabilitation projects which provides that, upon satisfactory completion of the project in accordance with the HUD-approved proposal or final proposal, the Agency will enter into a Housing Assistance Payments Contract with the owner.

Annual income. As defined in part 813 of this chapter.

Assisted unit. A dwelling unit eligible for assistance under a Contract.

Application. A request, submitted by a State Agency, to assign a portion of its set-aside to a specific jurisdiction or project.

Contract—(Housing Assistance Payments Contract). The Contract entered into by the owner and the State Agency upon satisfactory completion of a new construction or substantial rehabilitation project which sets forth the rights and duties of the parties with respect to the project and the payments under the Contract.

Contract Rent. The total amount of rent specified in the Contract as payable by the Agency and the tenant to the owner for an assisted unit. In the case of the rental of only a manufactured home space, ''contract rent'' is the total rent specified in the Contract as payable by the Agency and the tenant to the owner for rental of the space, including fees or charges for management and maintenance services with respect to the space, but excluding utility charges for the manufactured home.

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

Existing Housing. Housing assisted under a contract entered into pursuant to 24 CFR part 882. (See subpart E of this part.)

Family (Eligible Family). As defined in part 812 of this chapter.

Fast Track procedures. The procedures contained in subpart D for processing and construction of new construction and substantial rehabilitation projects. In order to be eligible for these procedures, a State Agency must provide permanent financing without Federal mortgage insurance or a Federal guarantee except coinsurance under Section 244 of the National Housing Act.

Financing Cost Contingency (FCC). The maximum amount of contract authority which may be used to amend the Annual Contributions Contract (ACC) and Housing Assistance Payments Contract (HAP Contract) to provide increased contract rents to cover higher than anticipated debt service on the loan for a new construction or substantial rehabilitation project.

Gross Rent. As defined in part 813 of this chapter.

Household type. The three household types are (1) elderly and handicapped, (2) family, and (3) large family.

Housing Assistance Payment. The payment made to the Owner of an assisted unit by the State Agency as provided in the Contract. Where the unit is leased to an eligible Family, the payment is the difference between the Contract Rent and the Tenant Rent. An additional payment is made to the Family when the Utility Allowance is greater than Total Tenant Payment. In the case of a Family renting only a manufactured home space as provided in § 883.303(i), the Housing Assistance Payment is the difference between Gross Rent and the Total Tenant Payment, but such payment may not exceed the Contract Rent for the space, and no additional payment is made to the Family. A Housing Assistance Payment, known as a ''vacancy payment'', may be made to the Owner when an assisted unit is vacant, as provided in § 883.712.

Housing Assistance Plan (HAP). A housing plan submitted by a unit of general local or State government and approved by HUD as being acceptable under the standards of 24 CFR part 570.

Housing type. The three housing types are new construction, substantial rehabilitation, and existing housing/moderate rehabilitation.

HFA (Housing Finance Agency). A State Agency which provides permanent financing for newly constructed or substantially rehabilitated housing processed under subpart D and financed without Federal mortgage insurance or a Federal guarantee except coinsurance under Section 244 of the National Housing Act.

Independent Public Accountant. Certified Public Accountant or a licensed or registered public accountant, none of which has a business relationship with the owner or State Agency except for the performance of audit, systems work and tax preparation. If not certified, the Independent Public Accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title ''public accountant,'' only Certified Public Accountants may be used.

Low-Income Family. As defined in part 813 of this chapter.

Moderate rehabilitation. The improvement of dwelling units in accordance with HUD requirements, under 24 CFR part 882.

New construction. Housing for which construction starts after execution of an Agreement, or housing which is already under construction when the Agreement is executed provided that:

(a) At the date an application is submitted to HUD, a substantial amount of construction (generally at least 25 percent) remains to be completed;

(b) At the date of application to HUD, the project cannot be completed and occupied by eligible families without assistance under this part; and

(c) At the time construction was initiated, all of the parties reasonably expected that the project would be completed without assistance under this part.

Override. The difference between an HFA's cost of borrowing on obligations issued to finance a new construction or substantial rehabilitation project and the lending rate at which they provide permanent financing for the project.

Owner. Any private person or entity (including a cooperative) or a public entity, having the legal right to lease or sublease dwelling units assisted under this part. The term Owner also includes the person or entity submitting a proposal to a State Agency under this part.

Partially-assisted Project. A project for non-elderly families under this part which includes more than 50 units, of which the number of assisted units does not exceed the greater of (a) 20 percent of the units in the project, rounded to the next highest whole number of units, or (b) the minimum percentage required by State law as a condition of HFA permanent financing, if the Assistant Secretary approves such minimum percentage for purposes of applicability of this definition.

Permanent financing. An Agency is determined to provide permanent financing if HUD determines that (a) the Agency permanently finances a project from its own funds, including the sale of its obligations; or (b) permanent financing for projects developed or administered by the Agency is provided by the State government or by an agency or instrumentality thereof other than the Agency; or (c) the permanent financing (by a public or private entity other than the Agency) is backed by the commitment of the Agency to assume the risks of loss on default or foreclosure of the loan.

Project Account. A specifically identified and segregated account for each project which is established in accordance with § 883.604(b) out of the amounts by which the maximum Annual Contributions Contract commitment exceeds the amount actually paid out under the ACC each year.

Proposal. A proposal for a project that is submitted by an HFA to HUD for Section 8 assistance under this part.

Rent. In the case of an assisted unit in a cooperative project, rent means the carrying charges payable to the cooperative with respect to occupancy of the unit.

Replacement cost—(a) *New construction.* The estimated construction cost of the project when the proposed improvements are completed. The replacement cost may include the land, the physical improvements, utilities within the boundaries of the land, architect's fees, miscellaneous charges incident to construction as approved by the Assistant Secretary.

(b) *Substantial rehabilitation.* The sum of the ''as is'' value before rehabilitation of the property as determined by the Agency and the estimated cost of rehabilitation, including carrying and finance charges.

Single Room Occupancy (SRO) Housing. A unit for occupancy by a single eligible individual capable of independent living, which does not contain food preparation and/or sanitary facilities and is located within a multifamily structure consisting of more than 12 units.

Secretary. The Secretary of Housing and Urban Development (or designee).

Small Project. A project for non-elderly families under this part which includes a total of 50 or fewer units (assisted and unassisted).

State Agency (Agency). An agency which has been notified by HUD in accordance with § 883.203 that it is authorized to apply for a set-aside and/or to use the Fast Track Procedures of this part.

Substantial rehabilitation. (a) The improvement of a property to decent, safe and sanitary condition in accordance with the standards of this part from a condition below these standards. Substantial Rehabilitation may vary in degree from gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as Substantial Rehabilitation under this definition.

(b) Substantial Rehabilitation may also include renovation, alteration or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part, or the repair or replacement of major building systems or components in danger of failure.

(c) Housing on which rehabilitation work has already started when the Agreement is executed is eligible for assistance as a Substantial Rehabilitation project under this part provided:

(1) At the date of application to HUD, a substantial amount of construction (generally at least 25 percent) remains to be completed;

(2) At the date of application to HUD, the project cannot be completed and occupied by eligible families without assistance under this part; and

(3) At the time construction was initiated, all of the parties reasonably expected that the project would be completed without assistance under this part.

Tenant Rent. The monthly amount defined in, and determined in accordance with part 813 of this chapter.

Total Tenant Payment. The monthly amount defined in, and determined in accordance with part 813 of this chapter.

Utility Allowance. As defined in part 813 of this chapter, made or approved by HUD.

Utility reimbursement. As defined in part 813 of this chapter.

Vacancy payments. The housing assistance payment made to the owner by the State Agency for a vacant, assisted unit if certain conditions are fulfilled as provided in the Contract. The amount of vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

Very Low-Income Family. As defined in part 813 of this chapter.

[45 FR 6889, Jan. 30, 1980, as amended at 45 FR 56326, Aug. 22, 1980; 48 FR 12708, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 49 FR 19946, May 10, 1984; 61 FR 5213, Feb. 9, 1996; 61 FR 13592, Mar. 27, 1996; 63 FR 46579, Sept. 1, 1998]

§ 883.306 Limitation on distributions.

(a) Non-profit owners are not entitled to distributions of project funds.

(b) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract and after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until the HFA certification of project costs, (See § 883.411), where applicable, has been submitted to HUD. The HFA must certify that distributions will not exceed the following maximum returns:

(1) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 6 percent return on the value, in subsequent years, as determined in accordance with HUD guidelines, of the approved initial equity. Any such adjustments will be made in accordance with a Notice in the FEDERAL REGISTER. The HFA may approve a lesser increase or no increase in subsequent years' distributions.

(2) For projects for non-elderly families the first year's distribution will be limited to 10 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 10 percent return on the value, in subsequent years, as determined in accordance with HUD guidelines, of the approved initial equity. Any such adjustments will be made in accordance with a Notice in the FEDERAL REGISTER. The HFA may approve a lesser increase or no increase in subsequent years' distributions.

(c) For the purpose of determining the allowable distribution, an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by the HFA at cost certification (See § 883.411), or as specified in the Proposal where cost certification is not required, unless the owner justifies a higher equity contribution through cost certification documentation accepted by the HFA.

(d) Any short-fall in return may be made up from surplus project funds in future years.

(e) If the HFA determines at any time that surplus project funds are more than the amount needed for project operations, reserve requirements and permitted distributions, the HFA may require the excess to be placed in a separate account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess project funds must be remitted to HUD.

(f) Owners of small projects or partially assisted projects are exempt from the limitation on distributions contained in paragraphs (b) through (d) of this section.

(g) HUD may permit increased distributions of surplus, in excess of the amounts otherwise permitted, to profit-motivated owners who participate in a HUD-approved initiative or program to preserve below-market housing stock. The increased distributions will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the owner is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the owner.

(h) Any State or local law or regulation that restricts distributions to an amount lower than permitted by this section or permitted by the Commissioner under this paragraph (h) is preempted as provided by section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997.

[45 FR 6889, Jan. 30, 1980, as amended at 65 FR 61075, Oct. 13, 2000; 65 FR 68891, Nov. 15, 2000]

§ 883.307 Financing.

(a) *Types of financing.* A State Agency that used the Fast Track Procedures formerly in this part must provide permanent financing for any new construction or substantial rehabilitation project without Federal mortgage insurance, except coinsurance under section 244 under the National Housing Act (12 U.S.C. 1701 et seq). Obligations issued by the HFA for this purpose may be taxable under section 802 of the Housing and Community Development Act of 1974 (42 U.S.C. 1440) or tax-exempt under section 103 of the Internal Revenue Code (26 U.S.C. 103), 24 CFR part 811 or other Federal Law.

(b) *HUD approval.* (1) A State Agency, prior to receiving HUD approval of its first New Construction or Substantial Rehabilitation Proposal using contract authority under this part, must submit copies of the documents relating to the method of financing Section 8 projects to HUD for review. These documents shall include bond resolutions or indentures, loan agreements, regulatory agreements, notes, mortgages or deeds of trust and other related documents, if any, but does not need to include the ''official statement'' or copies of the prospectus for individual bond issues. HUD review will be limited to making certain that the documents are not inconsistent with or in violation of these regulations and the administrative procedures used to implement them. After review, HUD must notify the Agency that the documents are acceptable or, if unacceptable, will request clarification or changes. This review and approval will meet the requirements of 24 CFR 811.107(a).

(2) When an Agency which has received HUD approval of its financing documents proposes substantive changes in them which affect the Section 8 program, the revised documents must be submitted for review. HUD review will be limited to the areas indicated in paragraph (b)(1) of this section and must be carried out promptly. HUD will notify the Agency that the revised documents are acceptable, or, if unacceptable, will request clarification or changes.

(3) The review and approval of financing documents required under 24 CFR

part 811 will constitute HUD approval under this section.

(4) The Agency must retain in its files, and make available for HUD inspection, the documentation relating to its financing of Section 8 projects, including any relating to the certifications of compliance with applicable Department of Treasury or HUD regulations (24 CFR part 811) regarding tax-exempt financing.

(c) *Pledge of Contracts.* The HFA or owner may pledge, or offer as security for any loan or obligation, an Agreement, Contract, or ACC entered into pursuant this part provided that such security is in connection with a project constructed pursuant to this part. Any pledge of the Agreement, Contract, or ACC, or payments thereunder will be limited to the amounts payable under the Contract or ACC in accordance with its terms. If the pledge or other document provides that all payments will be paid directly to the HFA, other mortgagee or the trustee for bondholders, the HFA, other mortgagee or trustee may make all payments or deposits required under the mortgage or trust indenture and remit any excess to the owner.

(d) *Foreclosure and other transfers.* In the event of assignment, sale, or other disposition of the project or the contracts agreed to by the HFA and approved by HUD (which approval shall not be unreasonably delayed or withheld), foreclosure, or assignment of the mortgage or deed in lieu of foreclosure,

(1) The Agreement, the Contract and the ACC will continue in effect, and

(2) Housing assistance payments will continue in accordance with the terms of the Contract, unless approval to amend or terminate the Agreement, the Contract or the ACC has been obtained from the Assistant Secretary.

(e) In the case of a newly constructed or substantially rehabilitated manufactured home park, the principal amount of any mortgage attributable to the rental spaces in the park may not exceed an amount per space determined in accordance with §207.33(b) of this title.

[45 FR 6889, Jan. 30, 1980, as amended at 45 FR 56327, Aug. 22, 1980; 48 FR 12709, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 61 FR 13592, Mar. 27, 1996]

§ 883.308 Adjustments to reflect changes in terms of financing.

(a) *Certifications of projected financing terms.* When an HFA, under this part, provides permanent financing for a project through the issuance of obligations and these are not sold until after the contract rents for a project have been set, the HFA must submit, with the Proposal, a certification of:

(1) Its projected rate of borrowing (net interest cost), based on a reasonable evaluation of market conditions, on obligations issued to provide interim and permanent financing for the project,

(2) The projected cost of borrowing to the owner on interim financing for the project,

(3) The projected loan amount for the project,

(4) The projected cost of borrowing and the term of the permanent financing to be provided to the owner for the project,

(5) The projected annual debt service for the permanent financing on which the Contract Rents are based, and

(6) The override, if any.

(b) *Revised certifications.* If, at any time prior to the execution of the Agreement, the terms and conditions of financing change, other than the HFA's projected cost of borrowing, the HFA must submit revised certifications based upon the new terms.

(c) *Certifications of actual financing terms.* After a project has been permanently financed, the HFA must submit a certification which specifies the actual financing terms. The items that must be included in this certification include:

(1) The HFA's actual cost of borrowing (net interest cost) on obligations from which funds were used to permanently finance the project,

(2) The override, if any, added to the actual cost of borrowing on obligations in setting the rate of lending to the owner,

(3) The annual debt service to the owner for the permanent financing on which contract rents are based; and,

(4) The actual loan amount and the term on which the annual debt service is based.

(d) *Reduction of Contract Rents.* If the actual debt service to the owner under

the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the initial Contract Rents, or the Contract Rents currently in effect, must be reduced commensurately, and the amount of the savings credited to the project account.

(e) *Increase of Contract Rents.* This paragraph (e) applies only if the HFA is using its set-aside for the project and it is processed under subpart D. If the actual debt service to the owner under the permanent financing is higher than the anticipated debt service on which the Contract Rents are based, the initial Contract Rents or the Contract Rents currently in effect may, if sufficient contract and budget authority is available, be increased commensurately based on the certification submitted under paragraph (c) of this section. The amount of this increase may not exceed the amount of the Financing Cost Contingency (FCC) authorized but not reserved for the project at the time the proposal is approved. The adjustment must not exceed the amount necessary to reflect an increase in debt service (based on the difference between the projected and actual terms of the permanent financing) resulting from an increase over the projected interest rate of not more than:

(1) One and one-half percent if the projected override was three-fourths of one percent or less, or

(2) One percent if such projected override was more than three-fourths of one percent but not more than one percent, or

(3) One-half of one percent if such projected override was more than one percent.

(f) *Recoupment of savings in financing costs.* In the event that interim financing is continued after the first year of the term of the Contract and the debt service of the interim financing for any period of three months after such first year is less than the anticipated debt service under the permanent financing on which the Contract Rents were based, an appropriate amount reflecting the savings in financing cost will be credited by HUD to the Project Account and withheld from housing assistance payments payable to the owner. If during the course of the same year there is any period of three months in which the debt service is greater than the anticipated debt service under the projected permanent financing, an adjustment will be made so that only the net amount of savings in debt service for the year is credited by HUD to the Project Account and withheld from housing assistance payments to the owner. No increased payments will be made to the owner on account of any net excess for the year of actual interim debt service over the anticipated debt service under the permanent financing. Nothing in this paragraph will be construed as requiring a permanent reduction in the Contract Rents or precluding adjustments of Contract Rents in accordance with paragraphs (d) or (e) of this section.

(g) *Compliance with other regulations.* The HFA must also submit a certification specifying:

(1) That the terms of financing, the amount of the obligations issued with respect to the project and the use of the funds will be in compliance with any regulation governing the issuance of the obligations, e.g., Department of the Treasury regulations regarding arbitrage or HUD regulations regarding Tax Exemption of Obligations of Public Housing Agencies (24 CFR part 811), and

(2) That the override, if any, on the permanent financing for the project will not be greater than the projected override nor greater than the override allowed for the borrowing as a whole under applicable regulations, e.g., the Department of Treasury regulations regarding arbitrage. The certifications required under 24 CFR 811.107(a)(2) will be sufficient to meet the certification requirements of this paragraph (g).

§ 883.310 Property standards.

(a) *New Construction.* Projects must comply with:

(1) [Reserved]

(2) In the case of manufactured homes, the Federal Manufactured Home Construction and Safety Standards, pursuant to Title VI of the Housing and Community Development Act of 1974, and 24 CFR part 3280;

(3) In the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards,

(4) HUD requirements pursuant to Section 209 of the Housing and Community Development Act of 1974 for projects for the elderly or the handicapped;

(5) HUD requirements pertaining to noise abatement and control; and

(6) Applicable state and local laws, codes, ordinances, and regulations.

(b) *Substantial Rehabilitation.* Projects must comply with:

(1) [Reserved]

(2) In the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards,

(3) HUD requirements pursuant to Section 209 of the HCD Act for projects for the elderly or the handicapped;

(4) HUD requirements pertaining to noise abatement and control;

(5) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title.

(6) Applicable State and local laws, codes, ordinances, and regulations.

(c) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

[45 FR 6889, Jan. 30, 1980, as amended at 50 FR 9269, Mar. 7, 1985; 57 FR 33851, July 30, 1992; 63 FR 46579, Sept. 1, 1998; 64 FR 50227, Sept. 15, 1999]

§ 883.313 Audit.

(a) Where housing assistance under the Section 8 Program is provided for projects developed by State agencies, these agencies shall follow audit requirements in 24 CFR part 44.

(b) Where a nonprofit organization is the eligible owner of a project receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.

[50 FR 39092, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986, as amended at 57 FR 33257, July 27, 1992]

Subparts D–E [Reserved]

Subpart F—Housing Assistance Payments Contract

§ 883.601 Applicability.

The provisions of this subpart apply to new construction and substantial rehabilitation projects using contract authority allocated under subpart B, Allocation and Assignment of Contract Authority, or processed and constructed under subpart D, Fast Track Procedures.

§ 883.602 The contract.

(a) *Contract.* The Housing Assistance Payments Contract sets forth rights and duties of the owner and State Agency with respect to the project and the Housing Assistance payments.

(b) *Housing Assistance Payments to Owners under the Contract.* The Housing Assistance Payments made under the Contract are:

(1) Payments to the owner to assist eligible families leasing assisted units, and

(2) Payments to the owner for vacant assisted units (''vacancy payments'') if the conditions specified in § 880.611 of this chapter are satisfied.

The housing assistance payments are made monthly by the State Agency upon proper requisition by the owner, except payments for vacancies of more than 60 days, which are made semi-annually by the Agency upon proper requisition by the owner.

(c) *Amount of Housing Assistance Payments to the Owner.* (1) The amount of the housing assistance payments made to the owner of a unit being leased by an eligible family is the difference between the contract rent for the unit and the tenant rent payable by the family.

(2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the first 60 days of vacancy, subject to the conditions in § 880.611 of this chapter. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as the Agency directs in accordance with HUD guidelines.

(3) For a vacancy that exceeds 60 days, a housing assistance payment for the vacant unit will be made, subject to the conditions in § 880.611 of this chapter, in an amount equal to the principal and interest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.

(d) *Payment of utility reimbursement.* Where applicable, the Utility Reimbursement will be paid to the Family as an additional Housing Assistance Payment. The Contract will provide that the Owner will make this payment on behalf of the Agency. Funds will be paid to the Owner in trust solely for the purpose of making this additional payment. If the Family and the utility company consent, the Owner may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

[45 FR 6889, Jan. 30, 1980, as amended at 49 FR 19946, May 10, 1984; 61 FR 13593, Mar. 27, 1996]

§ 883.603 Term of contract.

(a) *New Construction.* The term of the Contract will be governed by the following provisions:

(1) For assisted units in a project financed with the aid of a loan insured by the Federal government (including coinsurance under Section 244 of the National Housing Act) or a loan made, guaranteed or intended for purchase by the Federal government and for assisted units in newly constructed manufactured home parks, the term of the Contract will be 20 years.

(2) For assisted units in a project owned by or financed by a loan or loan guarantee from a State or local agency, where the assisted units are intended for occupancy by non-elderly families and where it is located in an area designated by the Assistant Secretary as one requiring special financial assistance, the Contract will be for an initial term of 20 years for any dwelling unit, with provision for renewal for additional terms of not more than 5 years each. The total term of initial and renewal terms will not exceed the lesser of (i) 40 years for any dwelling unit, or (ii) the term of the permanent financing (but not less than 20 years).

(3) For assisted units in all other projects, the Contract will be for an initial term of 20 years for any dwelling unit, with provision for renewal for additional terms of not more than 5 years each. The total term of initial and renewal terms will not exceed the lesser of (i) 30 years for any dwelling unit, or (ii) the term of the permanent financing (but not less than 20 years).

(b) *Substantial Rehabilitation.* The Contract will be for a term which is consistent with paragraph (b)(1) and with paragraph (b) (2), (3), or (4) of this section.

(1) The Contract term will cover the longest term, but not less than 20 years, of a single credit instrument covering:

(i) The cost of rehabilitation or

(ii) The existing indebtedness, or

(iii) The cost of rehabilitation and the refinancing of the existing indebtedness, or

(iv) The cost of rehabilitation and the acquisition of the property; and

(2) For assisted units in a project financed with the aid of a loan (including coinsurance under Section 244 of the National Housing Act), or a loan made, guaranteed or intended for purchase by the Federal Government, and for assisted units in a substantially rehabilitated manufactured home park, the term of the Contract will not exceed 20 years; or

(3) For assisted units in a project owned or financed by a loan or loan guarantee from a State or local agency where the assisted units are intended for occupancy by non-elderly families and where it is located in an area designated by the Assistant Secretary as one requiring special financial assistance, the Contract will be for an initial term of 20 years for any dwelling unit. There will be a provision for renewal

for additional terms of not more than 5 years each. The total of initial and renewal terms will not exceed the lesser of (i) 40 years for any dwelling unit, or (ii) the term of the permanent financing (but not less than 20 years); or

(4) For assisted units in projects financed other than as described in paragraph (b) (2) or (3) of this section, the Contract will be for an initial term of 20 years for any dwelling unit. There will be a provision for renewal for additional terms of not more than 5 years each. The total of initial and renewal terms will not exceed the lesser of (i) 30 years for any dwelling unit, or (ii) the term of the permanent financing (but not less than 20 years).

(c) *Staged Projects.* If a project is completed in stages, the term of the Contract must relate separately to the units in each stage unless the Agency and the owner agree that only the units in the first stage will be assisted for the maximum term of the Contract. The total Contract term, for the units in all stages, beginning with the effective date of the Contract for the first stage, may not exceed the overall maximum term allowable for any one unit under this section, plus two years.

[45 FR 56327, Aug. 22, 1980, as amended at 48 FR 12710, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984]

§ 883.604 Maximum annual commitment and project account.

(a) *Maximum annual commitment.* The maximum annual contribution that may be contracted for in the ACC is the total of the contract rents and utility allowances for all assisted units in the project, plus the HUD-approved fees, if any, for State Agency administration of the Contract. (See § 883.606)

(b) *Project Account.* (1) A project account will be established and maintained by HUD as a specifically identified and segregated account for each project. The account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the ACC each year. Payments will be made from this account for housing assistance payments (and fees for Agency admininstration, if appropriate) when needed to cover increases in contract rents or decreases in tenant rents and for other costs specifically approved by the Secretary.

(2) Whenever a HUD-approved estimate of required payments under the ACC for a fiscal year exceeds the maximum annual commitment and would cause the amount in the project account to be less than 40 percent of the maximum, HUD will, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the 1937 Act, as may be necessary, to assure that payments under the ACC will be adequate to cover increases in contract rents and decreases in tenant rents.

[45 FR 6889, Jan. 30, 1980, as amended at 61 FR 13593, Mar. 27, 1996]

§ 883.605 Leasing to eligible families.

The provisions of § 880.504 of this chapter apply, subject to the requirements of § 883.105.

[61 FR 13593, Mar. 27, 1996]

§ 883.606 Administration fee.

(a) The State Agency is responsible for administration of the Contract subject to periodic review and audit by HUD.

(b) The Agency is entitled to a reasonable fee, determined by HUD, for administering a Contract on newly constructed or substantially rehabilitated units provided there is no override on the permanent loan granted by the Agency to the owner for a project containing assisted units.

§ 883.607 Default by owner and/or agency.

(a) *Rights of Owner if Agency defaults under Agreement or Contract.* The ACC, the Agreement and the Contract will provide that, in the event of failure of the Agency to comply with the Agreement or Contract with the owner, the owner will have the right, if he/she is not in default, to demand that HUD investigate. HUD will first give the Agency a reasonable opportunity to take corrective action. If HUD determines that a substantial default exists, HUD will assume the Agency's rights and obligations under the Agreement or Contract and meet the obligations of the Agency under the Agreement or

Contract including the obligation to enter into the Contract.

(b) *Rights of HUD if Agency defaults under ACC.* The ACC will provide that, if the Agency fails to comply with any of its obligations, HUD may determine that there is a substantial default and require the Agency to assign to HUD all of its rights and interests under the Contract; however, HUD will continue to pay annual contributions in accordance with the terms of the ACC and the Contract. Before determining that an Agency is in substantial default, HUD will give the Agency a reasonable opportunity to take corrective action.

(c) *Rights of Agency and HUD if Owner defaults under Contract.* (1) The Contract will provide that if the Agency determines that the owner is in default under the Contract, the Agency will notify the owner, and lender, if applicable, with a copy to HUD,

(i) Of the actions required to be taken to cure the default,

(ii) Of the remedies to be applied by the Agency including specific performance under the Contract, abatement of housing assistance payments and recovery of overpayments, where appropriate; and

(iii) That, if he/she fails to cure the default, the Agency has the right to terminate the Contract or to take other corrective action, in its discretion.

(2) If the Agency provided the permanent financing, the Contract will also provide that HUD has an independent right to determine whether the owner is in default and to take corrective action and apply appropriate remedies, except that HUD will not have the right to terminate the Contract without proceeding in accordance with paragraph (c) of this section.

§ 883.608 Notice upon contract expiration.

The provisions of § 880.508 of this chapter apply, subject to the requirements of § 883.105.

[61 FR 13593, Mar. 27, 1996]

Subpart G—Management

§ 883.701 Cross-reference.

All of the provisions of part 880, subpart F, of this chapter apply to projects assisted under this part, subject to the requirements of § 883.105. For purposes of this subpart G, all references in part 880, subpart F, of this chapter to ''contract administrator'' shall be construed to refer to ''Agency''.

[61 FR 13593, Mar. 27, 1996]

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

Subpart A—Applicability, Scope and Basic Policies

Sec.

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AUTHORITY: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

SOURCE: 41 FR 47168, Oct. 27, 1976, unless otherwise noted. Redesignated at 45 FR 6909, Jan. 30, 1980.

Subpart A—Applicability, Scope and Basic Policies

§ 884.101 Applicability and scope.

(a) The policies and procedures in subparts A and B of this part apply to the making of Housing Assistance Payments on behalf of Eligible Families leasing newly constructed housing pursuant to the provisions of section 8 of the 1937 Act. They are applicable only to proposals submitted by the Department of Agriculture/Farmers Home Administration (now the Department of Agriculture/Rural Housing and Community Development Service) that have been charged against the set-aside of section 8 contract authority specifically established for projects to be funded under section 515 of title V of the Housing Act of 1949 (42 U.S.C. 1485).

(b) For the purpose of these subparts A and B, ''new construction'' shall mean newly constructed housing for which, prior to the start of construction, an Agreement to Enter into Housing Assistance Payments Contract is executed between the Owner and HUD or a Public Housing Agency.

[41 FR 47168, Oct. 27, 1976, as amended at 61 FR 13593, Mar. 27, 1996]

§ 884.102 Definitions.

The terms *Fair Market Rent (FMR), HUD, Public housing agency (PHA),* and *Secretary* are defined in 24 CFR part 5.

Agreement to enter into housing assistance payments contract (''*agreement*''). (a) In the case of a Private-Owner Project or a PHA-Owner Project, a written agreement between the Owner and HUD that, upon satisfactory completion of the housing in accordance with the HUD-approved Proposal and submission by RHCDS of the required certifications, HUD will enter into a Housing Assistance Payments Contract with the Owner.

(b) In the case of a Private-Owner/PHA Project, a written agreement between the private owner and the PHA, approved by HUD, that, upon satisfactory completion of the housing in accordance with the HUD-approved Proposal and submission by RHCDS of the required certifications, the PHA will enter into a Housing Assistance Payments Contract with the Private Owner.

Annual contributions contract (''*ACC*''). In the case of a Private-Owner/PHA Project, a written agreement between HUD and the PHA to provide annual contributions to the PHA with respect to the project.

Annual income. As defined in part 5 of this title.

Contract. See definition of Housing Assistance Payments Contract.

Contract rent. The rent payable to the Owner under his Contract including the portion of the rent payable by the Family. In the case of a cooperative, the term ''Contract Rent'' means charges under the occupancy agreements between the members and the cooperative.

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

Drug-related criminal activity. The illegal manufacture, sale, distribution, use or possession with the intent to manufacture, sell, distribute, or use, of a

controlled substance as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802.

Family. As defined in part 5 of this title.

HCD Act. The Housing and Community Development Act of 1974.

Housing Assistance Payment. The payment made by the contract administrator to the Owner of an assisted unit as provided in the Contract. Where the unit is leased to an eligible Family, the payment is the difference between the Contract Rent and Tenant Rent. An additional Housing Assistance Payment is made to the Family when the Utility Allowance is greater than the Total Tenant Payment. A Housing Assistance Payment may be made to the Owner when a unit becomes vacant, in accordance with the terms of the Contract.

Housing assistance payments contract (''Contract''). (a) In the case of a Private-Owner Project or a PHA-Owner Project, a written contract between the Owner and HUD for the purpose of providing housing assistance payments to the Owner on behalf of Eligible Families.

(b) In the case of a Private-Owner/PHA Project, a written contract between the private Owner, and the PHA, approved by HUD, for the purpose of providing housing assistance payments to the Owner on behalf of Eligible Families.

Income. Income from all sources of each member of the household as determined in accordance with criteria established by HUD.

Lease. A written agreement between an Owner and an Eligible Family for the leasing of a Decent, Safe, and Sanitary dwelling unit in accordance with the applicable Contract, which agreement is in compliance with the provisions of this part.

Local housing assistance plan. A housing assistance plan submitted by a unit of general local government and approved by HUD under Section 104 of the HCD Act or, in the case of a unit of general local government not participating under Title I of the HCD Act, a housing plan which contains the elements set forth in Section 104(a)(4) of the HCD Act and which is approved by the Secretary as meeting the requirements of Section 213 of that Act.

Low-income family. As defined in part 5 of this title.

Owner. Any private person or entity, including a cooperative or a PHA, having the legal right to lease or sublease newly constructed dwelling units.

PHA-owner proposal and PHA-owner project. A proposal for a project under this part (and the resulting project) to be owned by a PHA throughout the term of the Agreement and Contract where such Agreement and Contract are to be entered into between the PHA and HUD.

Private-owner/PHA proposal and private-owner/PHA project. A proposal for a project under this part (and the resulting project) to be owned by a private Owner throughout the term of the Agreement and Contract where such Agreement and Contract are to be entered into between the private Owner and the PHA pursuant to an ACC between the PHA and HUD. The term also covers the situation where the ACC is with one PHA and the Owner is another PHA.

Private-owner proposal and private-owner project. A proposal for a project under this part (and the resulting project) to be owned by a private Owner throughout the term of the Agreement and Contract where such Agreement and Contract are to be entered into between the private Owner and HUD.

Project account. The account established and maintained in accordance with § 884.104 or § 884.105.

Proposal. A proposal for a Private-Owner or PHA-Owner/PHA Project to provide newly constructed housing submitted to HUD by RHCDS on the prescribed RHCDS form.

RHCDS. The Rural Housing and Community Development Service.

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Very low-income family. As defined in part 5 of this title.

[41 FR 47168, Oct. 27, 1976, as amended at 42 FR 63745, Dec. 19, 1977. Redesignated at 45 FR 6909, Jan. 30, 1980, and amended at 48 FR 12710, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 49 FR 19947, May 10, 1984; 50 FR 38795, Sept. 25, 1985; 61 FR 5213, Feb. 9, 1996; 61 FR 13593, Mar. 27, 1996; 61 FR 47382, Sept. 6, 1996; 63 FR 46579, Sept. 1, 1998; 65 FR 16723, Mar. 29, 2000]

§ 884.104 Maximum total annual contract commitment and project account (private-owner or PHA-owner projects).

(a) *Maximum total annual contract commitment.* The maximum total annual housing assistance payments that may be committed under the Contract shall be the total of the Gross Rents for all the Contract units in the project.

(b) *Project account.* In order to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family Incomes:

(1) A Project Account shall be established and maintained in an amount as determined by the Secretary consistent with his responsibilities under Section 8(c)(6) of the Act, out of amounts by which the maximum annual Contract commitment per year exceeds amounts paid under the Contract for any year. This account shall be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the purposes of (i) housing assistance payments, and (ii) other costs specifically authorized or approved by the Secretary.

(2) Whenever a HUD-approved estimate of required housing assistance payments for a fiscal year exceeds the maximum annual Contract commitment, and would cause the amount in the Project Account to be less than an amount equal to 40 percent of such maximum annual Contract commitment, HUD shall, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) ''the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts.''

§ 884.105 Maximum total ACC commitment and project account (private-owner/PHA projects).

(a) *Maximum total ACC commitment.* The maximum total annual contribution that may be contracted for in the ACC for a project shall be the total of the Contract Rents plus any utility allowances for all the Contract units in the project, plus a fee for the regular costs of PHA administration. HUD-approved preliminary costs for administration (including administrative costs in connection with PHA activities related to relocation of occupants) shall be payable out of this total.

(b) *Project account.* In order to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family Incomes:

(1) A Project Account shall be established and maintained, in an amount as determined by the Secretary consistent with his responsibilities under Section 8(c)(6) of the 1937 Act, out of amounts by which the maximum ACC commitment per year exceeds amounts paid under the ACC for any year. This account shall be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the purposes of (i) housing assistance payments and (ii) other costs specifically authorized or approved by the Secretary.

(2) Whenever a HUD-approved estimate of required Annual Contribution exceeds the maximum ACC commitment then in effect, and would cause the amount in the Project Account to be less than an amount equal to 40 percent of such maximum ACC commitment, HUD shall, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the 1937 Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) ''the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of

amending housing assistance contracts.''

[41 FR 47168, Oct. 27, 1976, as amended at 61 FR 13593, Mar. 27, 1996; 65 FR 16723, Mar. 29, 2000]

§ 884.106 Housing assistance payments to owners.

(a) *General.* Housing Assistance Payments shall be paid to Owners for units under lease by eligible families, in accordance with the Contract and as provided in this section. These Housing Assistance Payments will cover the difference between the Contract Rent and the Tenant Rent. Where applicable, the Utility Reimbursement will be paid to the Family as an additional Housing Assistance Payment. The Contract will provide that the Owner will make this payment on behalf of the contract administrator. Funds will be paid to the Owner in trust solely for the purpose of making this additional payment. If the Family and the utility company consent, the Owner may pay the utility reimbursement jointly to the Family and the utility company or directly to the utility company. No Section 8 assistance may be provided for any unit occupied by an Owner; however, cooperatives are considered rental housing, rather than Owner-occupied housing, for this purpose.

(b) *Vacancies during rent-up.* If a Contract Unit is not leased as of the effective date of the Contract, the Owner shall be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract, in accordance with the procedure set forth in § 884.213(b): *Provided,* That the Owner: (1) Commenced marketing and otherwise complied with § 884.211(e), (2) has taken and continues to take all feasible actions to fill the vacancy, including, but not limited to, contacting applicants on his waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (3) has not rejected any eligible applicant, except for good cause acceptable to HUD or the PHA, as the case may be.

(c) *Vacancies after rent-up.* (1) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days; provided, however, That if the Owner collects any of the Family's share of the rent for this period in an amount which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to HUD or as HUD may direct. (See also § 884.115). The Owner shall not be entitled to any payment under this paragraph (c)(1) unless he: (i) Immediately upon learning of the vacancy, has notified HUD or the PHA, as the case may be, of the vacancy or prospective vacancy and the reasons for the vacancy, and (ii) has taken and continues to take the actions specified in paragraphs (b) (2) and (3) of this section.

(2) If the Owner evicts an Eligible Family, he shall not be entitled to any payment under paragraph (c)(1) of this section unless the request for such payment is supported by a certification that: (i) He gave such Family a written notice of the proposed eviction, stating the grounds and advising the Family that it had 10 days within which to present its objections to the Owner in writing or in person and (ii) the proposed eviction was not in violation of the Lease or the Contract or any applicable law.

(d) *Debt-service vacancy payments.* (1) If a unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the owner may submit a claim to receive additional housing assistance payments on a semiannual basis with respect to the vacant unit in an amount equal to the principal and interest payments required to amortize the portion of the debt attributable to that unit for the period of the vacancy, whether the vacancy commenced during rent-up or after rent-up.

(2) Additional payments under this paragraph (d) for any unit shall not be for more than 12 months for any vacancy period, and shall be made only if:

(i) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed.

(ii) The Owner has taken and is continuing to take the actions specified in paragraphs (b) (1), (2) and (3) or paragraphs (c)(1) (i) and (ii) and (c)(2) of this section, as appropriate.

(iii) The owner has demonstrated, in connection with the semiannual claim on a form and in accordance wih the standards prescribed by HUD with respect to the period of the vacancy, that the project is not providing the owner with revenues at least equal to the project costs incurred by the owner and that the amount of the payments requested is not in excess of the amount needed to make up the deficiency.

(iv) The owner has submitted to HUD or the PHA, as appropriate, in connection with the semiannual claim, a statement with relevant supporting evidence that there is a reasonable prospect that the project can achieve financial soundness within a reasonable time. The statement shall indicate the causes of the deficiency; the corrective steps that have been and will be taken; and the time by which it is expected that the project revenues will at least equal project costs without the additional payments provided under this paragraph.

(3) HUD or the PHA, as appropriate, may deny any claim for additional payments or suspend or terminate payments if it determines that, based on the owner's statement and other evidence, there is not a reasonable prospect that the project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* The Owner shall not be entitled to housing assistance payments with respect to vacant units under this section to the extent he is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the HCD Act or payments under § 884.115).

[41 FR 47168, Oct. 27, 1976, as amended at 42 FR 12983, Mar. 7, 1977; 43 FR 33880, Aug. 1, 1978. Redesignated at 45 FR 6909, Jan. 30, 1980; 49 FR 19947, May 10, 1984]

§ 884.108 Term of housing assistance payments contract.

(a) Except in the case of a Contract described in paragraph (b) of this section, the Contract shall be for an initial term of 20 years: *Provided,* That at the end of such Contract term and at the request of RHCDS, HUD may, subject to the availability of contract and budget authority, authorize the execution of a new Contract providing for a total Contract term of an additional 20 years.

(b) In the case of a Contract under which housing assistance payments are made with respect to a project owned by a State or local agency, the total Contract term may be equal to the term of such financing but may not exceed 40 years for any dwelling unit.

(c) If the project is completed in stages, the dates for the initial and the renewal terms shall be separately related to the units in each stage: *Provided, however,* That the total Contract term for the units in all the stages, beginning with the effective date of the Contract with respect to the first stage, may not exceed the overall maximum term allowable for any one unit, plus two years.

[41 FR 47168, Oct. 27, 1976. Redesignated at 45 FR 6909, Jan. 30, 1980, and amended at 48 FR 12710, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 61 FR 13593, Mar. 27, 1996]

§ 884.108a Notice upon contract expiration.

(a) The Contract will provide that the owner will notify each assisted family, at least 90 days before the end of the Contract term, of any increase in the amount the family will be required to pay as rent which may occur as a result of its expiration. If the Contract is to be renewed but with a reduction in the number of units covered by it, this notice shall be given to each family who will no longer be assisted under the Contract.

(b) The notice provided for in paragraph (a) of this section shall be accomplished by: (1) Sending a letter by first class mail, properly stamped and addressed, to the family at its address at the project, with a proper return address, and (2) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if

no adult responds, by placing the notice under or through the door, if possible, or else by afffixing the notice to the door. Service shall not be considered to be effective until both required notices have been accomplished. The date on which the notice shall be considered to be received by the family shall be the date on which the owner mails the first class letter provided for in this paragraph, or the date on which the notice provided for in this paragraph is properly given, whichever is later.

(c) The notice shall advise each affected family that, after the expiration date of the Contract, the family will be required to bear the entire cost of the rent and that the owner will be free (to the extent the project is not otherwise regulated by HUD) to alter the rent without HUD approval, but subject to any applicable requirements or restrictions under the lease or under State or local law. The notice shall also state: (1) The actual (if known) or the estimated rent which will be charged following the expiration of the Contract; (2) the difference between the rent and the Total Tenant Payment toward rent under the Contract; and (3) the date the Contract will expire.

(d) The owner shall give HUD a certification that families have been notified in accordance with this section with an example of the text of the notice attached.

(e) This section applies to all Contracts entered into pursuant to an Agreement executed on or after October 1, 1981, or entered into pursuant to an Agreement executed before October 1, 1981, but renewed or amended on or after October 1, 1984.

[49 FR 31284, Aug. 6, 1984]

§ 884.109 Rent adjustments.

(a) *Funding of adjustments.* Housing assistance payments will be made in increased amounts commensurate with Contract Rent adjustments under this paragraph, up to the maximum amount authorized under the Contract. (See §§ 884.104 and 884.105).

(b) *Automatic annual adjustments.* (1) Automatic Annual Adjustment Factors will be determined by HUD at least annually; interim revisions may be made as market conditions warrant. Such Factors and the basis for their determination will be published in the FEDERAL REGISTER. These published Factors will be reduced appropriately by HUD where utilities are paid directly by Families.

(2) On each anniversary date of the Contract, the Contract Rents shall be adjusted by applying the applicable Automatic Annual Adjustment Factor most recently published by HUD. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted rents be less than the Contract Rents on the effective date of the Contract.

(c) *Special additional adjustments.* Special additional adjustments shall be granted, when approved by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract Units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by automatic annual adjustments. The Owner shall submit to HUD financial statements which clearly support the increase.

(d) *Overall limitation.* Notwithstanding any other provisions of this part, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD: *Provided, however,* That this limitation shall not be construed to prohibit differences in rents between assisted and comparable unassisted units to the extent that such differences may have existed with respect to the initial Contract Rents.

§ 884.110 Types of housing and property standards.

(a) Newly constructed single-family houses and multifamily structures may be utilized in this program. Congregate housing may be developed for elderly, disabled, or handicapped Families and individuals. Except in the case of housing predominantly for the elderly, high-rise elevator projects for Families

with children may not be utilized unless HUD determines there is no practical alternative.

(b) Participation in this program requires compliance with:

(1) [Reserved]

(2) In the case of congregate housing, the appropriate HUD guidelines and standards;

(3) HUD requirements pursuant to section 209 of the HCD Act for projects for the elderly, disabled, or handicapped;

(4) HUD requirements pertaining to noise abatement and control; and

(5) Applicable State and local laws, codes, ordinances, and regulations.

(c) Housing assisted under this part shall be modest in design. Amenities in projects assisted under this part (except partially assisted projects) will be limited to those amenities, as determined by HUD, which are generally provided in unassisted, decent, safe and sanitary housing for low-income families, in the market area. The use of more durable, high-quality materials to control or reduce maintenance, repair and replacement costs will not be considered an excess amenity.

(d) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

[48 FR 12710, Mar. 28, 1983, as amended at 57 FR 33852, July 30, 1992; 63 FR 46579, Sept. 1, 1998]

§ 884.114 Financing.

(a) *Types.* Eligible projects under this program shall be financed under Section 515, Title V of the Housing Act of 1949.

(b) *Use of contract as security for financing.* (1) An Owner may pledge, or offer as security for any loan or obligation, an Agreement or Contract entered into pursuant to this part: *Provided, however,* That such security is in connection with a project constructed pursuant to this part, and the terms of the financing or any refinancing have been approved by HUD. It is the Owner's responsibility to request such approval in sufficient time before he needs the financing to permit review of the method and terms of the financing and the instrument of pledge, offer or other assignment that HUD is requested to approve.

(2) Any pledge of the Agreement, Contract, or ACC, or payments thereunder, shall be limited to the amounts payable under the Contract or ACC in accordance with its terms.

(3) In the event of foreclosure and in the event of assignment or sale agreed to by HUD, housing assistance payments shall continue in accordance with the Terms of the Contract.

§ 884.115 Security and utility deposits.

(a) An Owner may require Families to pay a security deposit in an amount equal to one month's Gross Family Contribution. If a Family vacates its unit, the Owner, subject to State and local laws, may utilize the deposit as reimbursement for any unpaid rent or other amount owed under the Lease. If the Family has provided a security deposit, and it is insufficient for such reimbursement, the Owner may claim reimbursement from HUD or the PHA, as appropriate, not to exceed an amount equal to the remainder of one month's Contract Rent. Any reimbursement under this section shall be applied first toward any unpaid rent. If a Family vacates the unit owing no rent or other amount under the Lease or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

(b) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. All security deposit funds shall be deposited by the Owner in a segregated

bank account, and the balance of this account, at all times, shall be equal to the total amount collected from tenants then in occupancy, plus any accrued interest. The Owner shall comply with all State and local laws regarding interest payments on security deposits.

(c) Families shall be expected to obtain the funds to pay security and utility deposits, if required, from their own resources and/or other private or public sources.

§ 884.116 Establishment of income limit schedules; 30 percent occupancy by very-low income families.

(a) HUD will establish schedules of Income limits for determining whether families qualify as Low-Income Families and Very Low-Income Families.

(b) In the leasing of units, the Owner shall comply with HUD requirements concerning the permissible income levels of families, as prescribed in part 5 of this title.

[41 FR 47168, Oct. 27, 1976. Redesignated at 45 FR 6909, Jan. 30, 1980, and amended at 49 FR 19947, May 10, 1984; 65 FR 16723, Mar. 29, 2000]

§ 884.117 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

To be eligible to become an owner of housing assisted under this part, the owner (other than a PHA) must meet the disclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 5.

(Approved by the Office of Management and Budget under control number 2502–0204)

[54 FR 39707, Sept. 27, 1989, as amended at 61 FR 13593, Mar. 27, 1996]

§ 884.118 Responsibilities of the owner.

(a) The Owner shall be responsible (subject to post-review or audit by HUD or the PHA, as the case may be) for management and maintenance of the project. These responsibilities shall include but not be limited to:

(1) Payment for utilities and services (unless paid directly by the Family), insurance and taxes;

(2) Performance of all ordinary and extraordinary maintenance;

(3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with part 5 of this title; selection of families, including verification of income, provision of Federal selection preferences in accordance with 24 CFR part 5, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 5), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in 24 CFR part 5), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria;

(4) Collection of Tenant Rents;

(5) Termination of tenancies, including evictions;

(6) Preparation and furnishing of information required under the Contract;

(7) Reexamination of family income and composition; redetermination, as appropriate, of the amount of Tenant Rent and the amount of housing assistance payment in accordance with part 5 of this title; obtaining and verifying Social Security Numbers submitted by participants, as provided by 24 CFR part 5; and obtaining signed consent forms from participants for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5;

(8) Redetermination of amount of Tenant Rent and amount of housing assistance payment in accordance with part 5 of this title as a result of an adjustment by the PHA or HUD, as appropriate, of any applicable Utility Allowance; and

(9) Compliance with equal opportunity requirements issued by RHCDS and HUD with respect to project operation.

(b) Subject to HUD approval, any Owner may contract with any private or public entity to perform for a fee the services required by paragraph (a) of this section: *Provided,* That such contract shall not relieve the Owner of his responsibilities or obligations. However, no entity which is responsible for administration of the Contract (for example, a PHA in the case of a Private-Owner/PHA Project) may contract to perform management and maintenance

of the project: *Provided, however,* That this prohibition shall not preclude management by the PHA in the event it takes possession as the result of foreclosure or assignment in lieu of foreclosure. (See, however, § 884.123(b), which permits conversion of a Private-Owner/PHA Project to a Private-Owner Project.)

(Approved by the Office of Management and Budget under control number 2502–0204)

[41 FR 47168, Oct. 27, 1976. Redesignated at 45 FR 6909, Jan. 30, 1980, and amended at 49 FR 19947, May 10, 1984; 51 FR 11227, Apr. 1, 1986; 53 FR 847, Jan. 13, 1988; 53 FR 1162, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39707, Sept. 27, 1989; 56 FR 7540, Feb. 22, 1991; 60 FR 14845, Mar. 20, 1995; 61 FR 13593, Mar. 27, 1996; 65 FR 16723, Mar. 29, 2000]

§ 884.119 Responsibility for contract administration and defaults (private-owner and PHA-owner projects).

(a) *Contract administration.* HUD is responsible for administration of the Contract. HUD may contract with another entity for the performance of some or all of its Contract administration functions.

(b) *Defaults by owner.* The Contract shall contain a provision to the effect (1) that if HUD determines that the Owner is in default under the Contract, HUD shall notify the Owner (with a copy to RHCDS) of the actions required to be taken to cure the default and of the remedies to be applied by HUD including abatement of housing assistance payments and recovery of overpayments, where appropriate; and (2) that if he fails to cure the default, HUD has the right to terminate the Contract or to take other corrective action.

[41 FR 47168, Oct. 27, 1976, as amended at 61 FR 13593, Mar. 27, 1996]

§ 884.120 Responsibility for contract administration and defaults (private-owner/PHA projects).

(a) *Contract administration.* The PHA is primarily responsible for administration of the Contract, subject to review and audit by HUD.

(b) *Defaults by PHA and/or owner.* (1) The ACC and the Contract shall contain a provision to the effect that in the event of failure of the PHA to comply with the Contract with the Owner, the Owner shall have the right, if he is not in default, to demand that HUD determine, after notice to the PHA giving it a reasonable opportunity to take corrective action, whether a substantial default exists, and if HUD determines that such a default exists, that HUD assure that the obligations of the PHA to the Owner are carried out.

(2) The ACC shall contain a provision to the effect that if the PHA fails to comply with any of its obligations (including specifically failure to enforce its rights under the Contract, in the event of any default by the Owner, to achieve compliance to the satisfaction of HUD or to terminate the Contract in whole or in part, as directed by HUD), HUD may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that there is a substantial default and require the PHA to assign to HUD all of the PHA's rights and interests under the Contract. In such case, HUD will continue to pay annual contributions in accordance with the terms of the ACC and the Contract.

(3) The Contract shall contain a provision to the effect (i) that if the PHA determines that the Owner is in default under the Contract, the PHA shall notify the Owner, with a copy to HUD and RHCDS, of the actions required to be taken to cure the default and of the remedies to be applied by the PHA including abatement of housing assistance payments and recovery of overpayments, where appropriate; and (ii) that if he fails to cure the default, the PHA has the right to terminate the Contract or to take other corrective action, in its discretion or as directed by HUD.

[41 FR 47168, Oct. 27, 1976, as amended at 61 FR 13593, Mar. 27, 1996]

§ 884.121 Rights of owner if PHA defaults under agreement (private-owner/PHA projects).

The ACC and the Agreement shall contain a provision to the effect that in the event of failure of the PHA to comply with the Agreement with the Owner, the Owner shall have the right, if he is not in default, to demand that HUD determine, after notice to the PHA giving it a reasonable opportunity

to take corrective action, whether a substantial default exists, and if HUD determines that such a default exists, that HUD assume the PHA's rights and obligations under the Agreement, and carry out the obligations of the PHA under the Agreement, including the obligation to enter into the Contract.

§ 884.122 Separate project requirement.

(a) In the case of a Private-Owner Project or a PHA-Owner Project, each Agreement and Contract shall constitute a separate project.

(b) In the case of a Private-Owner/PHA Project such project may not include more than one type of Section 8 assistance, shall be processed with a separate ACC List and ACC Part I and shall be assigned a separate project number. All new construction units to be placed under a single Contract shall comprise a separate project. However, the field office director may designate as a single project the units to be covered by two or more such Contracts for new construction projects where:

(1) The units are placed under ACC on the same date; and

(2) Such consolidation is necessary in the interest of administrative efficiency.

§ 884.123 Conversions.

(a) *Conversion of private-owner project to private-owner/PHA project.* HUD may request the Owner of a Private-Owner Project and an appropriate PHA to agree, if they are willing, to a conversion of any such project to a Private-Owner/PHA Project if HUD determines that such conversion would promote efficient project administration.

(b) *Conversion of private-owner/PHA project to private-owner project.* The Private Owner and the PHA, in the case of a Private-Owner/PHA Project, may request HUD to agree to a conversion of any such project to a Private-Owner or PHA-Owner Project. HUD shall agree to such conversion if it determines it to be in the best interest of the project.

§ 884.124 Audit.

(a) Where a State or local government is the eligible owner of a project, or is a contract administrator under § 884.119 or § 884.120, receiving financial assistance under this part, the audit requirements in 24 CFR part 44 shall apply.

(b) Where a nonprofit organization is the eligible owner of a project, receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.

[50 FR 39092, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986, as amended at 57 FR 33257, July 27, 1992]

Subpart B—Project Development and Operation

§ 884.212 Project completion.

(a) *FmHA certifications upon completion.* Upon completion of the project, FmHA shall inspect the project and, if determined to be acceptable, submit to the HUD field office the following certifications:

(1) The project has been completed in accordance with the requirements of the Agreement;

(2) The project is in good and tenantable condition;

(3) There are no defects or deficiencies in the project other than punchlist items, or incomplete work awaiting seasonal opportunity;

(4) There has been no change in management capability.

(b) *HUD review.* HUD shall promptly review the certifications submitted pursuant to paragraphs (a) and (b) of this section (see § 884.203(b)).

(c) *HUD acceptance.* If HUD determines from the review that the certifications are acceptable in accordance with these subparts, the project shall be accepted.

(d) *Acceptance where defects or deficiencies reported.* If the only defects or deficiencies are punchlist items or incomplete items awaiting seasonal opportunity, the project may be accepted and the Contract executed. If the Owner fails to complete the items within a reasonable time to the satisfaction of HUD (and the PHA, if applicable), HUD may, after consultation with FmHA, upon 30 days notice to the Owner (and the PHA, if applicable), terminate the Contract and/or exercise its other rights thereunder or, if the Contract is with a PHA, cancel its approval of the Contract and require its

termination and/or exercise its other rights under the Contract and the ACC.

(e) *Arbitration.* In the event the Owner disputes HUD determinations, he may submit the controversy to third-party arbitration at his expense, provided that the arbitration is advisory only.

(f) *Completion in stages.* If the project is to be completed in stages, the procedures of this section shall apply to each stage.

§ 884.213 Execution of housing assistance payments contract.

(a) *Time of execution.* Upon acceptance of the project by HUD pursuant to § 884.212, the Contract shall be executed first by the Owner and then by HUD, or, in the case of a Private-Owner/PHA Project, executed by the Owner and the PHA and then approved by HUD.

(b) *Unleased units.* At the time of execution of the Contract, HUD (or the PHA, as appropriate) shall examine the lists of dwelling units leased and not leased, referred to in § 884.211(e) and shall determine whether or not the Owner has met his obligations under that section with respect to any unleased units. HUD (or the PHA, as appropriate) shall state in writing its determination with respect to the unleased units and for which of those units it will make housing assistance payments. The Owner shall indicate in writing his concurrence with this determination or his disagreement, reserving his rights to claim housing assistance payments for the unleased units pursuant to the Contract, without prejudice by reason of his signing the Contract. Copies of all documents referred to this paragraph shall be furnished to HUD in the case of a Private-Owner/PHA Project.

§ 884.214 Marketing.

(a) *Compliance with equal opportunity requirements.* Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's FmHA-approved Affirmative Fair Housing Marketing Plan, if required, and with all regulations relating to fair housing advertising including use of the equal opportunity logotype statement and slogan in all advertising. Projects shall be managed and operated without regard to race, color, creed, religion, sex, or national origin.

(b) *Eligibility, selection and admission of families.* (1) The owner is responsible for determination of eligibility of applicants in accordance with the procedure of 24 CFR part part 5, selection of families from among those determined to be eligible (including provision of Federal selection preferences in accordance with 24 CFR part 5), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with schedules and criteria established by HUD.

(2) For every family that applies for admission, the owner and the applicant will complete and sign the form of application prescribed by HUD. However, if there are no vacant units and the owner's waiting list is such that there would be an unreasonable length of time before the applicant could be admitted, the owner may advise the applicant that the owner is not accepting applications for that reason.

The owner must retain copies of all completed applications together with any related correspondence for three years. For each family selected for admission, the owner must submit one copy of the completed and signed application to the HUD field office (in the case of private-owner/PHA projects, the owner simultaneously must send a copy of the form to the PHA). Housing assistance payments will not be made on behalf of an admitted family unit after this copy has been received by the HUD field office (or, in the case of private-owner/PHA projects, until the copy has been received by the PHA with a certification by the owner that the owner has sent a copy to HUD).

(3) If the Owner determines that the applicant is eligible on the basis of Income and family composition and is otherwise acceptable but the Owner does not have a suitable unit to offer, the Owner shall place such Family on his waiting list and so advise the Family.

(4) If the Owner determines that the applicant is eligible on the basis of Income and family composition and is otherwise acceptable and if the Owner has a suitable unit, the Owner and the Family shall enter into a Lease. Such

Lease shall be on the form of Lease included in the Owner's approved Final Proposal and shall otherwise be in conformity with the provisions of this part.

(5) Records on applicant families and approved Families shall be maintained by the Owner so as to provide HUD with racial, ethnic and gender data and shall be retained by the Owner for three years.

(6) In the case of a PHA-Owner project, (i) if the PHA places a Family on its waiting list, it shall notify the Family of the approximate date of availability of a suitable unit insofar as such date can be reasonably determined, and (ii) if the PHA determines that an applicant is ineligible on the basis of income or family composition, or that the PHA is not selecting the applicant for other reasons, the PHA shall promptly send the applicant a letter notifying him of the determination and the reasons and that the applicant has the right within a reasonable time (specified in the letter) to request an informal hearing. If, after conducting such an informal hearing, the PHA determines that the applicant shall not be admitted, the PHA shall so notify the applicant in writing and such notice shall inform the applicant that he has the right to request a review by HUD of the PHA's determination. The procedures of this subparagraph do not preclude the applicant from exercising his other rights if he believes he is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. The PHA shall retain for three years a copy of the application, the letter, the applicant's response if any, the record of any informal hearing, and a statement of final disposition.

(7) See 24 CFR part 5 for the informal review provisions for the denial of a Federal selection preference.

(8) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see part 5 of this title for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

[41 FR 47168, Oct. 27, 1976. Redesignated at 45 FR 6909, Jan. 30, 1980, and amended at 53 FR 1162, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 60 FR 14845, Mar. 20, 1995; 61 FR 9047, Mar. 6, 1996; 61 FR 13594, Mar. 27, 1996; 65 FR 16723, Mar. 29, 2000]

§ 884.215 Lease requirements.

The Lease shall contain all required provisions specified in paragraph (b) of this section and none of the prohibited provisions listed in paragraph (c) of this section.

(a) *Term of lease.* The term of the Lease shall be for not less than one year. The Lease may (or, in the case of a Lease for a term of more than one year, shall) contain a provision permitting termination upon 30 days advance written notice by either party.

(b) *Required provisions.* The Lease between the Owner (Lessor) and the Family (Lessee) shall contain the following provisions:

ADDENDUM TO LEASE

The following additional Lease provisions are incorporated in full in the Lease between _____ (Lessor) and _____ (Lessee) for the following dwelling unit: _____. In case of any conflict between these and any other provisions of the Lease, these provisions shall prevail.

a. The total rent shall be $_____ per month.

b. Of the total rent, $_____ shall be payable by or at the direction of the Department of Housing and Urban Development (''HUD'') as housing assistance payments on behalf of the Lessee and $_____ shall be payable by the Lessee. These amounts shall be subject to change by reason of changes in the Lessee's family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD-established schedules and criteria; or by reason of adjustment by HUD, or the PHA, if appropriate, of any applicable Allowance for Utilities and Other Services. Any such change shall be effective as of the date stated in a notification to the Lessee.

c. The Lessor shall not discriminate against the Lessee in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

d. The Lessor shall provide the following services and maintenance:

Lessor _____

By _____

Date _____
Lessee _____
Date _____

(c) *Prohibited provisions.* Lease clauses which fall within the classifications listed below shall not be included in any Lease.

(1) *Confession of judgment.* Prior consent by tenant to any lawsuit the landlord may bring against him in connection with the Lease and to a judgment in favor of the landlord.

(2) *Distraint for rent or other charges.* Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which the landlord has determined the tenant has failed to perform.

(3) *Exculpatory clause.* Agreement by tenant not to hold the landlord or landlord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents.

(4) *Waiver of legal notice to tenant prior to actions for eviction or money judgments.* Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.

(5) *Waiver of legal proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

(6) *Waiver of jury trial.* Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's right to a trial by jury.

(7) *Waiver of right to appeal judicial error in legal proceedings.* Authorization to the landlord's lawyer to waive the tenant's right to appeal on the ground of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.

(8) *Tenant chargeable with costs of legal actions regardless of outcome.* Agreement by the tenant to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court finds in favor of the tenant. (Omission of such clause does not mean that the tenant as a party to a lawsuit may not be obligated to pay attorney's fee or other costs if he loses the suit.)

§ 884.216 Termination of tenancy.

(a) The owner is responsible for termination of tenancies, including evictions. However, conditions for payment of housing assistance payments for any resulting vacancies must be as set forth in § 884.106(c)(1). Failure of the family to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, shall be grounds for termination of tenancy. For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, including the applicable informal requirements, see 24 CFR part 5 and also for provisions concerning assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

(b) Termination of tenancy for criminal activity by a covered person is subject to 24 CFR 5.858 and 5.859, and termination of tenancy for alcohol abuse by a covered person is subject to 24 CFR 5.860.

[56 FR 7541, Feb. 22, 1991, as amended at 60 FR 14845, Mar. 20, 1995; 61 FR 13594, Mar. 27, 1996; 61 FR 47382, Sept. 6, 1996; 66 FR 28798, May 24, 2001]

§ 884.217 Maintenance, operation and inspections.

(a) *Maintenance and operation.* The Owner shall maintain and operate the project so as to provide Decent, Safe, and Sanitary housing and he shall provide all the services, maintenance and utilities which he agrees to provide under the Contract, subject to abatement of housing assistance payments or other applicable remedies if he fails to meet these obligations.

(b) *Inspection prior to occupancy.* Prior to occupancy of any unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on forms prescribed by HUD, that they

have inspected the unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria provided in the prescribed forms. Copies of these reports shall be kept on file by the Owner for at least three years.

(c) *Periodic inspections.* HUD (or the PHA, as appropriate) will inspect or cause to be inspected each Contract unit and related facilities at least annually and at such other times (including prior to initial occupancy and rerenting of any unit) as HUD (or the PHA) may determine to be necessary to assure that the Owner is meeting his obligation to maintain the units in Decent, Safe, and Sanitary condition and to provide the agreed upon utilities and other services. HUD (or the PHA) will take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the Owner and the Family of its determination.

(d) *Units not decent, safe, and sanitary.* If HUD (or the PHA, as appropriate) notifies the Owner that he has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, HUD (or the PHA) may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments, even if the Family continues to occupy the unit. If, however, the Family wishes to be rehoused in another dwelling unit with Section 8 assistance and HUD (or the PHA) does not have other Section 8 funds for such purposes, HUD (or the PHA) may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. Where this is done, the Owner shall be notified that he will be entitled to resumption of housing assistance payments for the vacated dwelling unit if:

(1) The unit is restored to Decent, Safe, and Sanitary condition;

(2) The Family is willing to and does move back to the restored dwelling unit; and

(3) A deduction is made for the expenses incurred by the Family for both moves.

§ 884.218 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once each year. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 5 of this title and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose and verify Social Security Numbers, as provided by 24 CFR part 5. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5. At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 5 concerning verification of the immigration status of any new family member.

(b) *Interim reexaminations.* The family must comply with provisions of its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms by families

for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5. At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Contract Rent plus any utility allowance, or until the family loses eligibility for continued occupancy under Farmer's Home Administration regulations. However, eligibility also may be terminated in accordance with HUD requirements, for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5. For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR part 5 and also for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

[56 FR 7541, Feb. 22, 1991, as amended at 60 FR 14845, Mar. 20, 1995; 61 FR 13594, Mar. 27, 1996; 65 FR 16723, Mar. 29, 2000]

§ 884.219 Overcrowded and underoccupied units.

If HUD or the PHA, as the case may be, determines that a Contract unit assisted under this part is not Decent, Safe, and Sanitary by reason of increase in Family size, or that a Contract unit is larger than appropriate for the size of the Family in occupancy, housing assistance payments with respect to such unit will not be abated, unless the Owner fails to offer the Family a suitable unit as soon as one becomes vacant and ready for occupancy. In the case of an overcrowded unit, if the Owner does not have any suitable units or if no vacancy of a suitable unit occurs within a reasonable time, HUD (or the PHA) will assist the Family in finding a suitable dwelling unit and require the Family to move to such a unit as soon as possible. The Owner may receive housing assistance payments for the vacated unit if he complies with the requirements of § 884.106(c)(1).

§ 884.220 Adjustment of utility allowances.

In connection with annual and special adjustments of contract rents, the owner must submit an analysis of the project's Utility Allowances. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the project owner must advise the Secretary and request approval of new Utility Allowances. Whenever a Utility Allowance for a unit is adjusted, the owner will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment for the unit.

(Approved by the Office of Management and Budget under control number 2502–0161)

[50 FR 39098, Sept. 27, 1985]

§ 884.221 Continued family participation.

A Family must continue to occupy its approved unit to remain eligible for participation in the Housing Assistance Payments Program except that if the Family (a) wishes to vacate its unit at the end of the Lease term (or prior thereto but in accordance with the provisions of the Lease), or (b) is required to move for reasons other than violation of the Lease on the part of the Family, and if the Family wishes to receive the benefit of housing assistance payments in another approvable unit,

the Family should give reasonable notice of the circumstances to HUD or to the PHA, as appropriate, so that HUD or the PHA may have the opportunity to consider the Family's request.

§ 884.222 Inapplicability of low-rent public housing model lease and grievance procedures.

Model lease and grievance procedures established by HUD for PHA-owned low-rent public housing are applicable only to PHA-Owner Projects under the Section 8 Housing Assistance Payments Program.

§ 884.223 Leasing to eligible families.

(a) *Availability of units for occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 884.214; (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to HUD (or the PHA in accordance with HUD guidelines and at the direction of HUD, as appropriate). If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of HUD (or the PHA in accordance with HUD guidelines and at the direction of HUD, as appropriate). Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by Contract.* HUD (or the PHA at the direction of HUD, as appropriate), after consultation with the Farmers Home Administration, may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD (or the PHA at the direction of HUD, as appropriate) to lease such units to ineligible families, HUD (or the PHA at the direction of HUD, as appropriate) determines that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the ACC or the Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The owner otherwise has a record of compliance with his or her obligations under the Contract; and

(3) Contract and budget authority are available.

(d) *Applicability.* In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time will continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR part 5 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR part 5, the owner shall comply with the provisions of 24 CFR part

5 concerning assistance to mixed families, and deferral of termination of assistance.

[49 FR 31398, Aug. 7, 1984, as amended at 53 FR 847, Jan. 13, 1988; 53 FR 6601, Mar. 2, 1988; 59 FR 13653, Mar. 23, 1994; 60 FR 14846, Mar. 20, 1995; 61 FR 13594, Mar. 27, 1996]

§ 884.223a Preference for occupancy by elderly families.

(a) *Election of preference for occupancy by elderly families*—(1) *Election by owners of eligible projects.* (i) An owner of a project assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an ''eligible project'') may, at any time, elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.

(ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an ''elderly project.'' ''Elderly families'' refers to families whose heads of household, their spouses or sole members are 62 years or older.

(iii) An owner who elects to provide a preference to elderly families in accordance with this section is required to notify families on the waiting list who are not elderly that the election has been made and how the election may affect them if:

(A) The percentage of disabled families currently residing in the project who are neither elderly nor near-elderly (hereafter, collectively referred to as ''non-elderly disabled families'') is equal to or exceeds the minimum required percentage of units established for the elderly project in accordance with paragraph (c)(1) of this section, and therefore non-elderly families on the waiting list (including non-elderly disabled families) may be passed over for covered section 8 units; or

(B) The project, after making the calculation set forth in paragraph (c)(1) of this section, will have no units set aside for non-elderly disabled families.

(iv) An owner who elects to give a preference for elderly families in accordance with this section shall not remove an applicant from the project's waiting list solely on the basis of having made the election.

(2) *HUD approval of election not required.* (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project's eligibility through the production of all relevant documentation in the possession of the owner that pertains to the original design of the project.

(ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations under the Fair Housing Act (42 U.S.C. 3601 through 3619), or compliance reviews and complaint investigations under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

(b) *Determining projects eligible for preference for occupancy by elderly families*—(1) *Evidence supporting project eligibility.* Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this section, shall consist of at least one item from the sources (''primary'' sources) listed in paragraph (b)(1)(i) of this section, or at least two items from the sources (''secondary'' sources) listed in paragraph (b)(1)(ii) of this section:

(i) *Primary sources.* Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: the application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan commitment; the bid invitation; the

owner's management plan, or any underwriting or financial document collected at or before loan closing; *or*

(ii) *Secondary sources.* Two or more sources of evidence such as: lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older; evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with more than fifty percent of efficiency and one-bedroom units [a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of ''elderly families'') from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of ''elderly families'' which includes disabled families]; or any other relevant type of historical data, unless clearly contradicted by other comparable evidence.

(2) *Sources in conflict.* If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of preferences for elderly families as provided by this section based upon primary sources alone. In any case where primary sources do not provide *clear evidence* of original design of the project for occupancy primarily by elderly families, including those cases where sources documents conflict, secondary sources may be used to establish the use for which the project was originally designed.

(c) *Reservation of units in elderly projects for non-elderly disabled families.* The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph (c)(1) of this section for occupancy by non-elderly disabled families.

(1) *Minimum number of units to be reserved for non-elderly disabled families.* The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:

(i) The number of units equivalent to the higher of—

(A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and

(B) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families upon January 1, 1992; *or*

(ii) 10 percent of the number of units assisted under this part in the eligible project.

(2) *Option to reserve greater number of units for non-elderly disabled families.* The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.

(d) *Secondary preferences.* An owner of an elderly project also may elect to establish secondary preferences in accordance with the provisions of this paragraph (d) of this section.

(1) *Preference for near-elderly disabled families in units reserved for elderly families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c) of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.

(2) *Preference for near-elderly disabled families in units reserved for non-elderly*

disabled families. If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units to disabled families who are near-elderly families.

(e) *Availability of units to families without regard to preference.* An owner shall make vacant units in an elderly project generally available to otherwise eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section if either:

(1) The owner has adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, reserve preference, and secondary preference has been given, to fill all the vacant units; or

(2) The owner has *not* adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, and reserve preference has been given to fill all the vacant units.

(f) *Determination of insufficient number of applicants qualifying for preference.* To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:

(1) Conduct marketing in accordance with § 884.214(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section; and

(2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.

(g) *Prohibition of evictions.* An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

[59 FR 65855, Dec. 21, 1994, as amended at 61 FR 9047, Mar. 6, 1996; 65 FR 16723, Mar. 29, 2000]

§ 884.224 HUD review of contract compliance.

HUD will review project operation at such intervals as it deems necessary to ensure that the Owner is in full compliance with the terms and conditions of the Contract. Equal Opportunity review may be conducted with the scheduled HUD review or at any time deemed appropriate by HUD.

§ 884.225 PHA reporting requirements. [Reserved]

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

Subpart A—Additional Assistance Program for Projects With HUD-Insured and HUD-Held Mortgages

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886.338 Displacement, relocation, and acquisition.

AUTHORITY: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

Subpart A—Additional Assistance Program for Projects With HUD-Insured and HUD-Held Mortgages

SOURCE: 42 FR 5603, Jan. 28, 1977, unless otherwise noted.

§ 886.101 Applicability.

(a) The policies and procedures of this subpart apply to Housing Assistance Payments under Section 8 of the United States Housing Act of 1937 on behalf of Eligible Families in Eligible Projects (see definitions in § 886.102).

(b) The primary goal of the Section 8 Loan Management Set-Aside Program is to reduce claims on the Department's insurance fund by aiding those FHA-insured or Secretary-Held projects with immediately or potentially serious financial difficulties. A first priority should be given to projects with presently serious financial problems, which are likely to result in a claim on the insurance fund in the near future. To the extent resources remain available, assistance also may be provided to projects with potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing a claim on the insurance fund within approximately the next five years.

[42 FR 5603, Jan. 28, 1977, as amended at 53 FR 3368, Feb. 5, 1988]

§ 886.102 Definitions.

The terms *Fair Market Rent (FMR), HUD, Public Housing Agency (PHA),* and *Secretary* are defined in 24 CFR part 5.

Act. The United States Housing Act of 1937.

Annual income. As defined in part 5 of this title.

Contract (See *Section 8 Contract*).

Contract Rent. The rent payable to the Owner as required by HUD in connection with its mortgage insurance

and/or lending functions, including the portion of the rent payable by the Family, not to exceed the amount stated in the Section 8 Contract as such amount may be adjusted in accordance with § 886.112. In the case of a cooperative, the term ''Contract Rent'' means charges under the occupancy agreements between the members and the cooperative.

Decent, Safe, and Sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

Eligible Project. Any existing subsidized or unsubsidized multifamily residential project that is subject to a mortgage insured or any section of the National Housing Act; any such project subject to a mortgage that has been assigned to the Secretary; any such project acquired by the Secretary and thereafter sold under a Secretary-held purchase money mortgage; or a project for the elderly financed under section 202 of the Housing Act of 1959 (except projects receiving assistance under 24 CFR part 885).

Family. As defined in part 5 of this title.

HCD Act. The Housing and Community Development Act of 1974.

Housing Assistance Payment. The payment made by HUD to the Owner of an assisted unit as provided in the Contract. Where the unit is leased to an eligible Family, the payment is the difference between the Contract Rent and the Tenant Rent. An additional Housing Assistance Payment is made when the Utility Allowance is greater than the Total Tenant Payment. A Housing Assistance Payment may be made to the Owner when a unit is vacant, in accordance with § 886.109.

Income. Income from all sources of each member of the household as determined in accordance with criteria established by HUD.

Lease. A written agreement between the owner and a family for leasing of a decent, safe and sanitary dwelling unit to the family.

Low-income family. As defined in part 5 of this title.

Owner. The mortgagor of record under a multifamily project mortgage insured, or held by the Secretary, including purchase money mortgages; the owner of a Section 202 project.

Project. See § 886.101.

Project Account. The account established and maintained in accordance with § 886.108.

Section 8 Contract (*''Contract''*). A written Contract between the Owner of an Eligible Project and HUD for providing Housing Assistance Payments to the Owner on behalf of Eligible Families pursuant to this part.

Subsidized Rent. In Section 221(d)(3) BMIR, Section 202, or Section 236 projects, the rent payable to the project, based on the particular circumstances of any assisted tenant in the absence of any Housing Assistance Payment.

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Very low-income family. As defined in part 5 of this title.

[42 FR 5603, Jan. 28, 1977, as amended at 42 FR 63745, Dec. 19, 1977; 49 FR 19948, May 10, 1984; 50 FR 38795, Sept. 25, 1985; 53 FR 3368, Feb. 5, 1988; 61 FR 5213, Feb. 9, 1996; 63 FR 46579, Sept. 1, 1998; 65 FR 16723, Mar. 29, 2000]

§ 886.103 Allocation of Section 8 contract authority.

HUD will allocate to field offices contract authority for Section 8 project commitments for metropolitan and nonmetropolitan areas in conformance with Section 213(d) of the HCD Act.

§ 886.104 Invitations to participate.

(a) HUD shall identify Eligible Projects which are most likely to meet the selection criteria set forth in § 886.117, and shall invite the Owners of such projects to make application for Section 8 assistance under this part.

(b) An Owner of an Eligible Project who has not been notified pursuant to paragraph (a) of this section may also make application for such assistance.

§ 886.105 Content of application; Disclosure.

Applications shall be in the form and in accordance with the instructions prescribed by HUD, and shall include:

(a) Information on Gross Income, family size, and amount of rent paid to the project by Families currently in residence;

(b) Information on vacancies and turnover;

(c) Estimate of effect of the availability of Section 8 assistance on marketability of units in the project;

(d) For projects having a history of financial default, financial difficulties or deferred maintenance, a plan and a schedule for remedying such defaulted or deferred obligations;

(e) Total number of units by unit size (by bedroom count) for which Section 8 assistance is requested; and

(f) Affirmative Fair Housing Marketing Plan on a HUD-prescribed form.

To be eligible to become an owner of housing assisted under this subpart, the owner must meet the disclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by part 5, subpart B, of this title.

(Approved by the Office of Management and Budget under control number 2502–0204)

[42 FR 5603, Jan. 28, 1977, as amended at 54 FR 39708, Sept. 27, 1989; 61 FR 11118, Mar. 18, 1996]

§ 886.106 Notices.

(a) Within 10 days of receipt of each completed application by the HUD field office, the field office shall send to the chief executive officer of the unit of general local government in which the proposed assistance is to be provided, a notification in a form prescribed by HUD for purposes of compliance with Section 213 of the HCD Act.

(b) If an application is approved, HUD shall send to the Owner a notice of application approval. If an application can be approved only on certain conditions, HUD shall notify the Owner of the conditions and specify a time limit by which those conditions must be met. If an application is disapproved, HUD shall so notify the Owner by letter indicating the reasons for disapproval.

[42 FR 5603, Jan. 28, 1977, as amended at 53 FR 3368, Feb. 5, 1988]

§ 886.107 Approval of applications.

HUD shall approve applications, after considering all pertinent information including comments (if any) received during the comment period from the unit of general local government, based on the following criteria:

(a) The Owner's Affirmative Fair Housing Marketing Plan is approvable.

(b) The HUD-approved unit rents are approvable within the Fair Market Rent limitations contained in § 886.110.

(c) The residential units meet the housing quality standards set forth in § 886.113, except for such variations as HUD may approve. Local climatic or geological conditions or local codes are examples which may justify such variations.

(d) A significant number of residents, or potential residents, in the case of projects having a vacancy rate over 10 percent, are eligible for and in need of Section 8 assistance.

(e) The infusion of Section 8 assistance into the subject project should not affect other HUD-related multifamily housing within the same neighborhood in a substantially adverse manner. Examples of such adverse effects are (1) substantial move-outs from nearby HUD-related projects precipitated by much lower rents in the subject project, or (2) substantial diversion of prospective applicants from such projects to the subject project.

(f) A first priority is given to HUD-Insured or Secretary-Held projects with presently serious financial problems, which are likely to result in a claim on the insurance fund in the near future. To the extent resources remain available, assistance also may be provided to projects with potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing a claim on the insurance funds within approximately the next five years.

(g) The infusion of Section 8 assistance into the subject project solves an identifiable problem, e.g., high vacancies and/or turnover, and provides a

reasonable assurance of long-term project viability. A determination of long-term viability shall be based upon the following considerations:

(1) The project is not subject to any serious problems that are non-economic in nature. Examples of such problems are poor location, structural deficiencies or disinterested ownership.

(2) The Owner is in substantial compliance with the Regulatory Agreement. Owners are not diverting project funds for personal use. No dividends are being paid during any period of financial difficulty.

(3) The management agent is in substantial compliance with the management agreement. The current management agreement has been approved by HUD. Financial records are adequately kept. Occupancy requirements are being met. Marketing and maintenance programs are being carried out in an adequate manner, based upon available financial resources.

(4) The project's problems are primarily the result of factors beyond the control of the present ownership and management.

(5) The major problems are traceable to an inadequate cash flow.

(6) The infusion of Section 8 assistance will solve the cash flow problem by:

(i) Making it possible to grant needed rent increases;

(ii) Reducing turnover, vacancies and collection losses.

(7) The Owner's plan for remedying any deferred maintenance, financial problems, or other problems is realistic and achievable. There is positive evidence that the Owner will carry out the plan. Examples of such evidence are the Owner's past performance in correcting problems and, in the case of profit-motivated Owners, any cash contributions made to correct project problems.

(h) Any plan submitted pursuant to § 886.105(d) is found by HUD to be adequate.

§ 886.108 Maximum annual contract commitment.

(a) *Number of units assisted.* Based on analysis of housing assistance needs of families residing or expected to reside in the project, HUD shall determine the number of units to be assisted up to 100 percent of the units in the project. All units currently assisted under section 23 or section 8 shall be converted and included under the Contract pursuant to this subpart, unless the parties to the Lease or Contract object to such conversion. Units assisted under section 101 of the Housing and Urban Development Act of 1965 or under section 236(f)(2) of the National Housing Act shall not be included under the Contract pursuant to this subpart unless the Owner proposes and HUD approves such conversion.

(b) *Maximum annual Contract commitment.* The maximum annual housing assistance payments that may be committed under the Contract shall be that amount which, when paid annually over the term of the Contract, is determined by HUD to be sufficient to provide for all housing assistance payments and fees under the Contract.

(c) *Project Account.* In order to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family Incomes:

(1) A Project Account shall be established and maintained, in an amount as determined by the Secretary consistent with his responsibilities under section 8(c)(6) of the Act, out of amounts by which the maximum annual Contract commitment per year exceeds amounts paid under the Contract for any year. This account shall be established and maintained by HUD for each project as a specifically identified and segregated account, and payment shall be made therefrom only for the purposes of (i) housing assistance payments, and (ii) other costs specifically authorized or approved by the Secretary.

(2) Whenever a HUD-approved estimate of required housing assistance payments for a fiscal year exceeds the maximum annual Contract commitment, and would cause the amount in the Project Account to be less than an amount equal to 40 percent of such maximum annual Contract commitment, HUD shall, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) ''the

allocation of a portion of new authorizations for the purpose of amending housing assistance contracts.''

§ 886.109 Housing assistance payments to owners.

(a) *General.* Housing Assistance Payments shall be paid to Owners for units under lease by eligible families, in accordance with the Contract and as provided in this section. These Housing Assistance Payments will cover the difference between the Contract Rent and the Tenant Rent. Where applicable, the Utility Reimbursement will be paid to the Family as an additional Housing Assistance Payment. The Contract will provide that the Owner will make this payment on behalf of HUD. Funds will be paid to the Owner in trust solely for the purpose of making this additional payment. If the Family and the utility company consent, the Owner may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

(b) No Section 8 assistance may be provided for any unit occupied by an Owner; cooperatives are considered rental housing.

(c) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days: *Provided, however,* That if the Owner collects any of the Family's share of the rent for this period, or applies security deposits for unpaid rent, in amounts which when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to HUD or as HUD may direct. (See also § 886.116.) The Owner shall not be entitled to any payment under this paragraph unless he:

(1) Immediately upon learning of the vacancy, has notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy, and

(2) Has taken and continues to take all feasible actions to fill the vacancy including, but not limited to, contacting applicants on his waiting list (if any), and advising them of the availability of the unit, and

(3) Has not rejected any eligible applicant except for good cause.

[42 FR 5603, Jan. 28, 1977, as amended at 49 FR 19948, May 10, 1984]

§ 886.110 Contract rents.

(a) The sum of the Contract Rents plus an Allowance for Utilities and Other Services shall not exceed the published Section 8 Fair Market Rents for Existing Housing, except that they may be exceeded by:

(1) Up to 10 percent if the Field Office Director determines that special circumstances warrant such higher rents, or

(2) By up to 20 percent where the Regional Administrator determines that special circumstances warrant such higher rents, and in either case, such higher rents meet the test of reasonableness in paragraph (c) of this section.

(b) In the case of any project completed not more than six years prior to the application for assistance under that part, or in the case of units converted to Section 8 which were previously assisted under Section 101 of the Housing and Urban Development Act of 1965 or Section 236(f)(2) of the National Housing Act, contract rents plus any allowance for utilities and other services may be as high as 75 percent of the published Section 8 Fair Market Rents for New Construction, which limitation may be increased: (1) By up to 10 percent if the Field Office Director determines that special circumstances warrant such higher rents, or (2) by up to 20 percent where the Regional Administrator determines that special circumstances warrant such higher rents, and in either case, such higher rents meet the test of reasonableness contained in paragraph (c) of this section. The project shall be converted using the current HUD approved rent level established pursuant to 24 CFR 207.19(e)(2)(i).

(c) In any case, HUD shall determine and so certify that the Contract Rents for the project do not exceed rents which are reasonable for the location, quality, amenities, facilities, and management and maintenance services in relation to the rents paid for comparable units in the private unassisted market, nor shall the Contract Rents

exceed the rents charged by the Owner to unassisted Families for comparable units. HUD shall maintain for three years all certifications and relevant documentation under this paragraph (c).

[42 FR 5603, Jan. 28, 1977, as amended at 48 FR 36103, Aug. 9, 1983; 48 FR 56949, Dec. 27, 1983]

§ 886.111 Term of contract.

A Contract may be for an initial term of not more than 5 years, renewable for successive 5 year terms by agreement between HUD and the Owner: *Provided*, That the total Contract term, including renewals, shall not exceed 15 years.

§ 886.111a Notice upon contract expiration.

(a) The Contract will provide that the owner will notify each assisted family, at least 90 days before the end of the Contract term, of any increase in the amount the family will be required to pay as rent which may occur as a result of its expiration. If the Contract is to be renewed but with a reduction in the number of units covered by it, this notice shall be given to each family who will not longer be assisted under the Contract.

(b) The notice provided for in paragraph (a) of this section shall be accomplished by: (1) Sending a letter by first class mail, properly stamped and addressed, to the family at its address at the project, with a proper return address, and (2) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be considered to be effective until both required notices have been accomplished. The date on which the notice shall be considered to be received by the family shall be the date on which the owner mails the first class letter provided for in this paragraph, or the date on which the notice provided for in this paragraph is properly given, whichever is later.

(c) The notice shall advise each affected family that, after the expiration date of the Contract, the family will be required to bear the entire cost of the rent and that the owner will be free (to the extent the project is not otherwise regulated by HUD) to alter the rent without HUD approval, but subject to any applicable requirements or restrictions under the lease or under State or local law. The notice shall also state: (1) The actual (if known) or the estimated rent which will be charged following the expiration of the Contract; (2) the difference between the rent and the Total Tenant Payment toward rent under the Contract; and (3) the date the Contract will expire.

(d) The owner shall give HUD a certification that families have been notified in accordance with this section with an example of the text of the notice attached.

(e) This section applies to all Contracts executed, renewed or amended on or after October 1, 1984.

[49 FR 31285, Aug. 6, 1984]

§ 886.112 Rent adjustments.

This section applies to adjustments of the dollar amount stated in the Contract as the Maximum Unit Rent. It does not apply to adjustments in rents payable to Owners as required by HUD in connection with its mortgage insurance and/or lending functions.

(a) *Funding of adjustments.* Housing Assistance Payments will be made in increased amounts commensurate with Contract Rent adjustments up to the maximum annual amount of housing assistance payments specified in the Contract pursuant to § 886.108(b).

(b) *Annual adjustments.* The contract rents may be adjusted annually, or more frequently, at HUD's option, either (1) on the basis of a written request for a rent increase submitted by the owner and properly supported by substantiating evidence, or (2) by applying, on each anniversary date of the contract, the applicable Automatic Annual Adjustment Factor most recently published by HUD in the FEDERAL REGISTER in accordance with 24 CFR part 888, subpart B. Published Automatic Annual Adjustment Factors will be reduced appropriately by HUD where utilities are paid directly by Families. If HUD requires that the owner submit a written request, HUD, within a reasonable time, shall approve a rental

schedule that is necessary to compensate for any increase in taxes (other than income taxes) and operating and maintenance costs over which owners have no effective control, or shall deny the increase stating the reasons therefor. Increases in taxes and maintenance and operating costs shall be measured against levels of such expenses in comparable assisted and unassisted housing in the area to ensure that adjustments in the Contract Rents shall not result in material differences between the rents charged for assisted and comparable unassisted units. Contract Rents may be adjusted upward or downward as may be appropriate; however, in no case shall the adjusted rents be less than the contract rents on the effective date of the contract.

(c) *Special additional adjustments.* Special additional adjustments shall be granted, when approved by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract units which have resulted from substantial general increases in real property taxes, utility rates or similar costs (i.e., assessment, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by automatic annual adjustments. The Owner shall submit to HUD financial statements which clearly support the increase.

(d) *Overall limitation.* Notwithstanding any other provisions of the subpart, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD.

(e) *Incorporation of rent adjustments.* Any adjustment in Maximum Unit Rents shall be incorporated into the Contract by a dated addendum to the Contract establishing the effective date of the adjustment.

[42 FR 5603, Jan. 28, 1977, as amended at 45 FR 59149, Sept. 8, 1980; 47 FR 24700, June 8, 1982]

§ 886.113 Physical condition standard; physical inspection requirements.

(a) *General.* Housing used in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(c)–(h) [Reserved]

(i) *Lead based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to activities under this program.

(j)–(m) [Reserved]

(n) *Congregate housing.* In addition to the foregoing standards, the following standards apply to congregate housing:

(1) The unit shall contain a refrigerator of appropriate size.

(2) The central dining facility (and kitchen facility, if any) shall contain suitable space and equipment to store, prepare and serve food in a sanitary manner, and there shall 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).

[42 FR 5603, Jan. 28, 1977, as amended at 52 FR 1895, Jan. 15, 1987; 52 FR 9828, Mar. 27, 1987; 53 FR 20802, June 6, 1988; 57 FR 33852, July 30, 1992; 63 FR 46579, Sept. 1, 1998; 64 FR 50227, Sept. 15, 1999]

§ 886.114 Equal opportunity requirements.

Participation in the program authorized in this subpart requires compliance with (a) Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and section 3 of the Housing and Urban Development Act of 1968; and (b) all rules, regulations, and requirements issued pursuant thereto.

§ 886.115 [Reserved]

§ 886.116 Security and utility deposits.

(a) An Owner may require Families to pay a security deposit in an amount up to, but not more than, one month's Gross Family Contribution. If a Family vacates its unit, the Owner, subject to State and local laws, may utilize the deposit as reimbursement for any unpaid rent or other amount owed under the Lease. If the Family has provided a security deposit and it is insufficient for such reimbursement, the Owner may claim reimbursement from HUD, not to exceed an amount equal to the remainder of one month's Contract Rent. Any reimbursement under this section shall be applied first toward any unpaid rent. If a Family vacates the unit owing no rent or other amount under the Lease or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

(b) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. All security deposit funds shall be deposited by the Owner in a segregated bank account, and the balance of this account, at all times, shall be equal to the total amount collected from tenants then in occupancy, plus any accrued interest. The Owner shall comply with all State and local laws regarding interest payments on security deposits.

(c) Families shall be expected to obtain the funds to pay security and utility deposits, if required, from their own resources and/or other private or public sources.

§ 886.117 [Reserved]

§ 886.118 Amount of housing assistance payments in projects receiving other HUD assistance.

(a) For any Section 221(d)(3) BMIR, Section 236, or Section 202 project, the Housing Assistance Payment shall be the amount by which the rent payable by the eligible Family under Section 8 is less than the subsidized rent (which subsidy shall not be reduced by reason of any Section 8 assistance).

(b) In no event may any tenant benefit from more than one of the following subsidies: Rent Supplements, Section 236 deep subsidies, Section 23 leasing assistance, and Section 8 housing assistance.

[42 FR 5603, Jan. 28, 1977, as amended at 49 FR 19948, May 10, 1984]

§ 886.119 Responsibilities of the owner.

(a) The Owner shall be responsible for management and maintenance of the project in conformance with requirements of the Regulatory Agreement. These responsibilities shall include but not be limited to:

(1) Payment for utilities and services (unless paid directly by the Family), insurance and taxes;

(2) Performance of all ordinary and extraordinary maintenance;

(3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with part 5 of this title; selection of families, including verification of income, in accordance with part 5 of this title, obtaining and verifying Social Security Numbers submitted by applicants (as provided by part 5, subpart B, of this title), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in part 5, subpart B, of this title), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.

(4) Collection of Tenant Rents;

(5) Termination of tenancies, including evictions;

(6) Preparation and furnishing of information required under the Contract;

(7) Reexamination of family income and composition, redetermination, as appropriate, of the amount of Tenant Rent and the amount of housing assistance payment in accordance with part 5 of this title; collection of rent; obtaining and verifying participant Social Security Numbers, as provided by part 5, subpart B, of this title; and obtaining signed consent forms from participants for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by part 5, subpart B, of this title.

(8) Redeterminations of amount of Tenant Rent and amount of Housing Assistance Payment in accordance with part 5 of this title as a result of an adjustment by HUD of any applicable Utility Allowance; and

(9) Compliance with equal opportunity requirements.

(b) In the event of a financial default under the project mortgage, HUD shall have the right to make subsequent Housing Assistance Payments to the mortgagee until such time as the default is cured, or, at the option of the mortgagee and subject to HUD approval, until some other agreed-upon time.

(c) Subject to HUD approval, any Owner may contract with any private or public entity to perform for a fee the services required by paragraph (a) of this section: *Provided,* That such contract shall not shift any of the Owner's responsibilities or obligations.

(Approved by the Office of Management and Budget under control number 2502–0204)

[42 FR 5603, Jan. 28, 1977, as amended at 49 FR 19948, May 10, 1984; 51 FR 11227, Apr. 1, 1986; 53 FR 847, Jan. 13, 1988; 53 FR 1165, Jan. 15, 1988; 53 FR 3368, Feb. 5, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39708, Sept. 27, 1989; 56 FR 7542, Feb. 22, 1991; 60 FR 14846, Mar. 20, 1995; 61 FR 9047, Mar. 6, 1996; 61 FR 11119, Mar. 18, 1996; 65 FR 16723, Mar. 29, 2000]

§ 886.120 Responsibility for contract administration.

(a) HUD is responsible for administration of the Contract. HUD may contract with another entity for the performance of some or all of its Contract administration functions.

(b) The Contract shall contain a provision to the effect (1) that if HUD determines that the Owner is not in compliance under the Contract, HUD shall notify the Owner of the actions required to be taken to restore compliance and of the remedies to be applied by HUD including abatement of Housing Assistance Payments and recovery of overpayments, where appropriate; and (2) that if he fails to comply, HUD has the right to terminate the Contract or to take other corrective action. A default under the Regulatory Agreement shall be treated as noncompliance under the Contract.

§ 886.121 Marketing.

(a) Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's HUD-approved Affirmative Fair Housing Marketing Plan, if required, and with all regulations relating to fair housing advertising including use of the equal opportunity logotype, statement, and slogan in all advertising. Projects shall be managed and operated without regard to race, color, creed, religion, sex, or national origin.

(b) The Owner shall comply with the applicable provisions of the Contract, this subpart A, and the procedures of part 5 of this title in taking applications, selecting families, and all related determinations.

(c) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see part 5, subpart E, of this title for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

[42 FR 5603, Jan. 28, 1977, as amended at 53 FR 1166, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 60 FR 14846, Mar. 20, 1995; 65 FR 16723, Mar. 29, 2000]

§ 886.122 [Reserved]

§ 886.123 Maintenance, operation and inspections.

(a) *Maintenance and operation.* The Owner shall maintain and operate the project so as to provide Decent, Safe, and Sanitary housing and he shall provide all the services, maintenance and utilities which he agrees to provide under the Contract, subject to abatement of housing assistance payments or other applicable remedies if he fails to meet these obligations.

(b) *Inspection prior to occupancy.* Prior to occupancy of any unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on forms prescribed by HUD that they have inspected the unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria

provided in the prescribed forms. Copies of these reports shall be kept on file by the Owner for at least three years.

(c) *Periodic inspections.* HUD will inspect or cause to be inspected a reasonable sample of contract units at least annually and at such other times as may be necessary to assure that the owner is meeting his contractual obligations. HUD will take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the owner of its determination.

(d) *Units not Decent, Safe, and Sanitary.* If HUD notifies the Owner that he has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, HUD may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments, even if the Family continues to occupy the unit.

[42 FR 5603, Jan. 28, 1977, as amended at 43 FR 60157, Dec. 26, 1978]

§ 886.124 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once each year. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 5 of this title and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose and verify Social Security Numbers. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see part 5, subpart B, of this title. At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of part 5, subpart E, of this title concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of part 5, subpart E, of this title concerning verification of the immigration status of any new family member.

(b) *Interim reexaminations.* The family must comply with provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified. See part 5, subpart B, of this title for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see part 5, subpart B, of this title. At any interim reexamination after June 19, 1995, when there is a new family member, the owner shall follow the requirements of part 5, subpart E, of this title concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) *Continuation of housing assistance payments.* A family's eligibility for housing assistance payments will continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with program requirements, for such reasons as failure to submit requested verification information, including failure to meet the disclosure

and verification requirements for Social Security Numbers, as provided by part 5, subpart B, of this title, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by part 5, subpart B, of this title. For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see part 5, subpart E, of this title for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance

[56 FR 7542, Feb. 22, 1991, as amended at 60 FR 14846, Mar. 20, 1995; 61 FR 11119, Mar. 18, 1996; 65 FR 16723, Mar. 29, 2000]

§ 886.125 Overcrowded and underoccupied units.

If HUD determines that a contract unit assisted under this part is not Decent, Safe, and Sanitary by reason of increase in Family size or that a Contract unit is larger than appropriate for the size of the Family in occupancy, housing assistance payments with respect to such unit will not be abated, unless the Owner fails to offer the Family a suitable unit as soon as one becomes vacant and ready for occupancy. The Owner may receive housing assistance payments for the vacated unit if he complies with the requirements of § 886.109.

§ 886.126 Adjustment of utility allowances.

When the owner requests HUD approval of adjustment in Contract Rents under § 886.112, an analysis of the project's Utility Allowances must be included. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the owner must advise the Secretary and request approval of new Utility Allowances.

(Approved by the Office of Management and Budget under control numbers 2502–0352 and 2502–0354)

[51 FR 21863, June 16, 1986]

§ 886.127 Lease requirements.

(a) *Term of lease.* (1) The term of a lease, including a new lease or a lease amendment, executed by the owner and the family must be for at least one year, or the remaining term of the contract if the remaining term of the contract is less than one year.

(2) During the first year of the lease term, the owner may not terminate the tenancy for ''other good cause'' under 24 CFR 247.3(a)(3), unless the termination is based on family malfeasance or nonfeasance. For example, during the first year of the lease term, the owner may not terminate the tenancy for ''other good cause'' based on the failure by the family to accept the offer of a new lease.

(3) The lease may contain a provision permitting the family to terminate the lease on 30 days advance written notice to the owner. In the case of a lease term for more than one year, the lease must contain this provision.

(b) *Required and prohibited provisions.* The lease between the owner and the family must comply with HUD regulations and requirements, and must be in the form required by HUD. The lease may not contain any of the following types of prohibited provisions:

(1) *Admission of guilt.* Agreement by the family (i) to be sued, (ii) to admit guilt, or (iii) to a judgment in favor of the owner, in a court proceeding against the family in connection with the lease.

(2) *Treatment of family property.* Agreement by the family that the owner may take or hold family property, or may sell family property, without notice to the family and a court decision on the rights of the parties.

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

(4) *Waiver of notice.* Agreement by the family that the owner does not need to give notice of a court proceeding

against the family in connection with the lease, or does not need to give any notice required by HUD.

(5) *Waiver of court proceeding for eviction.* Agreement by the family that the owner may evict the family (i) without instituting a civil court proceeding in which the family has the opportunity to present a defense, or (ii) before a decision by the court on the rights of the parties.

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

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

(8) *Family chargeable with legal costs regardless of outcome.* Agreement by the family to pay lawyer's fees or other legal costs of the owner, even if the family wins in a court proceeding by the owner against the family. (However, the family may have to pay these fees and costs if the family loses.)

[53 FR 3368, Feb. 5, 1988]

§ 886.128 Termination of tenancy.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of parts 247 and 5 of this title shall apply. The provisions of part 5, Subpart E, of this title concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance also shall apply.

[60 FR 14846, Mar. 20, 1995, as amended at 65 FR 16724, Mar. 29, 2000]

§ 886.129 Leasing to eligible families.

(a) *Availability of units for occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 886.121; (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to HUD. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of HUD. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by Contract.* HUD may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD to lease such units to ineligible families, HUD determines that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The owner otherwise has a record of compliance with his or her obligations under the Contract; and

(3) Contract and budget authority are available.

(d) *Applicability.* Paragraphs (a) and (b) of this section apply to Contracts executed on or after October 3, 1984.

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is

required to terminate housing assistance payments for the family in accordance with part 5, subpart E, of this title because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in part 5, subpart E, of this title, the owner shall comply with the provisions of part 5, subpart E, of this title concerning assistance to mixed families, and deferral of termination of assistance.

[49 FR 31399, Aug. 7, 1984, as amended at 53 FR 847, Jan. 13, 1988; 53 FR 6601, Mar. 2, 1988; 60 FR 14846, Mar. 20, 1995; 65 FR 16724, Mar. 29, 2000]

§ 886.130 HUD review of contract compliance.

HUD will review project operation at such intervals as it deems necessary to ensure that the Owner is in full compliance with the terms and conditions of the Contract. Equal Opportunity review may be conducted with the scheduled HUD review or at any time deemed appropriate by HUD.

§ 886.131 Audit.

(a) Where a State or local government is the eligible owner of a project, or is a contract administrator under § 886.120, receiving financial assistance under this part, the audit requirements in 24 CFR part 44 shall apply.

(b) Where a nonprofit organization is the eligible owner of a project, receiving financial assistance under this part, the audit requirements of 24 CFR part 45 shall apply.

[50 FR 39092, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986, as amended at 57 FR 33257, July 27, 1992]

§ 886.132 Tenant selection.

Sections 5.653 through 5.661 of this title govern selection of tenants and occupancy requirements applicable under this subpart A.

[65 FR 16724, Mar. 29, 2000]

§ 886.138 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organization, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided;

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent/utility costs; and

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A ''displaced person'' (as defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. A ''displaced person'' shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority

concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the Owner's determination concerning whether the person qualifies as a ''displaced person,'' or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the owner. A low-income person who is dissatisfied with the owner's determination on such appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of owner.* (1) The owner shall certify (i.e., provide assurance of compliance, as required by 49 CFR part 24) that he or she will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The owner is responsible for such compliance notwithstanding and third party's contractual obligation to the owner to comply with these provisions.

(2) The cost of providing required relocation assistance is an eligible project cost to the same extent and in the same manner as other project costs. Such costs also may be paid for with funds available from other sources.

(3) The owner shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The owner shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.

(g) *Definition of displaced person.* (1) for purposes of this section, the term *displaced person* means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(i) After notice by the owner to move permanently from the property, if the move occurs on or after the date of the submission of the application to HUD;

(ii) Before submission of the application to HUD, if HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs;

(A) The tenant moves after execution of the Housing Assistance Payments Contract, and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(*1*) The tenant's monthly rent before execution of the Housing Assistance Payments Contract and estimated average monthly utility costs; or

(*2*) The total tenant payment, as determined under part 5 of this title, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income;

(B) The tenant is required to relocate temporarily, does not return to the building/complex, and either:

(*1*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or

(*2*) Other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a ''displaced person'' (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, received written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that he or she would not qualify as a ''displaced person'' (or for assistance under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The owner may ask HUD, at any time, to determine whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term ''initiation of negotiations'' means the owner's execution of the Housing Assistance Payments Contract.

(Approved by Office of Management and Budget under OMB Control Number 2506–0121)

[58 FR 43721, Aug. 17, 1993. Redesignated at 59 FR 36643, July 18, 1994, as amended at 65 FR 16724, Mar. 29, 2000]

Subpart B [Reserved]

Subpart C—Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects

SOURCE: 44 FR 70365, Dec. 6, 1979, unless otherwise noted.

§ 886.301 Purpose.

The purpose of this subpart is to provide for the use of Section 8 housing assistance in connection with the sale of HUD-owned multifamily rental housing projects and the foreclosure of HUD-held mortgages on rental housing projects (as defined in 24 CFR 290.5).

[58 FR 43722, Aug. 17, 1993]

§ 886.302 Definitions.

The terms *Fair Market Rent (FMR), HUD,* and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

Act. The United States Housing Act of 1937.

Agreement. An Agreement to Enter into a Housing Assistance Payments Contract. See § 886.332.

Annual income. As defined in part 5 of this title.

Contract. (See Section 8 contract.)

Contract rent. The rent payable to the owner under the contract, including the portion of the rent payable by the family. In the case of a cooperative, the term ''contract rent'' means charges under the occupancy agreements between the members and the cooperative.

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

Eligible project or project. A multifamily housing project (see 24 CFR part 290):

(1) For which the disposition in accordance with the provisions of 24 CFR part 290 involves sale with Section 8 housing assistance to enable the project to be used, in whole or in part, to provide housing for lower income families; and

(2) The units of which are decent, safe, and sanitary.

Family. As defined in part 5 of this title.

HCD Act. The Housing and Community Development Act of 1974.

Housing Assistance Payment. The payment made by the contract administrator to the Owner of an assisted unit as provided in the Contract. Where the unit is leased to an eligible Family, the payment is the difference between the Contract Rent and the Tenant Rent. A Housing Assistance Payment may be

made to the Owner when a unit is vacant, in accordance with the terms of the Contract. An additional Housing Assistance Payment is made when the Utility Allowance is greater than the Total Tenant Payment.

Lease. A written agreement between the owner and a family for leasing of decent, safe and sanitary dwelling unit to the family.

Low-income family. As defined in part 5 of this title.

Owner. The purchaser, including a cooperative entity or an agency of the Federal Government, under this subpart, of a HUD-owned project; or the purchaser, including a cooperative entity or an agency of the Federal Government, through a foreclosure sale of a project that was subject to a HUD-held mortgage.

Project account. The account established and maintained in accordance with § 886.308.

Rehabilitation. The rehabilitation of an eligible project to upgrade the property to decent, safe, and sanitary condition to comply with the Housing Quality Standards described in § 886.307 of this part, or other standards approved by HUD, from a condition below those standards and requiring repairs that may vary in degree from gutting and extensive reconstruction to the cure of deferred maintenance. Rehabilitation may exceed the requirements of § 886.307 of this part.

Section 8 contract (''Contract''). A written contract between the owner of an eligible project and HUD providing housing assistance payments to the owner on behalf of eligible families pursuant to this subpart.

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Very low-income family. As defined in part 5 of this title.

[44 FR 70365, Dec. 6, 1979, as amended at 49 FR 19949, May 10, 1984; 50 FR 9269, Mar. 7, 1985; 50 FR 38795, Sept. 25, 1985; 53 FR 3369, Feb. 5, 1988; 58 FR 43722, Aug. 17, 1993; 60 FR 11859, Mar. 2, 1995; 61 FR 5213, Feb. 9, 1996; 63 FR 46580, Sept. 1, 1998; 65 FR 16724, Mar. 29, 2000]

§ 886.303 Allocation and reservation of Section 8 contract authority and budget authority.

Allocation. The contract authority and budget authority for this program will be provided from the Headquarters reserve authority approved specifically for use in connection with the sale of eligible projects.

§ 886.304 Project eligibility criteria.

(a) *Selection of projects.* HUD shall select projects for sale with assistance under this subpart on the basis of the final disposition programs developed and approved in accordance with part 290 and the requirements of this subpart. In the evaluation of projects, consideration shall be given to whether there are site occupants who would have to be displaced, whether the relocation of site occupants is feasible, and the degree of hardship which displacement might cause.

(b) *Projects needing rehabilitation.* A project, which is sold subject to the condition that following sale the project will be rehabilitated by the owner so as to become decent, safe and sanitary, will be sold with an Agreement that Section 8 assistance will be provided after the repairs are completed by the owner and the project is inspected and accepted by HUD. In these projects, Section 8 payments may be made only for project units which are determined to be decent, safe and sanitary.

(c) *High-rise elevator projects.* High-rise elevator projects for families with children will not be assisted under this subpart unless the final disposition program, prepared in accordance with 24 CFR part 290 indicates that there is a need for assisted housing for families and there is no other practical alternative for providing the needed housing.

[44 FR 70365, Dec. 6, 1979, as amended at 58 FR 43722, Aug. 17, 1993]

§ 886.305 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

To be eligible to become an owner of housing assisted under this subpart, the owner must meet the disclosure

and verification requirements for Social Security and Employer Identification Numbers, as provided by part 5, subpart B, of this title.

(Approved by the Office of Management and Budget under control number 2502–0204)

[54 FR 39709, Sept. 27, 1989; 55 FR 11905, Mar. 30, 1990, as amended at 61 FR 11119, Mar. 18, 1996]

§ 886.306 Notices.

Before a project is approved for sale in accordance with this subpart, and as a part of the process of preparing a disposition recommendation in accordance with 24 CFR part 290, the field office manager must notify in writing the chief executive officer of the unit of general local government in which the project is located (or the designee of that officer) of the proposed sale with housing assistance, and must afford the unit of local government an opportunity to review and comment upon the proposed sale in accordance with 24 CFR part 791. Local government review should address consistency with the housing needs and strategy of the community, rather than strict conformance to the limitations on variations from housing assistance plan goals which are contained in part 791.

[53 FR 3369, Feb. 5, 1988]

§ 886.307 Physical condition standards; physical inspection requirements.

(a) *General.* Housing assisted under this part must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(c)–(h) [Reserved]

(i) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to activities under this program.

(j)–(l) [Reserved]

(m) *Congregate housing.* In addition to the foregoing standards, the following standards apply to congregate housing:

(1) The unit shall contain and have ready access to a flush toilet which can be used in privacy, a fixed basin with hot and cold running water, and a shower and/or tub equipped with hot and cold running water all in proper operating condition and adequate for personal cleanliness and the disposal of human wastes. These facilities shall utilize an approved public or private disposal system, and shall be sufficient in number so that they need not be shared by more than four occupants. Those units accommodating physically handicapped occupants with wheelchairs or other special equipment shall provide access to all sanitary facilities, and shall provide, as appropriate to needs of the occupants, basins and toilets of appropriate height; grab bars to toilets, showers and/or bathtubs; shower seats; and adequate space for movement.

(2) The unit shall contain suitable space to store, prepare and serve foods in a sanitary manner. A cooking stove or range, a refrigerator(s) of appropriate size and in sufficient quantity for the number of occupants, and a kitchen sink with hot and cold running water shall be present in proper operating condition. The sink shall drain into an approved private or public system. Adequate space for the storage, preparation and serving of food shall be provided. There shall 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).

(3) The dwelling unit shall afford the Family adequate space and security. A living room, kitchen, dining area, bathroom, and other appropriate social and/or recreational community space shall be within the unit and the dwelling unit shall contain at least one sleeping room of appropriate size for each two persons. Exterior doors and windows accessible from outside each unit shall be capable of being locked. An emergency exit plan shall be developed and occupants shall be apprised of the details of the plan. Regular fire inspections shall be conducted by appropriate local officials. Readily accessible first

aid supplies and fire extinguishers shall be provided throughout the unit, smoke detectors shall be provided and emergency phone numbers (police, ambulance, fire department, etc.) shall be available at every phone and individual copies shall be provided to each occupant. All emergency and safety features and procedures shall meet applicable State and local standards.

(n) *Independent group residence.* In addition to the foregoing standards, the standards in 24 CFR 887.467 (a) through (g) apply to independent group residences.

[44 FR 70365, Dec. 6, 1979, as amended at 50 FR 9269, Mar. 7, 1985; 52 FR 1986, Jan. 15, 1987; 57 FR 33852, July 30, 1992; 58 FR 43722, Aug. 17, 1993; 63 FR 46580, Sept. 1, 1998; 64 FR 50227, Sept. 15, 1999]

§ 886.308 Maximum total annual contract commitment.

(a) *Number of units assisted.* Based on the final disposition program developed in accordance with 24 CFR part 290, HUD shall determine the number of units to be assisted up to 100 percent of the units in the project.

(b) *Maximum assistance.* The maximum total annual housing assistance payments that may be committed under the contract shall be the total of the gross rents for all the contract units in the project.

(c) *Changes in contract amounts.* In order to assure that housing assistance payments will be increased on a timely basis to cover increases in contract rents, changes in family composition, or decreases in family incomes:

(1) A project account shall be established and maintained, in an amount as determined by HUD consistent with section 8(c)(6) of the Act, out of amounts by which the maximum annual contract commitment per year exceeds amounts paid under the contract for any fiscal year. This account shall be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the purposes of:

(i) Housing assistance payments, and

(ii) Other costs specifically authorized or approved by HUD.

(2) Whenever a HUD-approved estimate of required housing assistance payments for a fiscal year exceeds the maximum annual contract commitment, causing the amount in the project account to be less than an amount equal to 40 percent of the maximum annual contract commitment, HUD, within a reasonable period of time, shall take such additional steps authorized by Section 8(c)(6) of the Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) ''the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts.''

§ 886.309 Housing assistance payment to owners.

(a) *General.* Housing Assistance Payments shall be paid to Owners for units under lease by eligible Families, in accordance with the Contract and as provided in this section. These Housing Assistance Payments will cover the difference between the Contract Rent and the Tenant Rent. Where applicable, the Utility Reimbursement will be paid to the Family as an additional Housing Assistance Payment. The Contract will provide that the Owner will make this payment on behalf of HUD. Funds will be paid to the Owner in trust solely for the purpose of making this additional payment. If the Family and the utility company consent, the Owner may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

(b) *No assistance for owners.* No Section 8 assistance may be provided for any unit occupied by an owner. However, cooperatives are considered rental housing rather than owner-occupied housing under this subpart.

(c) *Payments for vacancies from execution of contract to initial occupancy.* If a Contract unit which is decent, safe and sanitary and has been accepted by HUD as available as of the effective date of the Contract is not leased within 15 days of the effective date of the Contract, the Owner will be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period

not exceeding 60 days from the effective date of the Contract provided that the Owner (1) has submitted a list of units leased as of the effective date and a list of the units not so leased; (2) 60 days prior to the completion of the rehabilitation or the date the agreement was executed, whichever is later, had notified the PHA of any units which the owner anticipated would be vacant on the anticipated effective date of the contract; (3) has taken and continues to take all feasible actions to fill the vacancy including, but not limited to: contracting applicants on the Owner's waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the units in a manner specifically designed to reach low-income families; and (4) has not rejected any eligible applicant except for good cause acceptable to HUD.

(d) *Payments for vacancies after initial occupancy.* If an eligible family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the owner may receive housing assistance payments for so much of the month in which the Family vacates the unit as the unit remains vacant. Should the unit remain vacant, the Owner may receive from HUD a housing assistance payment in the amount of 80 percent of Contract Rent for a vacancy period not exceeding an additional month. However, if the owner collects any of the family's share of the rent for this period, the payment must be reduced to an amount which, when added to the family's payments, does not exceed 80 percent of the Contract Rent. Any such excess shall be reimbursed by the Owner to HUD or as HUD may direct. (See also § 886.315.) The owner shall not be entitled to any payment under this paragraph unless he or she: (1) Immediately upon learning of the vacancy, has notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy, and (2) has made and continues to make a good faith effort to fill the vacancy, including but not limited to, contacting applicants on the waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (3) has not rejected any eligible applicant, except for good cause acceptable to HUD.

(e) *Payments for units where family is evicted.* If the owner evicts a family, the owner shall not be entitled to any payments pursuant to paragraph (d) of this section unless the request for such payment is supported by a certification that the provisions of § 886.327 and part 247 of this title have been followed.

(f) *Prohibition for double compensation for vacancies.* The owner shall not be entitled to housing assistance payments with respect to vacant units under this section to the extent he or she is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the HCD Act or payments under § 886.315).

(g) *Debt service payments.* (1) If a contract unit continues to be vacant after the 60-day period specified in paragraph (c) or (d) of this section, the Owner may submit a claim and receive additional housing assistance payments on a semiannual basis with respect to such a vacant unit in an amount equal to the principal and interest payments required to amortize the portion of the debt attributable to that unit for the period of the vacancy, whether such vacancy commenced during rent-up or after rent-up.

(2) Additional payments under this paragraph (g) for any unit shall not be for more than 12 months for any vacancy period, and shall be made only if:

(i) The unit is not in a project insured under the National Housing Act except pursuant to section 244 of that Act.

(ii) The unit was in decent, safe, and sanitary condition during the vacancy period for which payments are claimed.

(iii) The owner has taken and is continuing to take the actions specified in paragraphs (c)(1), (2) and (3) or paragraphs (d)(1) and (2) of this section, as appropriate.

(iv) The Owner has demonstrated in connection with the semiannual claim on a form and in accordance with the standards prescribed by HUD with respect to the period of the vacancy, that the project is not providing the Owner

with revenues at least equal to the project costs incurred by the Owner, and that the amount of the payments requested is not in excess of that portion of the deficiency which is attributable to the vacant units for the period of the vacancies.

(v) The Owner has submitted, in connection with the semiannual claim, a statement with relevant supporting evidence that there is a reasonable prospect that the project can achieve financial soundness within a reasonable time. The statement shall indicate the causes of the deficiency; the corrective steps that have been and will be taken; and the time by which it is expected that the project revenues will at least equal project costs without the additional payments provided under this paragraph.

(3) HUD may deny any claim for additional payments or suspend or terminate payments if it determines that based on the Owner's statement and other evidence, there is not a reasonable prospect that the project can achieve financial soundness within a reasonable time.

[44 FR 70365, Dec. 6, 1979, as amended at 49 FR 19949, May 10, 1984; 53 FR 3369, Feb. 5, 1988; 58 FR 43722, Aug. 17, 1993]

§ 886.310 Initial contract rents.

HUD will establish contract rents at levels that, together with other resources available to the purchasers, provide sufficient amounts for the necessary costs of rehabilitating and operating the multifamily housing project and do not exceed 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A).

[60 FR 11859, Mar. 2, 1995]

§ 886.311 Term of contract.

The contract term for any unit shall not exceed 15 years, except that the term may be less than 15 years as provided under either paragraph (a) or (b) of this section.

(a) The contract term may be less than 15 years if HUD finds that, based on the rental charges and financing for the multifamily housing project to which the contract relates, the financial viability of the project can be maintained under a contract having a term less than 15 years. Where a contract of less than 15 years is provided under this paragraph, the amount of rent payable by tenants of the project for units assisted under such a contract shall not exceed the amount payable for rent under section 3(a) of the United States Housing Act of 1937 for a period of at least 15 years.

(b) The contract term may be less than 15 years if the assistance is provided under a contract authorized under section 6 of the HUD Demonstration Act of 1993, and pursuant to a disposition plan under this part for a project that is determined by the HUD to be otherwise in compliance with this part.

[60 FR 11859, Mar. 2, 1995]

§ 886.311a Notice upon contract expiration.

(a) The Contract will provide that the owner will notify each assisted family, at least 90 days before the end of the Contract term, of any increase in the amount the family will be required to pay as rent which may occur as a result of its expiration. If the Contract is to be renewed but with a reduction in the number of units covered by it, this notice shall be given to each family who will no longer be assisted under the Contract.

(b) The notice provided for in paragraph (a) of this section shall be accomplished by: (1) Sending a letter by first class mail, properly stamped and addressed, to the family at its address at the project, with a proper return address, and (2) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be considered to be effective until both required notices have been accomplished. The date on which the notice shall be considered to be received by the family shall be the date on which the owner mails the first class letter provided for in this paragraph, or the date on which the notice provided for in this paragraph is properly given, whichever is later.

(c) The notice shall advise each affected family that, after the expiration date of the Contract, the family will be required to bear the entire cost of the rent and that the owner will be free (to the extent the project is not otherwise regulated by HUD) to alter the rent without HUD approval, but subject to any applicable requirements or restrictions under the lease or under State or local law. The notice shall also state:

(1) The actual (if known) or the estimated rent which will be charged following the expiration of the Contract;

(2) The difference between the rent and the Total Tenant Payment toward rent under the Contract; and

(3) The date the Contract will expire.

(d) The owner shall give HUD a certification that families have been notified in accordance with this section with an example of the text of the notice attached.

(e) This section shall apply to (1) Contracts involving Substantial Rehabilitation entered into pursuant to Agreements executed on or after October 1, 1981, or Contracts involving Substantial Rehabilitation entered into pursuant to Agreements executed before October 1, 1981, but renewed or amended on or after October 1, 1984 and (2) all other Contracts executed, renewed or amended on or after October 1, 1984.

[49 FR 31285, Aug. 6, 1984]

§ 886.312 Rent adjustments.

(a) *Limits.* Housing assistance payments will be made in amounts commensurate with contract rent adjustments under this paragraph, up to the maximum amount authorized under the contract. (See § 886.308.)

(b) *Annual adjustments.* The contract rents may be adjusted annually, at HUD's option, either (1) on the basis of a written request for a rent increase submitted by the owner and properly supported by substantiating evidence, or (2) by applying, on each anniversary date of the contract, the applicable automatic annual adjustment factor most recently published by HUD in the FEDERAL REGISTER. If HUD requires that the owner submit a written request, HUD within a reasonable time shall approve a rental schedule that is necessary to compensate for any increase occurring since the last approved rental schedule in taxes (other than income taxes) and operating and maintenance costs over which owners have no effective control, or shall deny the increase stating the reasons therefor. Increases in taxes and maintenance and operating costs shall be measured against levels of such expenses in comparable assisted and unassisted housing in the area to ensure that adjustments in the contract rents shall not result in material differences between the rents charged for assisted and comparable unassisted units. Contract rents may be adjusted upward or downward as may be appropriate; however, in no case shall the adjusted rents be less than the contract rents on the effective date of the contract, provided there was no fraud or mistake adverse to the Department's interest in determining the initial contract rent.

(c) *Special adjustments.* Special adjustments in the contract rents shall be requested in writing by the owner and may be authorized by HUD to the extent HUD determines such adjustments are necessary to reflect increases in the actual and necessary expenses of owning and maintaining the contract units which have resulted from substantial general increases in real property taxes, utility rates or similar costs (i.e., assessments and utilities not covered be regulated rates) which are not adequately compensated for by the adjustment authorized by paragraph (b) of this section.

(d) *Comparability between assisted and unassisted units.* Notwithstanding any other provisions of this subpart, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD: *Provided, however,* That this limitation shall not be construed to prohibit differences in rents between assisted and comparable unassisted units to the extent that such differences may have existed with respect to the initial contract rents assuming no fraud or mistake adverse to the Department's interest.

(e) *Addendums to contract and leases.* Any adjustment in contract rents shall be incorporated into the contract and

leases by dated addendums to the contract and leases establishing the effective date of the adjustment.

§ 886.313 Other Federal requirements.

Participation in this program requires:

(a) Compliance with (1) title VI of the Civil Rights Act of 1964, title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and Section 3 of the Housing and Urban Development Act of 1968, and (2) all rules, regulations, and requirements issued pursuant thereto.

(b) Submission of an approvable Affirmative Fair Housing Marketing Plan.

(c) For projects where rehabilitation is to be completed by or at the direction of the owner, compliance with:

(1) The Clean Air Act and Federal Water Pollution Control Act;

(2) Where the property contains nine or more units to be assisted, the requirement to pay not less than the wage rates prevailing in the locality, as predetermined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a–276a–5) to all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed in the rehabilitation work, and the labor standards provisions contained in the Contract Work Hours and Safety Standards Act, Copeland Anti-Kickback Act, and implementing regulations of the Department of Labor.

(3) Section 504 of the Rehabilitation Act of 1973;

(4) The National Historic Preservation Act (Pub. L. 89–665);

(5) The Archeological and Historic Preservation Act of 1974 (Pub. L. 93–291);

(6) Executive Order 11593 on Protection and Enhancement of the Cultural Environment, including the procedures prescribed by the Advisory Council on Historic Preservation at 36 CFR part 800;

(7) The National Environmental Policy Act of 1969;

(8) The Flood Disaster Protection Act of 1973;

(9) Executive Order 11988, Flood Plains Management;

(10) Executive Order 11990, Protection of Wetlands.

[44 FR 70365, Dec. 6, 1979, as amended at 57 FR 14760, Apr. 22, 1992]

§ 886.314 Financial default.

In the event of a financial default under the project mortgage, HUD shall have the right to make subsequent housing assistance payments to the mortgagee until such time as the default is cured, or until some other time agreeable to the mortgagee and approved by HUD.

§ 886.315 Security and utility deposits.

(a) *Amount of deposits.* If at the time of the initial execution of the Lease the Owner wishes to collect a security deposit, the maximum amount shall be the greater of one month's Gross Family Contribution or $50. However, this amount shall not exceed the maximum amount allowable under State or local law. For units leased in place, security deposits collected prior to the execution of a Contract which are in excess of this maximum amount do not have to be refunded until the Family is expected to pay security deposits and utility deposits from its resources and/or other public or private sources.

(b) *When a Family vacates.* If a Family vacates the unit, the Owner, subject to State and local law, may use the security deposit as reimbursement for any unpaid Family Contribution or other amount which the Family owes under the Lease. If a Family vacates the unit owing no rent or other amount under the Lease consistent with State or local law or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance to the Family.

(c) *Interest payable on deposits.* In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. The Owner shall comply with all State and local laws regarding interest payments on security deposits.

(d) *Insufficient deposits.* If the security deposit is insufficient to reimburse the Owner for the unpaid Family Contribution or other amounts which the Family owes under the Lease, or if the

Owner did not collect a security deposit, the Owner may claim reimbursement from HUD for an amount not to exceed the lesser of: (1) The amount owed the Owner, (2) two months' Contract Rent, minus, in either case, the greater of the security deposit actually collected or the amount of security deposit the owner could have collected under the program (pursuant to paragraph (a) of this section). Any reimbursement under this section must be applied first toward any unpaid Family Contribution due under the Lease and then to any other amounts owed. No reimbursement shall be claimed for unpaid rent for the period after the family vacates.

§§ 886.316–886.317 [Reserved]

§ 886.318 Responsibilities of the owner.

(a) *Management and maintenance.* The owner shall be responsible for the management and maintenance of the project in accordance with requirements established by HUD. These responsibilities shall include but not be limited to:

(1) Payment for utilities and services (unless paid directly by the family), insurance and taxes;

(2) Performance of all ordinary and extraordinary maintenance;

(3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with 24 CFR part 5 of this title; selection of families, including verification of income, obtaining and verifying Social Security Numbers submitted by applicants (as provided by part 5, subpart B, of this title), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in part 5, subpart B, of this title), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.

(4) Collection of Tenant Rents;

(5) Preparation and furnishing of information required under the contract;

(6) Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses; redeterminations, as appropriate, of the amount of Tenant Rent and amount of housing assistance payment in accordance with part 5 of this title; obtaining and verifying Social Security Numbers submitted by participants, as provided by CFR part 750; and obtaining signed consent forms from participants for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by part 5, subpart B, of this title.

(7) Redeterminations of the amount of Tenant Rent and the amount of housing assistance payment in accordance with part 5 of this title as a result of an adjustment by HUD of any applicable utility allowance;

(8) Notifying families in writing when they are determined to be qualified for assistance under this subpart where they have not already been notified by HUD prior to sale;

(9) Reviewing at least annually the allowance for utilities and other services;

(10) Compliance with equal opportunity requirements; and

(11) Compliance with Federal requirements set forth in § 886.313(c).

(b) *Contracting for Services.* Subject to HUD approval, any owner may contract with any private or public entity to perform for a fee the services required by paragraph (a) of this section: *Provided,* That such contract shall not shift any of the owner's responsibilities or obligations.

(c) *HUD review.* The owner shall permit HUD to review and audit the management and maintenance of the project at any time.

(d) *Submission of financial and operating statements.* After execution of the Contract, the owner must submit to HUD:

(1) Financial information in accordance with 24 CFR part 5, subpart H; and

(2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to

administration of the Contract and monitoring of project operations.

(Approved by the Office of Management and Budget under control numbers 2502–0204 and 2505–0052)

[44 FR 70365, Dec. 6, 1979, as amended at 49 FR 19949, May 10, 1984; 53 FR 1169, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39709, Sep. 27, 1989; 56 FR 7542, Feb. 22, 1991; 58 FR 43722, Aug. 17, 1993; 60 FR 14846, Mar. 20, 1995; 61 FR 11119, Mar. 18, 1996; 63 FR 46593, Sept. 1, 1998; 65 FR 16724, Mar. 29, 2000]

§ 886.319 Responsibility for contract administration.

HUD is responsible for administration of the Contract. HUD may contract with another entity for the performance of some or all of its Contract administration functions.

[60 FR 11860, Mar. 2, 1995]

§ 886.320 Default under the contract.

The contract shall contain a provision to the effect that if HUD determines that the owner is in default under the contract, HUD shall notify the owner of the actions required to be taken to cure the default and of the remedies to be applied by HUD including recovery of overpayments, where appropriate, and that if the owner fails to cure the default within a reasonable time as determined by HUD, HUD has the right to terminate the contract or to take other corrective action, including recission of the sale. When contract termination is under consideration by HUD, HUD shall give eligible families an opportunity to submit written and other comments. Where the project is sold under the arrangement that involves a regulatory agreement between HUD and the owner, a default under the regulatory agreement shall be treated as default under the contract.

§ 886.321 Marketing.

(a) *Marketing in accordance with HUD-Approved Plan.* Marketing of units and selection of families by the owner shall be in accordance with the owner's HUD-approved Affirmative Fair Housing Marketing Plan, HUD-approved tenant selection factors and with all regulations relating to fair housing advertising including use of the equal opportunity logotype, statement, and slogan in all advertising. Projects shall be managed and operated without regard to race, color, creed, religion, sex, or national origin.

(b)(1) HUD will determine the eligibility for assistance of families in occupancy before sales closing. After the sale, the owner shall be responsible for taking applications, selecting families, and all related determinations, in accordance with part 5 of this title. (See especially, §§ 5.653 through 5.661.)

(2) For every family that applies for admission, the owner and the applicant must complete and sign the form of application prescribed by HUD. When the owner decides no longer to accept applications, the owner must publish a notice to that effect in a publication likely to be read by potential applicants. The notice must state the reasons for the owner's refusal to accept additional applications. When the owner agrees to accept applications again, a notice to this effect must also be published. The owner must retain copies of all completed applications together with any related correspondence for three years. For each family selected for admission, the owner must submit one copy of the completed and signed application to HUD. Housing assistance payments will not be made on behalf of an admitted family until after this copy has been received by HUD.

(3) If the owner determines that the applicant is eligible on the basis of income and family composition and is otherwise acceptable but the owner does not have a suitable unit to offer, the owner shall place such family on the waiting list and so advise the family indicating approximately when a unit may be available.

(4) If the owner determines that the applicant is eligible on the basis of income and family composition and is otherwise acceptable in accordance with the HUD approved tenant selection factors and if the owner has a suitable unit, the owner and the family shall enter into a lease. The lease shall be on a form approved by HUD and shall otherwise be in conformity with the provisions of this subpart.

(5) Records on applicant families and approved families shall be maintained by the owner so as to provide HUD with racial, ethnic, and gender data and

shall be retained by the owner for 3 years.

(6) If the owner determines that an applicant is not eligible, or, if eligible, not selected, the owner must notify the applicant in writing of the determination, the reasons upon which the determination is made, and inform the applicant that the applicant has the right within a reasonable time (specified in the letter) to request an informal hearing if the applicant believes that the owner's determination is based on erroneous information. The procedures of this paragraph (b)(6) do not preclude an applicant from exercising his or her other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap. The owner must retain for three years a copy of the application, the letter, the applicant's response, if any, the record of any informal hearing, and a statement of final disposition. The informal review provisions for the denial of a tenant selection preference under § 886.337 are contained in paragraph (k) of that section.

(7) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see part 5 of this title for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

(c) *Initial occupancy.* (1) Where rehabilitation is involved, sixty days prior to the completion of the rehabilitation, or when the rehabilitation is begun, whichever is later, the Owner shall determine whether the tenant population of the project generally reflects the racial/ethnic makeup of the housing market area. Based on this determination, the Owner shall then conduct appropriate marketing activities in accordance with a HUD-approved Affirmative Fair Housing Marketing Plan. Such activities may include special outreach to those groups identified as not ordinarily expected to apply for these units without special outreach; notification to PHA's in the housing market area of any anticipated vacancies; and formulation of waiting lists based on the Owner's HUD-approved tenant selection factors.

(2) Where a PHA is notified, the PHA shall notify an appropriate size family (families) on its waiting list of the availability of the unit and refer the family (families) to the owner. (Since the Owner is responsible for tenant selection, the owner is not required to lease to a PHA selected family, but the owner must comply with § 886.321(b)(6).)

[44 FR 70365, Dec. 6, 1979, as amended at 53 FR 1169, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 58 FR 43722, Aug. 17, 1993; 60 FR 14846, Mar. 20, 1995; 65 FR 16724, Mar. 29, 2000]

§ 886.322 [Reserved]

§ 886.323 Maintenance, operation, and inspections.

(a) *Maintain decent, safe, and sanitary housing.* The owner shall maintain and operate the project so as to provide decent, safe, and sanitary housing and the owner shall provide all the services, maintenance, and utilities which he or she agrees to provide under the contract and the lease. Failure to do so shall be considered a material default under the contract and Regulatory Agreement, if any.

(b) *HUD inspection.* Prior to execution of the contract, HUD shall inspect (or cause to be inspected) each proposed contract unit and related facilities to ensure that they are in decent, safe, and sanitary condition.

(c) *Owner and family inspection.* Prior to occupancy of any vacant until by a family, the owner and the family shall inspect the unit and both shall certify that they have inspected the unit and have determined it to be decent, safe, and sanitary. Copies of these reports shall be kept on file by the owner for at least 3 years.

(d) *Annual inspections.* HUD will inspect the project (or cause it to be inspected) at least annually and at such other times as HUD may determine to be necessary to assure that the owner is meeting his or her obligation to maintain the units and the related facilities in decent, safe, and sanitary condition and to provide the agreed-upon utilities and other services. HUD will take into account complaints by occupants and any other information

coming to its attention in scheduling inspections and shall notify the owner and the family of its determination regarding the condition of the units.

(e) *Failure to maintain decent, safe, and sanitary units.* If HUD notifies the owner that he/she has failed to maintain a dwelling unit in decent, safe, and sanitary condition, and the owner fails to take corrective action within the time prescribed in the notice, HUD may exercise any of its rights or remedies under the contract, or Regulatory Agreement, if any, including abatement of housing assistance payments (even if the family continues to occupy the unit) and rescission of the sale. If, however, the family wishes to be rehoused in another dwelling unit, HUD shall provide assistance in finding such a unit for the family.

§ 886.324 Reexamination of family income and composition.

(a) *Regular reexaminations.* The owner must reexamine the income and composition of all families at least once each year. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 5 of this title and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose and verify Social Security Numbers, as provided by part 5, subpart B, of this title. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see part 5, subpart B, of this title. At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of part 5 of this title concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of part 5 of this title concerning verification of the immigration status of any new family member.

(b) *Interim reexaminations.* The family must comply with provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified. See part 5, subpart B, of this title for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see part 5, subpart B, of this title. At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of part 5 of this title concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) *Continuation of housing assistance payments.* A family's eligibility for Housing Assistance Payments will continue until the Total Tenant Payment equals the Contact Rent plus any applicable Utility Allowance. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the contract. However, eligibility also may be terminated in accordance with HUD requirements, for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by part 5, subpart B, of this title, or failure to sign and submit consent forms for the obtaining of wage and claim information from State

Wage Information Collection Agencies, as provided by part 5, subpart B, of this title. For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see part 5, subpart E, of this title for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

[56 FR 7543, Feb. 22, 1991, as amended at 60 FR 14847, Mar. 20, 1995; 61 FR 11119, Mar. 18, 1996; 65 FR 16724, Mar. 29, 2000]

§ 886.325 Overcrowded and underoccupied units.

(a) *Change in family composition, family's notification.* The family shall notify the owner of a change in family composition and shall transfer to an appropriate size dwelling unit, based on family composition, upon appropriate notice by the owner of HUD that such a dwelling unit is available. Such a family shall have priority over a family on the owner's waiting list seeking the same size unit.

(b) *Change in family composition, owner's responsibilities.* Upon receipt by the owner of a notification by the family of a change in the family size, the owner agrees to offer the family a suitable unit as soon as one becomes vacant and ready for occupancy. If the owner does not have any suitable units or if no vacancy of a suitable unit occurs within a reasonable time, HUD may assist the family in finding a suitable dwelling unit and require the family to move to such unit as soon as possible.

(c) *HUD actions if appropriate size unit is not made available.* If the owner fails to offer the family a unit appropriate for the size of the family when such unit becomes vacant and ready for occupancy, HUD may abate housing assistance payments to the owner for the unit occupied by the family and assist the family in finding a suitable dwelling unit elsewhere.

[46 FR 19467, Mar. 31, 1981]

§ 886.326 Adjustment of utility allowances.

When the owner requests HUD approval of an adjustment in Contract Rents under § 886.312, an analysis of the project's Utility Allowances must be included. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the owner must advise the Secretary and request approval of new Utility Allowances.

(Approved by the Office of Management and Budget under control numbers 2502–0352 and 2502–0354)

[51 FR 21864, June 16, 1986]

§ 886.327 Lease requirements.

(a) *Term of lease.* (1) The term of a lease, including a new lease or a lease amendment, executed by the owner and the family must be for at least one year, or the remaining term of the contract if the remaining term of the contract is less than one year.

(2) During the first year of the lease term, the owner may not terminate the tenancy for ''other good cause'' under 24 CFR 247.3(a)(3), unless the termination is based on family malfeasance or nonfeasance. For example, during the first year of the lease term, the owner may not terminate the tenancy for ''other good cause'' based on the failure of the family to accept the offer of a new lease.

(3) The lease may contain a provision permitting the family to terminate on 30 days advance written notice to the owner. In this case of a lease term for more than one year, the lease must contain this provision.

(b) *Required and prohibited provisions.* The lease between the owner and the family must comply with HUD regulations and requirements, and must be in the form required by HUD. The lease may not contain any of the following types of prohibited provisions:

(1) *Admission of guilt.* Agreement by the family (i) to be sued, and (ii) to admit guilt, or (iii) to a judgment in

favor of the owner, in a court proceeding against the family in connection with the lease.

(2) *Treatment of family property.* Agreement by the family that the owner may take or hold family property, or may sell family property, without notice to the family and a court decision on the rights of the parties.

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

(4) *Waiver of notice.* Agreement by the family that the owner does not need to give notice of a court proceeding against the family in connection with the lease, or does not need to give any notice required by HUD.

(5) *Waiver of court proceeding for eviction.* Agreement by the family that the owner may evict the family (i) without instituting a civil court proceeding in which the family has the opportunity to present a defense, or (ii) before a decision by the court on the rights of the parties.

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

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

(8) *Family chargeable with legal costs regardless of outcome.* Agreement by the family to pay lawyer's fees or other legal costs of the owner, even if the family wins in a court proceeding by the owner against the family. (However, the family may have to pay these fees and costs if the family loses.)

[53 FR 3369, Feb. 5, 1988]

§ 886.328 Termination of tenancy.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of part 247 and 5 of this title shall apply. The provisions of part 5, subpart E, of this title concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance also shall apply.

[60 FR 14847, Mar. 20, 1995, as amended by 65 FR 16724, Mar. 29, 2000]

§ 886.329 Leasing to eligible families.

(a) *Availability of units for occupancy by Eligible Families.* During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with § 886.321; (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to HUD. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of HUD. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by Contract.* HUD may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:

(1) The owner fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD to lease such units to ineligible families, HUD determines that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the Contract to provide

for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The owner otherwise has a record of compliance with his or her obligations under the Contract; and

(3) Contract and budget authority are available.

(d) *Applicability*. In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all contracts involving substantial rehabilitation. These paragraphs apply to all other Contracts executed on or after October, 3, 1984. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time will continue to lease the unit to that family. However, the Borrower must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with part 5, subpart E, of this title because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in part 5, subpart E, of this title, the owner shall comply with the provisions of part 5, subpart E, of this title concerning assistance to mixed families, and deferral of termination of assistance.

[49 FR 31399, Aug. 7, 1984, as amended at 53 FR 847, Jan. 13, 1988; 53 FR 6601, Mar. 2, 1988; 58 FR 43722, Aug. 17, 1993; 59 FR 13653, Mar. 23, 1994; 60 FR 14847, Mar. 20, 1995; 65 FR 16724, Mar. 29, 2000]

§ 886.329a Preferences for occupancy by elderly families.

(a) *Election of preference for occupancy by elderly families*—(1) *Election by owners of eligible projects.* (i) An owner of a project involving substantial rehabilitation and assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an ''eligible project'') may, at any time, elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.

(ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an ''elderly project.'' ''Elderly families'' refers to families whose heads of household, their spouses or sole members are 62 years or older.

(iii) An owner who elects to provide a preference to elderly families in accordance with this section is required to notify families on the waiting list who are not elderly that the election has been made and how the election may affect them if:

(A) The percentage of disabled families currently residing in the project who are neither elderly nor near-elderly (hereafter, collectively referred to as ''non-elderly disabled families'') is equal to or exceeds the minimum required percentage of units established for the elderly project in accordance with paragraph (c)(1) of this section, and therefore non-elderly families on the waiting list (including non-elderly disabled families) may be passed over for covered section 8 units; or

(B) The project, after making the calculation set forth in paragraph (c)(1) of this section, will have no units set aside for non-elderly disabled families.

(iv) An owner who elects to give a preference for elderly families in accordance with this section shall not remove an applicant from the project's waiting list solely on the basis of having made the election.

(2) *HUD approval of election not required.* (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the

project's eligibility through the production of all relevant documentation in the possession of the owner that pertains to the original design of the project.

(ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations under the Fair Housing Act (42 U.S.C. 3601 through 3619), or compliance reviews and complaint investigations under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

(b) *Determining projects eligible for preference for occupancy by elderly families.* (1) *Evidence supporting project eligibility*. Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this section, shall consist of at least one item from the sources (''primary'' sources) listed in paragraph (b)(1)(i), or at least two items from the sources (''secondary'' sources) listed in paragraph (b)(1)(ii) of this section:

(i) *Primary sources.* Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: the application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan commitment; the bid invitation; the owner's management plan, or any underwriting or financial document collected at or before loan closing; *or*

(ii) *Secondary sources.* Two or more sources of evidence such as: lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older; evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with more than fifty percent of efficiency and one-bedroom units [a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of ''elderly families'') from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of ''elderly families'' which includes disabled families]; or any other relevant type of historical data, unless clearly contradicted by other comparable evidence.

(2) *Sources in conflict.* If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of preferences for elderly families as provided by this section based upon primary sources alone. In any case where primary sources do not provide *clear evidence* of original design of the project for occupancy primarily by elderly families, including those cases where primary sources conflict, secondary sources may be used to establish the use for which the project was originally designed.

(c) *Reservation of units in elderly projects for non-elderly disabled families.* The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph (c)(1) of this section for occupancy by non-elderly disabled families.

(1) *Minimum number of units to be reserved for non-elderly disabled families.* The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:

(i) The number of units equivalent to the higher of—

(A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and

(B) The percentage of units assisted under this part in the elderly project

that were occupied by non-elderly disabled families upon January 1, 1992; *or*

(ii) 10 percent of the number of units assisted under this part in the eligible project.

(2) *Option to reserve greater number of units for non-elderly disabled families.* The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.

(d) *Secondary preferences.* An owner of an elderly project also may elect to establish secondary preferences in accordance with the provisions of this paragraph (d) of this section.

(1) *Preference for near-elderly disabled families in units reserved for elderly families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c) of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.

(2) *Preference for near-elderly disabled families in units reserved for non-elderly disabled families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units to disabled families who are near-elderly families.

(e) *Availability of units to families without regard to preference.* An owner shall make vacant units in an elderly project generally available to otherwise eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section if either:

(1) The owner has adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, reserve preference, and secondary preference has been given, to fill all the vacant units; or

(2) The owner has *not* adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, and reserve preference has been given to fill all the vacant units.

(f) *Determination of insufficient number of applicants qualifying for preference.* To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:

(1) Conduct marketing in accordance with § 886.321(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section; and

(2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.

(g) *Prohibition of evictions.* An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

[59 FR 65857, Dec. 21, 1994, as amended at 65 FR 16724, Mar. 29, 2000]

§ 886.330 Work write-ups and cost estimates.

(a) *HUD preparation of work write-ups.* If needed, a work write-up, including plans and specifications, will be made by HUD specifying necessary rehabilitation.

(b) *HUD specifies deficiencies and corrective action.* The work write-up will specify deficiencies noted by HUD and

describe the manner in which the deficiencies are to be corrected, including minimum acceptable levels of workmanship and materials.

(c) *HUD preparation of cost estimates.* HUD shall perform or cause to be performed a cost estimate to complete rehabilitation. The cost of any necessary relocation, as determined by HUD as being necessary to expedite the rehabilitation and the estimated cost to the owner of maintaining project rents at the Section 8 level, as required by HUD prior to execution of the Contract, plus other costs allowable by HUD will be included in the cost estimate. The work write-up and cost estimate shall become part of the disposition package and will be used in determining the sales price of the project.

[44 FR 70365, Dec. 6, 1979, as amended at 58 FR 43722, Aug. 17, 1993]

§ 886.331 Agreement to enter into housing assistance payments contract.

(a) *Execution of agreement.* At the sales closing and prior to the Owner's commencement of any rehabilitation under this subpart, HUD will enter into an Agreement with the Owner which contains the following:

(1) A statement that the Owner agrees to rehabilitate the project unit(s) to make the unit(s) decent, safe, and sanitary in accordance with the work write-up, cost estimates, and this subpart.

(2) A date by which rehabilitation will have commenced and a deadline date by which the rehabilitated project unit(s) will be completed and ready for occupancy. The Agreement may provide for staged rehabilitation, occupancy, and payments under the contract.

(3) The Contract Rent which will be paid to the Owner once rehabilitation is completed, the Contract is executed, and the unit(s) is/are occupied by an eligible family.

(4) A date for final inspection of the unit(s) by HUD and the owner shall be specified. This date shall be as soon as possible after the deadline date specified pursuant to paragraph (a)(2) of this section.

(5) The term of the contract.

(b) *Agreement part of sales contract.* The Agreement will be prepared by HUD and incorporated into the Contract of Sale and Purchase. The Agreement shall include all required information in paragraph (a) of this section and a statement specifying the Owner's responsibility for making relocation payments to Families temporarily displaced.

[44 FR 70365, Dec. 6, 1979, as amended at 58 FR 43722, Aug. 17, 1993]

§ 886.332 Rehabilitation period.

(a) *Immediate start of rehabilitation after sales closing.* After the execution of the Agreement and the sales closing, the owner shall immediately proceed with the rehabilitation work as provided in the Agreement. In the event the work is not immediately commenced, diligently continued, and/or completed by the deadline date stated on the Agreement, HUD will have the right, upon written notification to the owner, to rescind the Agreement and the sale, or take other appropriate action.

(b) *Extensions.* Although extensions of time may be granted by HUD upon a written request from the owner stating the grounds for the extension, no increases in Contract Rents shall be granted for delays.

(c) *Changes.* (1) The Owner must submit to HUD for approval any changes from the work specified in the Agreement which would materially reduce or alter the Owner's obligations or the quality or amenities of the project. HUD may condition its approval of such changes on a reduction of the Contract Rents. If changes are made without prior HUD approval, HUD will have the right to take action consistent with the purpose of this subpart, including action intended to preclude the owner from benefiting from a change in the work specified without HUD approval. HUD action shall include but is not limited to reducing the Contract Rents, requiring the owner to remedy the deficiency, or rescission of the Contract of Sale with reimbursement to the owner for the HUD determined reasonable cost of work items completed by the Owner and acceptable to HUD.

(2) Contract Rents for project units being rehabilitated shall not be increased except in accordance with this subpart. Should an increase in Contract Rents be necessitated by changes in local codes or ordinances or other unanticipated changes in work items which could not have been anticipated by HUD, an increase will only be approved if HUD approval is obtained prior to incorporation of any changes in the project.

[44 FR 70365, Dec. 6, 1979, as amended at 58 FR 43722, Aug. 17, 1993]

§ 886.333 Completion of rehabilitation.

(a) *Notification of completion.* The owner must notify HUD in writing when work is completed and submit to HUD the evidence of completion and cost certifications described in paragraph (b) and (c) of this section.

(b) *Evidence of completion.* Completion of the project must be evidenced by furnishing HUD with the following:

(1) A certificate of occupancy and/or other official approvals necessary for occupancy as required by the locality.

(2) A certification by the owner that:

(i) The project unit(s) has been completed in accordance with the requirements of the Agreement;

(ii) The project unit(s) is/are decent, safe, and sanitary;

(iii) The project unit(s) has/have been rehabilitated in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials;

(iv) The project was in compliance with applicable HUD lead-based paint regulations at part 35, subparts A, B, H, and R of this title.

(v) If applicable, the owner has complied with the provisions of the Agreement relating to the payment of not less than prevailing wage rates and that to the best of the owner's knowledge and belief there are no claims of underpayment in alleged violation of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the owner of HUD, the owner shall be required to place a sufficient amount in escrow, as determined by HUD, to assure such payments;

(vi) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified); and

(vii) There has been no change in the evidence of management capability or in the proposed management program (if one was required) specified in the approved purchase proposal other than changes approved in writing by HUD in accordance with the Agreement.

(c) *Actual cost and interest rate certifications.* The Owner must provide HUD with statements of the actual costs, including the interest rate incurred for the rehabilitation, Contract Rent shortfalls, and any relocation approved by HUD. The owner shall certify that these are the actual costs. HUD shall review and approve these costs subject to post audit.

(d) *Review and inspections.* (1) Within fifteen working days of the receipt of the evidence of completion, and the owner's certification of costs, HUD shall review the evidence of completion for compliance with paragraphs (b) and (c) of this section.

(2) Within the same time period, a HUD representative shall inspect the units, to determine whether the units meet the Housing Quality Standards, the Agreement to Enter into the HAP, and any applicable work write-up.

(e) If the inspection discloses defects or deficiencies, the inspector shall report these with sufficient detail and information for purposes of paragraphs (g) (1) and (2) of this section.

(f) *Acceptance.* If HUD determines from the review and inspection that the project has been completed in accordance with the Agreement, the project shall be accepted.

(g) *Acceptance where defects or deficiencies reported.* If the projects unit(s) are not acceptable under paragraph (f) of this section, the following shall apply:

(1) If the only defects or deficiencies are punchlist items or incomplete items awaiting seasonal opportunity, the project may be accepted and the contract executed. If the owner fails to complete the items within a reasonable time to the satisfaction of HUD, HUD

may, upon 30 days notice to the owner terminate the contract and/or exercise its other rights thereunder, including rescission of the sale.

(2) If the defects or deficiencies are other than punchlist items or incomplete work awaiting seasonal opportunity, HUD shall determine whether and to what extent the defects or deficiencies can be corrected, what corrections are essential to permit HUD to accept the project, whether and to what extent a reduction of Contract Rents will be required as a condition to acceptance of the project, and the extension of time required for the remaining work to be done. The owner shall be notified of HUD's determinations and, if the owner agrees to comply with the conditions, an addendum to the Agreement shall be entered into, specifying the remaining work, pursuant to which the defects or deficiencies will be corrected and the unit(s) then accepted. If the owner is unwilling to enter into such an addendum or fails to perform under the addendum, the units will not be accepted and appropriate remedies will be sought by HUD. Paragraphs (a) through (g) will apply when the remaining work is completed satisfactorily.

(h) *Notification of non-acceptance.* If HUD determines that, based on the review of the evidence of completion and inspection, the unit(s) cannot be accepted, the Owner must be promptly notified of this decision and the reasons and steps shall be taken immediately to rescind the sale, or such other action deemed appropriate by HUD.

[44 FR 70365, Dec. 6, 1979, as amended at 52 FR 1896, Jan. 15, 1987; 58 FR 43723, Aug. 17, 1993; 64 FR 50227, Sept. 15, 1999]

§ 886.334 Execution of housing assistance payments contract.

(a) *Time of execution.* Upon acceptance of the unit(s) by HUD pursuant to § 886.333(f), the contract will be executed first by the Owner and then by HUD. The effective date must be no earlier than the HUD inspection which provides the basis for unconditional acceptance.

(b) *Changes in initial contract rents during rehabilitation.* (1) The Contract Rents established pursuant to § 886.310 and 24 CFR part 290 will be the Contract Rents on the effective date of the Contract except under the following circumstances:

(i) When, during rehabilitation, work items are discovered which could not reasonably have been anticipated by HUD or are necessitated by an unforeseen change in local codes or ordinances; were not listed in the work write-up prepared by HUD but are deemed by HUD, in writing, to be necessary work; and will require additional expenditures which would make the rehabilitations infeasible at the Contract Rents established in the Agreement. Under these circumstances, HUD will:

(A) Approve a change order to the rehabilitation contract, or amend the work write-up if there is no rehabilitation contract, specifying the additional work to be accomplished and the additional cost for this work,

(B) Recompute the Contract Rents, within the limits specified in paragraph (b)(4) of this section, based upon the revised cost estimate, and

(C) Prepare and execute an amendment to the Agreement stating the additional work required and the revised Contract Rents.

(ii) When the actual cost of the rehabilitation performed is less than that estimated in the calculation of Contract Rents for the Agreement.

(iii) When, due to unforeseen factors, the actual certified relocation payments made by the Owner to temporarily relocated Families varies from the cost estimated by HUD.

(2) Should changes occur as specified in paragraph (b)(1) (ii) or (iii) (either an increase or decrease), HUD may recalculate the Contract Rents and amend the Contract or Agreement, as appropriate, to reflect the revised rents. The rents shall not be recalculated based on increased costs to maintain rents at the Section 8 level during the rehabilitation period.

(3) HUD must review and approve the Owner's certification that the rehabilitation costs and relocation costs are the actual costs incurred.

(4) In establishing the revised Contract Rents, HUD must determine that the resulting Contract Rents plus an applicable Utility Allowances do not

exceed the Fair Market Rent or the exception rent provided in § 886.310 in effect at the time of execution of the Agreement.

(c) *Unleased unit(s).* At the time the contract is executed, HUD will provide a list of dwelling unit(s) leased as of the effective date of the Contract and a list of the unit(s) not so leased, if any, and shall determine whether or not the owner has met the obligations with respect to any unleased unit(s) and for which of those unit(s) vacancy payments will be made by HUD. The owner must indicate in writing either concurrence with this determination or disagreement reserving all rights to claim vacancy payments for the unleased unit(s) pursuant to the contract, without prejudice by reason of the owner's signing the contract.

[44 FR 70365, Dec. 6, 1979, as amended at 48 FR 12711, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 65 FR 16427, Mar. 29, 2000]

§ 886.335 HUD review of agreement and contract compliance.

HUD will review project operations at such intervals as it deems necessary to ensure that the owner is in full compliance with the terms and conditions of the contract, Regulatory Agreement, and Agreement to Enter into a Housing Assistance Contract, if any. The equal opportunity review may be conducted with the scheduled HUD review or at any time deemed appropriate by HUD.

§ 886.336 Audit.

(a) Where a State or local government is the eligible owner of a project receiving financial assistance under this part, the audit requirements in 24 CFR part 44 shall apply.

(b) Where a nonprofit organization is the eligible owner of a project receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.

[50 FR 39092, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986, as amended at 57 FR 33257, July 27, 1992]

§ 886.337 Selection preferences.

Sections 5.410 through 5.430 govern the use of preferences in the selection of tenants under this subpart.

[59 FR 36647, July 18, 1994, as amended at 61 FR 9047, Mar. 6, 1996]

§ 886.338 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent/utility costs; and

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A ''displaced person'' (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part

24. A ''displaced person'' shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the owner's determination concerning whether the person qualifies as a ''displaced person,'' or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the owner. A low-income person who is dissatisfied with the owner's determination on such appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of owner.* (1) The owner shall certify (i.e., provide assurance of compliance, as required by 49 CFR part 24) that he or she will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The owner is responsible for such compliance notwithstanding any third party's contractual obligation to the owner to comply with these provisions.

(2) The cost of providing required relocation assistance is an eligible project cost to the same extent and in the same manner as other project costs. Such costs may also be paid for with funds available from other sources.

(3) The owner shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The owner shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(i) After notice by the owner to move permanently from the property, if the move occurs on or after the date of the submission of the application to HUD;

(ii) Before submission of the application to HUD, if HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(A) The tenant moves after the execution of the contract to provide Housing Assistance Payments, and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(*1*) The tenant's monthly rent before execution of the Housing Assistance Payments Contract and estimated average monthly utility costs; or

(*2*) The total tenant payment, as determined under part 5 of this title, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex, and either:

(*1*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or

(*2*) Other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection

with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a ''displaced person'' (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, received written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that he or she would not qualify as a ''displaced person'' (or for assistance under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The owner may ask HUD, at any time, to determine whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term ''initiation of negotiations'' means the owner's execution of the Housing Assistance Payments Contract.

(Approved by Office of Management and Budget under OMB Control Number 2506–0121)

[58 FR 43723, Aug. 17, 1993, amended at 65 FR 16724, Mar. 29, 2000]

PART 887 [RESERVED]

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

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

SOURCE: 50 FR 38796, Sept. 25, 1985, unless otherwise noted.

EDITORIAL NOTE: For revisions and amendments affecting Schedules A, B, C, and D, issued under part 888, but not carried in the Code of Federal Regulations, see the List of

CFR Sections Affected, in the Finding Aids section of the printed volume and on GPO Access.

Subpart A—Fair Market Rents

§ 888.111 Fair market rents for existing housing: Applicability.

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

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

[64 FR 56911, Oct. 21, 1999]

§ 888.113 Fair market rents for existing housing: Methodology.

(a) *Basis for setting fair market rents.* Fair Market Rents (FMRs) are estimates of rent plus the cost of utilities, except telephone. FMRs are housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units in the FMR area. FMRs are set at either the 40th or 50th percentile rent—the dollar amount below which the rent for 40 or 50 percent of standard quality rental housing units falls. The 40th or 50th percentile rent is drawn from the distribution of rents of all units that are occupied by recent movers. Adjustments are made to exclude public housing units, newly built units and substandard units.

(b) *Setting FMRs at the 40th or 50th percentile rent.* Generally HUD will set the FMRs at the 40th percentile rent. HUD will set FMRs at the 50th percentile only in accordance with paragraph (c) of this section.

(c) *Setting FMRs at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area.* (1) HUD will set the FMRs at the 50th percentile rent for all unit sizes in each metropolitan FMR area that meets all of the following criteria at the time of annual publication of the FMRs:

(i) The FMR area contains at least 100 census tracts;

(ii) 70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent; and

(iii) 25 percent or more of the tenant-based rental program participants in the FMR area reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.

(2) If the FMRs are set at the 50th percentile rent in accordance with paragraph (c)(1) of this section, HUD will set the FMRs at the 50th percentile rent for a total of three years.

(i) At the end of the three-year period, HUD will continue to set the FMRs at the 50th percentile rent only so long as the concentration measure for the current year is less than the concentration measure at the time the FMR area first received an FMR set at the 50th percentile rent. HUD will publish FMRs based on the 40th percentile rent for FMR areas that do not qualify for continued use of the 50th percentile rent.

(ii) For purposes of this section, the term ''concentration measure'' means the percentage of tenant-based rental program participants in the FMR area who reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.

(iii) FMR areas that do not meet the test for continued use of FMRs set at

the 50th percentile will be ineligible to use FMRs set at the 50th percentile for a period of three years.

(iv) A PHA whose jurisdiction includes one or more FMR areas that are no longer eligible to use FMRs set at the 50th percentile may be eligible for a higher payment standard under § 982.503(f).

(d) *FMR Areas.* FMR areas are metropolitan areas and nonmetropolitan counties (nonmetropolitan parts of counties in the New England States). With several exceptions, the most current Office of Management and Budget (OMB) metropolitan area definitions of Metropolitan Statistical Areas (MSAs) and Primary Metropolitan Statistical Areas (PMSAs) are used because of their generally close correspondence with housing market area definitions. HUD may make exceptions to OMB definitions if the MSAs or PMSAs encompass areas that are larger than housing market areas. The counties deleted from the HUD-defined FMR areas in those cases are established as separate metropolitan county FMR areas. FMRs are established for all areas in the United States, the District of Columbia, Puerto Rico, the Virgin Islands, and the Pacific Islands.

(e) *Data sources.* (1) HUD uses the most accurate and current data available to develop the FMR estimates and may add other data sources as they are discovered and determined to be statistically valid. The following sources of survey data are used to develop the base-year FMR estimates:

(i) The most recent decennial Census, which provides statistically reliable rent data.

(ii) The American Housing Survey (AHS) data, conducted by the Bureau of the Census for HUD. AHS's have comparable accuracy to the decennial Census, and are used to develop between-census revisions for the largest metropolitan areas on a four-year revolving schedule.

(iii) Random Digit Dialing (RDD) telephone survey data, based on a sampling procedure that uses computers to select statistically random samples of rental housing.

(iv) Statistically valid information, as determined by HUD, presented to HUD during the public comment and review period.

(2) Base-year FMRs are updated and trended to the midpoint of the program year they are to be effective using Consumer Price Index (CPI) data for rents and for utilities or using rent-change factors obtained from the RDD regional surveys. The RDD rent-change factors are developed annually for the metropolitan and nonmetropolitan parts of the HUD-specified geographic regions not covered by CPI surveys, and are used to update the base-year FMR estimates within these regions.

(f) *Unit size adjustments.* (1) For most areas the ratios developed from the most recent decennial Census are applied to the two-bedroom FMR estimates to derive FMRs for other bedroom sizes. Exceptions to this procedure may be made for areas with local bedroom intervals below an acceptable range. To help the largest most difficult to house families find units, higher ratios than the actual market ratios may be used for three-bedroom and larger-size units.

(2) The FMR for single room occupancy housing is 75 percent of the FMR for a zero bedroom unit.

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

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

(2) When approved by HUD on the basis of survey data submitted in public comments, either the 40th or 50th percentile as applicable of the rental distribution of manufactured home spaces for the FMR area. HUD accepts public comments requesting revision of the proposed manufactured home spaces FMRs for areas where space rentals are thought to differ from 40 percent of the FMR for a two-bedroom unit. To be considered for approval, the comments must contain statistically valid survey data that show either the 40th or 50th percentile manufactured home space rent (including the cost of utilities for the manufactured home) for the FMR area. Once approved, the revised manufactured home space FMRs establish new base-year estimates that will be updated annually

using the same data used to update the FMRs.

[60 FR 42226, Aug. 15, 1995, as amended at 64 FR 56911, Oct. 21, 1999; 65 FR 58873, Oct. 2, 2000]

§ 888.115 Fair market rents for existing housing: Manner of publication.

FMRs will be published at least annually in the FEDERAL REGISTER. The Department will propose FMRs and provide a comment period of at least 30 days for the purpose of identifying areas where the FMRs are believed to be too high or too low. To be considered for FMR revisions, public comments must include statistically valid rental housing survey data that justify the requested changes. After the comments have been considered, the Department will publish a final notice announcing FMRs to be effective on October 1 each year.

[60 FR 42227, Aug. 15, 1995]

Subpart B—Contract Rent Annual Adjustment Factors

§ 888.201 Purpose.

Automatic Annual Adjustment Factors are used to adjust rents under the Section 8 Housing Assistance Payments Program.

[44 FR 75383, Dec. 20, 1979]

§ 888.202 Manner of publication.

Adjustment Factors will be published in the FEDERAL REGISTER at least annually by Notice. Interim revisions may be published as market conditions indicate. In the case of revised factors applicable only to specific areas, the HUD Field Office will publish a notice appropriate to the limited scope of the revised factors (see § 888.204).

[42 FR 60508, Nov. 25, 1977, as amended at 44 FR 75383, Dec. 20, 1979; 47 FR 4252, Jan. 29, 1982]

§ 888.203 Use of contract rent automatic annual adjustment factors.

(a) To compute an adjustment to a Contract Rent, find the schedule of Automatic Annual Adjustment Factors for the appropriate Census Region or Standard Metropolitan Statistical Area—

(1) If the Contract Rent includes all utilities, use the factor shown on the basic schedule for the rent bracket within which the particular Contract Rent falls and for the applicable size of unit (by number of bedrooms).

(2) If the Contract Rent does not include all utilities but does include the highest cost utility, use the appropriate factor shown on the basic schedule.

(3) If the Contract Rent does not include any utilities or includes some utilities but not the highest cost utility, use the Annual Adjustment Factor for Contract Rent (Excluding Utilities).

(b) The adjusted monthly amount of the Contract Rent of a dwelling unit shall be determined by multiplying the Contract Rent in effect on the anniversary date of the contract by the applicable Automatic Annual Adjustment Factor (see paragraph (a) of this section) and rounding the result as follows:

(1) If the result contains a fractional dollar amount ranging from $0.01 to $0.49, round to the next lower whole dollar amount;

(2) If the result contains a fractional dollar amount ranging from $0.50 to $0.99, round to the next higher whole dollar amount.

[42 FR 60508, Nov. 25, 1977, as amended at 44 FR 21769, Apr. 12, 1979; 47 FR 4252, Jan. 29, 1982; 59 FR 38564, July 29, 1994]

§ 888.204 Revision to the automatic annual adjustment factors.

If the application of the Annual Adjustment Factors results in rents that are substantially lower than rents charged for comparable units not receiving assistance under the U.S. Housing Act of 1937, in the area for which the factor was published or a portion thereof, and it is shown to HUD that the costs of operating comparable rental housing have increased at a substantially greater rate than the Adjustment Factors, the HUD Field Office will consider establishing separate or revised Automatic Annual Adjustment Factors for that particular area. Any request for revision of the factors must be accompanied by an identification of the area, its boundaries and evidence that the area constitutes the largest contiguous area in which substantially

the same rent levels prevail. The HUD Field Office will publish appropriate notice of the establishment of any such revised Automatic Annual Adjustment Factors. These factors will remain in effect until superseded by the subsequent publication of Automatic Annual Adjustment Factors pursuant to § 888.202.

[44 FR 21769, Apr. 12, 1979]

Subpart C—Retroactive Housing Assistance Payments for New Construction, Substantial Rehabilitation, State Finance Agencies, Section 515 Farmers Home Administration, Section 202 Elderly or Handicapped, and Special Allocations Projects

SOURCE: 56 FR 20084, May 1, 1991, unless otherwise noted.

§ 888.301 Purpose and scope.

(a) *Purpose.* This subpart describes the basic policies and procedures for the retroactive payment of Housing Assistance Payments to eligible project owners for the period from October 1, 1979 to May 31, 1991 and for one-time Contract Rent determinations for such eligible project owners.

(b) *Applicability.* This subpart applies to all project-based Section 8 Housing Assistance Payments Contracts under New Construction (Part 880); Substantial Rehabilitation (Part 881); State Finance Agencies (Part 883); and Section 515 Farmers Home Administration (Part 884). It also applies to those projects under Section 202 Elderly or Handicapped (Part 885) and Special Allocations (Part 886, Subparts A and C) whose Contract Rents are adjusted by use of the Annual Adjustment Factors (AAFs), as described in subpart B of this part.

(c) *Eligible project owners.* Project owners may be eligible for retroactive payments if, during the period from October 1, 1979 to May 31, 1991:

(1) The use of a comparability study by HUD (or the Contract Administrator), which was conducted as an independent limitation on the amount of rent adjustment that would have resulted from use of the applicable AAF, resulted in the reduction of the maximum monthly Contract Rents for units covered by a Housing Assistance Payments (HAP) contract or resulted in less than the maximum increase for those units than would otherwise be permitted by the AAF; or

(2) The HAP contract required a project owner to request annual rent adjustments, and the project owner certifies that a request was not made because of an anticipated reduction of the maximum monthly Contract Rents resulting from a comparability study.

§ 888.305 Amount of the retroactive Housing Assistance Payments.

(a) *Recalculating the total rent adjustment.* To establish the amount of the retroactive HAP payment for which a project owner meeting the criteria in § 888.301(c) is eligible, the total rent adjustment will be recalculated for the period from October 1, 1979 to May 31, 1991. For purposes of establishing the amount of the retroactive payment only, the total rent adjustment will be an amount equal to the Contract Rent, minus the amount of the Contract Rent attributable to debt service, multiplied by the applicable AAF, for each year.

(b) *Calculating the retroactive payment.* HUD (or the Contract Administrator) will pay, as a retroactive Housing Assistance Payment, the amount, if any, by which the total rent adjustment, calculated under paragraph (a) of this section, exceeds the rent adjustments actually approved for the same time period, except that in no event will any payment be an amount less than 30 percent of the aggregate of the full Contract Rent multiplied by the applicable AAF, minus the sum of the rent adjustments actually approved for the same time period, adjusted by the average occupancy rate.

(c) *Occupancy rates.* (1) Retroactive payments will be made only for units that were occupied, based on average occupancy rate, including units qualifying for vacancy payments under 24 CFR 880.611, 881.611, 883.712, 884.106, 885.985, 886.109, or 886.309, during the time period from October 1, 1979 to May 31, 1991.

(2) When requesting retroactive payment, a project owner must, if the information is available, submit documentation of occupancy rates, on either an annual or monthly basis, for the same time period. The average occupancy rate will be based on these records. If records are unavailable for the full time period, HUD (or the Contract Administrator) will establish an average occupancy rate, to be used for the entire period, from the occupancy rate for the three years immediately preceding May 31, 1991.

(d) *Revised AAFs.* For any year during the period from October 1, 1979 to May 31, 1991, where a HUD field office published a revised Annual Adjustment Factor that replaced the applicable AAF for a specific locality under 24 CFR 888.204, the revised Annual Adjustment Factor, which applied to all projects in that area, will be used to recalculate the total rent adjustment under paragraph (a) of this section, and to establish the amount of the retroactive payments.

(e) *Special adjustments.* When calculating the total rent adjustments and establishing the amount of the retroactive payments under paragraphs (a) and (b) of this section, any special adjustments granted under 24 CFR 880.609(b), 881,609(b), 883.710(b), 884.109(c), 886.112(c), or 886.312(c) during the time period from October 1, 1979 to May 31, 1991, to reflect substantial general increases in real property taxes, assessments, utility rates, utilities not covered by regulated rates, or for special adjustments for any other purpose authorized by a waiver of the regulations, will be deducted from the Contract Rent before applying the AAF.

(f) *AAFs less than 1.0.* For any area where an AAF of less than 1.0 was published, a factor of 1.0 will be used to recalculate the total rent adjustments and to establish the amount of the retroactive payments under paragraphs (a) and (b) of this section.

(g) *Debt service.* (1) For purposes of this section, debt service includes principal, interest, and the mortgage insurance premium, if any.

(2) The monthly debt service set forth in the original mortgage documents for a project will be used to compute the debt service portion of the contract rent. The debt service will be compared to the spread of unit sizes included in the original HAP contract, and the amount used in the calculation will be based on the percentage of total rent potential of the various unit types.

(3) If, in some cases, HUD or the Contract Administrator cannot determine the debt service for a project, the project owner will be asked to provide documentation of the debt service. The project owner will be notified by the HUD Field Office or the Contract Administrator of the need for documentation of the debt service, and allowed 30 days to respond, or for such longer period as approved by HUD or the Contract Administrator on a case-by-case basis. Where the debt service is not available to HUD or the Contract Administrator and the owner is unable to provide the necessary information, retroactive payments cannot be made.

(h) *Applicable AAF.* The applicable AAF is the factor in effect on the anniversary date of the contract and appropriate for the area, for the size of the unit, and for the treatment of utilities; except where, for any year when AAFs were published after November 8 and made retroactive to November 8, a project owner was given the option to choose the factor in effect on the anniversary date or the retroactive factor, the applicable AAF is the factor chosen by the project owner in that year.

(Approved by the Office of Management and Budget under control number 2502–0042)

§ 888.310 Notice of eligibility requirements for retroactive payments.

(a) *Notice of eligibility requirements.* HUD (or the Contract Administrator) will give written notice to all current owners of projects of the eligibility requirements for retroactive payments. Eligible project owners must make a request for payment and a request for a one-time contract determination within 60 days from the date of the notice.

(b) *Request for payment.* (1) Owners eligible for retroactive payments under § 888.301(c) must submit a request for a calculation of the total rent adjustments and the establishment of the amount of the retroactive payment, as described in § 888.301 (a) and (b), and documentation of the occupancy rate

for the period from October 1, 1979, to May 31, 1991, if available.

(2) Owners whose HAP contract requires a request to be made for annual rent adjustments must certify that a request was not made because of an anticipated reduction in the Contract Rents as a result of a comparability study. The certification must contain the year or years upon which the request for payment is based and a statement of the basis for the belief that rents would have been reduced.

(3) Retroactive payments will be made to owners over a three-year period as funds are appropriated for that purpose. When funds are available for payment, HUD will publish a FEDERAL REGISTER notice containing procedures for claiming payments.

(c) *Request for one-time contract rent determination.* When making a request for payment, eligible owners may also request a one-time contract rent determination, as described in § 888.320. Eligible owners may request a one-time contract rent determination even if they choose not to request retroactive payments, provided they are eligible for retroactive payments.

(d) *Transfer of ownership since October 1, 1979.* Eligible owners who request retroactive payments must certify that they are entitled to the entire amount of the payment. Any owner who is unable to certify must present documentation of an agreement between the current and former owners of the proportionate share of the payment for which each is eligible.

(Approved by the Office of Management and Budget under control number 2502–0042)

§ 888.315 Restrictions on retroactive payments.

(a) *Restrictions on distribution of surplus cash.* Retroactive payments for HUD-insured projects and other projects subject to limitations on the distribution of surplus cash will be deposited, in the manner of Housing Assistance Payments, into the appropriate project account. The payments will be subject to HUD rules and procedures (or rules and procedures of other agencies, as appropriate), described in the applicable regulations and the HAP contracts, for distribution of surplus cash to project owners.

(b) *Replacement reserve.* Projects required by HUD regulations to maintain a reserve for replacement account and to adjust the annual payment to the account each year by the amount of the annual rent adjustment must deposit into the account the proportionate share of any retroactive payment received, in accordance with HUD regulations and the HAP contract.

(c) *Physical condition of HUD-insured or State-financed projects.* If the most recent physical inspection report of a HUD-insured project, completed by the mortgagee, or by HUD or the Contract Administrator if a mortgagee inspection is not present, shows significant deficiencies that have not been addressed to the satisfaction of HUD by the date the retroactive payment is deposited into the project account, the payment will not be made available for surplus cash distribution until the deficiencies are resolved or a plan for their resolution has been approved by HUD.

§ 888.320 One-time Contract Rent determination.

(a) *Determining the amount of the new Contract Rent.* Project owners eligible for retroactive payments, as described in § 888.301(c), may request a one-time Contract Rent determination, to be effective as described in paragraph (c) of this section. The request for a one-time rent determination must be made when submitting a request for retroactive payments, as described in § 888.315. If no claim for retroactive payments is made, an owner may submit only the request for a one-time rent determination, provided the owner is eligible for retroactive payments. The new Contract Rent under this provision will be the greater of:

(1) The Contract Rent currently approved by HUD (or the Contract Administrator); or

(2) An amount equal to the applicable AAF multipled by the Contract Rent minus debt service, calculated for each year from October 1, 1979, to May 31, 1991.

(b) *Currently approved rent.* The Contract Rent currently approved by HUD (or the Contract Administrator) is the Contract Rent stated in the most recent amendment to the HAP Contract signed by both HUD (or the Contract

Administrator) and the owner, or as shown on HUD Form 92458 (Rental Schedule) if the most recent amendment to the HAP Contract cannot be located.

(c) *Effective date of new Contract Rent.* The new Contract Rent, determined under paragraph (a) of this section, will be effective on May 31, 1991.

(Approved by the Office of Management and Budget under control number 2505–0042)

Subpart D—Retroactive Housing Assistance Payments for Moderate Rehabilitation Projects

SOURCE: 56 FR 20085, May 1, 1991, unless otherwise noted.

§ 888.401 Purpose and scope.

(a) *Purpose.* This subpart describes the basic policies and procedures for the retroactive payment of Housing Assistance Payments to eligible project owners for the period from October 1, 1979 to May 31, 1991 and a one-time Contract Rent determination for such eligible project owners.

(b) *Applicability.* This subpart applies to all Moderate Rehabilitation projects under 24 CFR part 882, subparts D, E, and H.

(c) *Eligible project owners.* Project owners may be eligible for retroactive payments if, during the period from October 1, 1979 to May 31, 1991:

(1) The use of a comparability study by the Public Housing Agency (PHA) as contract administrator, which was conducted as an independent limitation on the amount of rent adjustment that would have resulted from use of the applicable AAF, resulted in the reduction of the maximum monthly Contract Rents for units covered by a Housing Assistance Payments (HAP) contract or resulted in less than the maximum increase for those units than would otherwise be permitted by the AAF; or

(2) The project owner certifies that a request for an annual rent adjustment was not made because of an anticipated reduction of the maximum monthly Contract Rents resulting from a comparability study.

§ 888.405 Amount of the retroactive Housing Assistance Payments.

(a) *Recalculating the total rent adjustment.* To establish the amount of the retroactive HAP payment for which a project owner meeting the criteria in § 888.401(c) is eligible, the total rent adjustment will be recalculated for the period from October 1, 1979 to May 31, 1991. Rents for that period will be recalculated, under the procedures set out in 24 CFR 882.410(a)(1), by applying the AAF for any affected year, and recalculating the rents for the remainder of the period as necessary. For each year thereafter, all rent adjustments made at the request of the owner at the time will be recalculated, under the procedures in 24 CFR 882.410(a)(1), to account for the new adjustments.

(b) *Calculating the retroactive payment.* HUD will pay, through the PHA, as a retroactive Housing Assistance Payment the amount, if any, by which the total rent adjustment, calculated under paragraph (a) of this section exceeds the rent adjustments actually approved for the same time period.

(c) *Occupancy rate.* (1) Retroactive payments will be made only for units that were occupied, based on average occupancy rate, including units qualifying for vacancy payments under 24 CFR 882.411, during the time period from October 1, 1979 to May 31, 1991.

(2) When requesting a retroactive payment, a project owner must, if the information is available, submit documentation of occupancy rates, on either an annual or monthly basis, for the same time period. The average occupancy rate will be based on these records. If records are unavailable for the full time period, the PHA will establish an average occupancy rate, to be used for the entire period, from the occupancy rate for the three years immediately preceding May 31, 1991.

(d) *Revised AAFs.* For any year during the period from October 1, 1979 to May 31, 1991, where a HUD field office published a revised Annual Adjustment Factor that replaced the applicable AAF for a specific locality under 24 CFR 888.204, the revised Annual Adjustment Factor, which applied to all projects in that area, will be used to recalculate the total rent adjustment under paragraph (a) of this section, and

to establish the amount of the retroactive payments.

(e) *Special adjustments.* When calculating the total rent adjustments and establishing the amount of the retroactive payments under paragraphs (a) and (b) of this section, any special adjustments granted under 24 CFR 882.410(a)(2) during the period from October 1, 1979 to May 31, 1991, to reflect substantial general increases in real property taxes, assessments, utility rates, utilities not covered by regulated rates, or for special adjustments for any other purpose authorized by a waiver of the regulations, will be deducted from the base rent before applying the AAF.

(f) *AAFs less than 1.0.* For any area where an AAF of less than 1.0 was published, a factor of 1.0 will be used to recalculate the total rent adjustments and to establish the amount of the retroactive payments under paragraphs (a) and (b) of this section.

(Approved by the Office of Management and Budget under control number 2502–0042)

§ 888.410 Notice of eligibility requirements for retroactive payments.

(a) *Notice of eligibility requirements.* PHAs will give written notice to all current owners of projects, for which they are the Contract Administrators, of the eligibility requirements for retroactive payments. Eligible project owners must make a request for payment or a request for a one-time contract determination within 60 days from the date of the notice.

(b) *Request for payment.* (1) Owners eligible for retroactive payments under § 888.401(c) must submit a request for a calculation of the total rent adjustments and the establishment of the amount of the retroactive payment, as described in § 888.401 (a) and (b), and documentation of the occupancy rate for the period from October 1, 1979 to May 31, 1991, if available.

(2) Owners claiming eligibility under § 888.401(c)(2) must certify that a request was not made because of an anticipated reduction in the Contract Rents as a result of a comparability study. The certification must contain the year or years upon which the request for payment is based and a statement of the basis for the belief that rents would have been reduced.

(3) Retroactive payments will be made to owners over a three-year period as funds are appropriated for that purpose. When funds are available for payment, HUD will publish a FEDERAL REGISTER Notice containing procedures for claiming payments.

(c) *Request for one-time contract rent determination.* When making a request for payment, eligible owners may also request a one-time contract rent determination, as described in § 888.420. Eligible owners may request a one-time contract rent determination even if they choose to forgo receiving retroactive payments, provided they are eligible for retroactive payments.

(d) *Transfer of ownership since October 1, 1979.* Eligible owners requesting retroactive payments must certify that they are entitled to the entire amount of the payment. Any owner who is unable to certify must present documentation of an agreement between the current and former owners of the proportionate share of the payment for which each is eligible.

(Approved by the Office of Management and Budget under control number 2502–0042)

§ 888.415 Restrictions on retroactive payments.

(a) *Restrictions.* Retroactive payments are subject to all regulations, procedures, or restrictions that apply to Housing Assistance Payments.

(b) *Review of initial rents.* Before calculating the amount of any retroactive payment, the PHA, if directed by HUD, will review whether rents were excessive when initially set.

(c) *Physical condition of projects.* If the most recent physical inspection report by the PHA shows significant deficiencies that have not been addressed to the satisfaction of the PHA by the date the retroactive payment is deposited into the project account, the payment will not be made available until the deficiencies are resolved or a plan for their resolution has been approved by the PHA.

§ 888.420 One-time Contract Rent determination.

(a) *Determining the amount of the new Contract Rent.* Project owners eligible

for retroactive payments, as described in §888.401(c), may request a one-time Contract Rent determination, to be effective as described in paragraph (c) of this section. The request for a one-time rent determinaton must be made when submitting a request for retroactive payments, as described in §888.415. If no claim for retroactive payments is made, an owner may submit only the request for a one-time rent determinaton, provided the owner is eligible for retroactive payments. The new Contract Rent under this provision will be the greater of:

(1) The Contract Rent currently approved by the PHA; or

(2) An amount equal to the Contract Rent as adjusted to May 31, 1991 under §888.405(a).

(b) *Currently approved rent.* The Contract Rent currently approved by the PHA is the Contract Rent stated in the most recent amendment to the HAP Contract signed by both the PHA and the owner.

(c) *Effective date of new Contract Rent.* The new Contract Rent, determined under paragraph (a) of this section, will be effective on May 31, 1991.

(Approved by the Office of Management and Budget under control number 2502–0042)

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AUTHORITY: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

SOURCE: 61 FR 11956, Mar. 22, 1996, unless otherwise noted.

Subpart A—General Program Requirements

§ 891.100 Purpose and policy.

(a) *Purpose.* The Section 202 Program of Supportive Housing for the Elderly and the Section 811 Program of Supportive Housing for Persons with Disabilities provide Federal capital advances and project rental assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) (section 202) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013) (section 811), respectively, for housing projects serving elderly households and persons with disabilities. Section 202 projects shall provide a range of services that are tailored to the needs of the residents. Owners of Section 811 projects shall ensure that the residents are provided with any necessary supportive services that address their individual needs.

(b) *General policy.* (1) *Supportive Housing for the Elderly.* A capital advance and contract for project rental assistance provided under this program shall be used for the purposes described in Section 202 (12 U.S.C. 1701q(b)).

(2) *Supportive Housing for Persons with Disabilities.* A capital advance and contract for project rental assistance provided under this program shall be used for the purposes described in Section 811 (42 U.S.C. 8013(b)).

(c) *Use of capital advance funds.* No part of the funds reserved may be transferred by the Sponsor, except to the Owner caused to be formed by the Sponsor. This action must be accomplished prior to issuance of a commitment for capital advance funding.

(d) *Amendments.* Subject to the availability of funds, HUD may amend the amount of an approved capital advance only after initial closing has occurred.

§ 891.105 Definitions.

The following definitions apply, as appropriate, throughout this part. Other terms with definitions unique to the particular program are defined in §§ 891.205, 891.305, and 891.505, as applicable.

Adjusted income as defined in part 5, subpart F of subtitle A of this title.

Affiliated entities means entities that the field office determines to be related to each other in such a manner that it is appropriate to treat them as a single entity. Such relationship shall include any identity of interest among such entities or their principals and the use by any otherwise unaffiliated entities of a single Sponsor or of Sponsors (or of a single Borrower or of Borrowers, as applicable) that have any identity of interest themselves or their principals.

Annual income as defined in part 5, subpart F of subtitle A of this title. In the case of an individual residing in an intermediate care facility for the developmentally disabled that is assisted under title XIX of the Social Security Act and this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For purposes of determining the total tenant payment, the income of such individuals shall be imputed to be the amount that the household would receive if assisted under title XVI of the Social Security Act.

Household (eligible household) means an elderly or disabled household (as defined in §§ 891.205 or 891.305, respectively), as applicable, that meets the project occupancy requirements approved by HUD and, if the household occupies an assisted unit, meets the very low-income requirements described in § 813.102 of this chapter, as modified by the definition of annual income in this section.

Housing and related facilities means rental housing structures constructed, rehabilitated, or acquired as permanent residences for use by elderly or disabled households, as applicable. The term includes necessary community space. Except for intermediate care facilities for individuals with developmental disabilities, this term does not include nursing homes, hospitals, intermediate care facilities, or transitional care facilities. For the Loans for the Elderly and Persons with Disabilities Program, see § 891.505.

Low-income families shall have the same meaning provided in section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a).

National Sponsor means a Sponsor that has one or more Section 202 or one or more Section 811 project(s) under reservation, construction, or management in two or more different HUD geographical regions.

Operating costs means HUD-approved expenses related to the provision of housing and includes:

(1) Administrative expenses, including salary and management expenses related to the provision of shelter and, in the case of the Section 202 Program, the coordination of services;

(2) Maintenance expenses, including routine and minor repairs and groundskeeping;

(3) Security expenses;

(4) Utilities expenses, including gas, oil, electricity, water, sewer, trash removal, and extermination services. The term ''*operating costs*'' excludes telephone services for households;

(5) Taxes and insurance;

(6) Allowances for reserves; and

(7) Allowances for services (in the Section 202 Program only).

Project rental assistance contract (PRAC) means the contract entered into by the Owner and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PRAC.

Project rental assistance payment means the payment made by HUD to

the Owner for assisted units as provided in the PRAC. The payment is the difference between the total tenant payment and the HUD-approved per unit operating expenses except for expenses related to items not eligible under design and cost provisions. An additional payment is made to a household occupying an assisted unit when the utility allowance is greater than the total tenant payment. A project rental assistance payment, known as a ''vacancy payment,'' may be made to the Owner when an assisted unit is vacant, in accordance with the terms of the PRAC.

Rehabilitation means the improvement of the condition of a property from deteriorated or substandard to good condition. Rehabilitation may vary in degree from the gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as rehabilitation under this definition. Rehabilitation may also include renovation, alteration, or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part, or the repair or replacement of major building systems or components in danger of failure. Improvement of an existing structure must require 15 percent or more of the estimated development cost to rehabilitate the project to a useful life of 55 years.

Replacement reserve account means a project account into which funds are deposited, which may be used only with the approval of the Secretary for repairs, replacement, capital improvements to the project, and retrofitting to reduce the number of units as provided by 24 CFR 891.405(d).

Section 202 means section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended, or the Supportive Housing for the Elderly Program authorized by that section.

Section 811 means section 811 of the National Affordable Housing Act (42 U.S.C. 8013), as amended, or the Supportive Housing for Persons with Disabilities Program authorized by that section.

Start-up expenses mean necessary costs (to plan a Section 202 or Section 811 project, as applicable) incurred by the Sponsor or Owner prior to initial closing.

Tenant payment to Owner equals total tenant payment less utility allowance, if any.

Total tenant payment means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.

Utility allowance is defined in part 5, subpart F of this subtitle A of this title and is determined or approved by HUD.

Very low-income families shall have the same meaning provided in section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a).

[61 FR 11956, Mar. 22, 1996, as amended at 66 FR 6225, Jan. 19, 2001; 66 FR 8175, Jan. 30, 2001; 68 FR 67320, Dec. 1, 2003]

§ 891.110 Allocation of authority.

In accordance with 24 CFR part 791, the Assistant Secretary will separately allocate the amounts available for capital advances for the development of housing for elderly households and for disabled households, less amounts set aside by Congress for specific types of projects, and for amendments of fund reservations made in prior years, for technical assistance, and for other contracted services.

§ 891.115 Notice of funding availability.

Following an allocation of authority under § 891.110, HUD shall publish a separate Notice of Funding Availability (NOFA) for the Section 202 Program of Supportive Housing for the Elderly and for the Section 811 Program of Supportive Housing for Persons with Disabilities in the FEDERAL REGISTER. The NOFAs will contain specific information on how and when to apply for the available capital advance authority, the contents of the application, and the selection process.

§ 891.120 Project design and cost standards.

In addition to the special project standards described in §§ 891.210 and 891.310, as applicable, the following standards apply:

(a) *Property standards.* Projects under this part must comply with HUD Minimum Property Standards, unless otherwise indicated in this part.

(b) *Accessibility requirements.* Projects under this part must comply with the Uniform Federal Accessibility Standards (See 24 CFR 40.7 for availability), section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations (24 CFR part 8), and for new construction multifamily housing projects, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100. For the Section 811 Program of Supportive Housing for Persons with Disabilities, see additional accessibility requirements in § 891.310(b).

(c) *Restrictions on amenities.* Projects must be modest in design. Amenities not eligible for HUD funding include individual unit balconies and decks, atriums, bowling alleys, swimming pools, saunas, jacuzzis, and dishwashers, trash compactors, and washers and dryers in individual units in supportive housing for the elderly or in independent living facilities for persons with disabilities. Sponsors may include certain excess amenities but they must pay for them from sources other than the section 202 or 811 capital advance. They must also pay for the continuing operating costs associated with any excess amenities from sources other than the Section 202 or 811 project rental assistance contract.

(d) *Smoke detectors.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hardwired smoke detector, in proper working condition, on each level of the unit.

(e) Projects under this part may have on their sites commercial facilities for the benefit of residents of the project and of the community in which the project is located, so long as the commercial facilities are not subsidized with funding under the supportive housing programs for the elderly or persons with disabilities. Such commercial facilities are considered public accommodations under Title III of the Americans with Disabilities Act and must be accessible under the requirements of that Act.

[61 FR 11956, Mar. 22, 1996, as amended at 68 FR 67320, Dec. 1, 2003]

§ 891.125 Site and neighborhood standards.

All sites must meet the following site and neighborhood requirements:

(a) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063 (27 FR 11527, 3 CFR, 1958–1963 Comp., p. 652); as amended by Executive Order 12259, (46 FR 1253, 3 CFR, 1980 Comp., p. 307)); section 504 of the Rehabilitation Act of 1973, and implementing HUD regulations.

(c) New construction sites must meet the following site and neighborhood requirements:

(1) The site must not be located in an area of minority concentration (or minority elderly concentration under the Section 202 Program) except as permitted under paragraph (c)(2) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to nonminority residents (or minority elderly to nonminority elderly residents, under the Section 202 Program) in the area.

(2) A project may be located in an area of minority concentration (or minority elderly concentration, under the Section 202 Program) only if:

(i) Sufficient, comparable opportunities exist for housing for minority elderly households or minority disabled households, as applicable (or minority families, for projects funded under §§ 891.655 through 891.790), in the income range to be served by the proposed project, outside areas of minority concentration (see paragraph (c)(3) of this section for further guidance on this criterion); or

(ii) The project is necessary to meet overriding housing needs that cannot

be met in that housing market area (see paragraph (c)(4) of this section for further guidance on this criterion).

(3)(i) *Sufficient* does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year which over a period of several years will approach an appropriate balance of housing opportunities within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for very low-income minority elderly or disabled households, as applicable (or low-income minority families, for projects funded under §§ 891.655 through 891.790), and in relation to the racial mix of the locality's population.

(ii) Units may be considered to be *comparable opportunities* if they have the same household type (elderly or disabled, as applicable) and tenure type (owner/renter); require approximately the same total tenant payment; serve the same income group; are located in the same housing market; and are in standard condition.

(iii) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for very low-income minority elderly or disabled households, as applicable (or low-income minority families, for projects funded under §§ 891.655 through 891.790), in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice:

(A) A significant number of assisted housing units are available outside areas of minority concentration.

(B) There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.

(C) There are racially integrated neighborhoods in the locality.

(D) Programs are operated by the locality to assist minority elderly or disabled households, as applicable (or minority families, for projects funded under §§ 891.655 through 891.790), that wish to find housing outside areas of minority concentration.

(E) Minority elderly or disabled households, as applicable (or minority families, for projects funded under §§ 891.655 through 891.790), have benefitted from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority households (or families) outside of areas of minority concentration.

(F) A significant proportion of minority elderly or disabled households, as applicable (or minority households, for projects funded under §§ 891.655 through 891.790), have been successful in finding units in nonminority areas under the Section 8 Certificate and Housing Voucher programs.

(G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(4) Application of the *overriding housing needs* criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a ''revitalizing area''). An *overriding housing need*, however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable, or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(d) The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(e) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(f) For the Section 811 Program of Supportive Housing for Persons with Disabilities, the additional site and neighborhood requirements in § 891.320 apply.

§ 891.130 Prohibited relationships.

This section shall apply to capital advances under the Section 202 Program and the Section 811 Program, as well as to loans financed under §§ 891.655 through 891.790.

(a) *Conflicts of interest.* (1) Officers and Board members of either the Sponsor or the Owner (or Borrower, as applicable) may not have any financial interest in any contract with the Owner or in any firm which has a contract with the Owner. This restriction applies so long as the individual is serving on the Board and for a period of three years following resignation or final closing, whichever occurs later.

(2) The following contracts between the Owner (or Borrower, as applicable) and the Sponsor or the Sponsor's nonprofit affiliate will not constitute a conflict of interest if no more than two persons salaried by the Sponsor or management affiliate serve as nonvoting directors on the Owner's board of directors:

(i) Management contracts (including associated management fees);

(ii) Supportive services contracts (including service fees) under the Supportive Housing for the Elderly Program; and

(iii) Developer (consultant) contracts.

(b) *Identity of interest.* An identity of interest between the Sponsor or Owner (or Borrower, as applicable) and any development team member or between development team members is prohibited until two years after final closing.

§ 891.135 Amount and terms of capital advances.

(a) *Amount of capital advances.* The amount of capital advances approved shall be the amount stated in the notification of fund reservation, including any adjustment required by HUD before the final closing. The amount of the capital advance may not exceed the appropriate development cost limit.

(b) *Estimated development cost.* The amount of the capital advance may not exceed the total estimated development cost of the project (as determined by HUD), less the incremental development cost associated with excess amenities and design features to be paid for by the Sponsor under § 891.120.

§ 891.140 Development cost limits.

(a) HUD shall use the development cost limits, established by Notice in the FEDERAL REGISTER and adjusted by locality, to calculate the fund reservation amount of the capital advance to be made available to individual Owners. Owners that incur actual development costs that are less than the amount of the initial fund reservation shall be entitled to retain 50 percent of the savings in a Replacement Reserve Account. Such percentage shall be increased to 75 percent for Owners that add energy efficiency features.

(b) The Replacement Reserve Account established under paragraph (a) of this section may only be used for repairs, replacements, and capital improvements to the project.

§ 891.145 Owner deposit (Minimum Capital Investment).

As a Minimum Capital Investment, the Owner must deposit in a special escrow account one-half of one percent (0.5%) of the HUD-approved capital advance, not to exceed $10,000, to assure the Owner's commitment to the housing. Under the Section 202 Program, if an Owner has a National Sponsor or a National Co-Sponsor, the Minimum Capital Investment shall be one-half of one percent (0.5%) of the HUD-approved capital advance, not to exceed $25,000.

§ 891.150 Operating cost standards.

HUD shall establish operating cost standards based on the average annual operating cost of comparable housing for the elderly or for persons with disabilities in each field office, and shall adjust the standard annually based on appropriate indices of increases in

housing costs such as the Consumer Price Index. The operating cost standards shall be developed based on the number of units. However, under the Section 811 Program and for projects funded under §§ 891.655 through 891.790, the operating cost standard for group homes shall be based on the number of residents. HUD may adjust the operating cost standard applicable to an approved project to reflect such factors as differences in costs based on location within the field office jurisdiction. The operating cost standard will be used to determine the amount of the project assistance initially reserved for a project.

§ 891.155 Other Federal requirements.

In addition to the requirements set forth in 24 CFR part 5, the following requirements in this § 891.155 apply to the Section 202 and Section 811 Programs, as well as projects funded under §§ 891.655 through 891.790. Other requirements unique to a particular program are described in subparts B and C of this part, as applicable.

(a) *Affirmative fair housing marketing.* (1) The affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and

(2) The fair housing advertising and poster guidelines at 24 CFR parts 109 and 110.

(b) *Environmental.* The National Environmental Policy Act of 1969, HUD's implementing regulations at 24 CFR part 50, including the related authorities described in 24 CFR 50.4. For the purposes of Executive Order No. 11988, Floodplain Management (42 FR 26951, 3 CFR, 1977 Comp., p. 117); as amended by Executive Order 12148 (44 FR 43239, 3 CFR, 1979 Comp., p. 412)), and implementing regulations in 24 CFR part 55, all applications for intermediate care facilities for persons with developmental disabilities shall be treated as critical actions requiring consideration of the 500-year floodplain.

(c) *Flood insurance.* The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).

(d) *Labor standards.* (1) All laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) employed by contractors and subcontractors in the construction (including rehabilitation) of housing with 12 or more units assisted under this part shall be paid wages at rates not less than those prevailing in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a–276a–5). A group home for persons with disabilities is not covered by the labor standards.

(2) Contracts involving employment of laborers and mechanics shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333).

(3) Sponsors, Owners, contractors, and subcontractors must comply with all related rules, regulations, and requirements.

(e) *Displacement, relocation, and real property acquisition.* (1) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Sponsors and Owners (or Borrowers, if applicable) shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(2) *Relocation assistance for displaced persons.* A displaced person must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655), as implemented by 49 CFR part 24.

(3) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(f) *Intergovernmental review.* The requirements for intergovernmental review in Executive Order No. 12372 (47 FR 30959, 3 CFR, 1982 Comp., p. 197; as amended by Executive Order No. 12416 (48 FR 15587, 3 CFR, 1983 Comp., p. 186)) and the implementing regulations at 24 CFR part 52 are applicable to this program.

(g) Lead-based paint. The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C.

4851–4856), and implementing regulations at part 35, subparts A, B, H, J, and R of this title apply to these programs.

[61 FR 11956, Mar. 22, 1996, as amended at 64 FR 50227, Sept. 15, 1999; 69 FR 34275, June 21, 2004]

§ 891.160 Audit requirements.

Nonprofits receiving assistance under this part are subject to the audit requirements in 24 CFR part 45.

§ 891.165 Duration of capital advance.

The duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

§ 891.170 Repayment of capital advance.

(a) *Interest prohibition and repayment.* A capital advance provided under this part shall bear no interest and its repayment shall not be required so long as the housing project remains available for very low-income elderly families or persons with disabilities, as applicable, in accordance with this part. The capital advance may not be repaid to extinguish the requirements of this part. To ensure its interest in the capital advance, HUD shall require a note and mortgage, use agreement, capital advance agreement and regulatory agreement from the Owner in a form to be prescribed by HUD.

(b) The transfer of physical and financial assets of any project under this part is prohibited, unless HUD gives prior written approval. Approval for transfer will not be granted unless HUD determines that the transfer to a private nonprofit corporation or consumer cooperative (under the Section 202 Program) or a nonprofit organization (under the Section 811 Program) is part of a transaction that will ensure the continued operation of the project for not less than 40 years (from the date of original closing) in a manner that will provide rental housing for very low-income elderly persons or persons with disabilities, as applicable, on terms at least as advantageous to existing and future tenants as the terms required by the original capital advance.

§ 891.175 Technical assistance.

For purposes of the Section 202 Program and the Section 811 Program, the Secretary shall make available appropriate technical assistance to assure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the programs.

§ 891.180 Physical condition standards; physical inspection requirements.

Housing assisted under this part must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

[63 FR 46580, Sept. 1, 1998]

§ 891.185 Preemption of rent control laws.

The Department finds that it is necessary and desirable to assist project owners to preserve the continued viability of each project assisted under this part (except subpart E) as a housing resource for very low-income elderly persons or persons with disabilities. The Department also finds that it is necessary to protect the substantial economic interest of the Federal Government in those projects. Therefore, the Department concludes that it is in the national interest to preempt, and it does hereby preempt, the entire field of rent regulation by local rent control boards or other authority acting pursuant to state or local law as it affects those projects. Part 246 of this title applies to projects covered by subpart E of this part.

[63 FR 64803, Nov. 23, 1998]

Subpart B—Section 202 Supportive Housing for the Elderly

§ 891.200 Applicability.

The requirements set forth in this subpart B apply to the Section 202 Program of Supportive Housing for the Elderly only, and to applicants, Sponsors, and Owners under that program.

§ 891.205 Definitions.

As used in this part in reference to the Section 202 Program, and in addition to the applicable definitions in § 891.105:

Acquisition means the purchase of (or otherwise obtaining title to) existing housing and related facilities.

Activities of daily living (ADL) means eating, dressing, bathing, grooming, and household management activities, as further described below:

(1) *Eating*—May need assistance with cooking, preparing, or serving food, but must be able to feed self;

(2) *Bathing*—May need assistance in getting in and out of the shower or tub, but must be able to wash self;

(3) *Grooming*—May need assistance in washing hair, but must be able to take care of personal appearance;

(4) *Dressing*—Must be able to dress self, but may need occasional assistance; and

(5) *Home management activities*—May need assistance in doing housework, grocery shopping, laundry, or getting to and from activities such as going to the doctor and shopping, but must be mobile. The mobility requirement does not exclude persons in wheelchairs or those requiring mobility devices.

Congregate space (hereinafter referred to as community space) shall have the meaning provided in section 202 (12 U.S.C. 1701q(h)(1)). The term ''*community spaces*'' excludes offices, halls, mechanical rooms, laundry rooms, parking areas, dwelling units, and lobbies. Community space does not include commercial areas.

Elderly person means a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy.

Frail elderly means an elderly person who is unable to perform at least three activities of daily living as defined in this section. Owners may establish additional eligibility requirements acceptable to HUD based on the standards in local supportive services programs.

Owner means a single-purpose private nonprofit organization that may be established by the Sponsor that will receive a capital advance and project rental assistance payments to develop and operate supportive housing for the elderly as its legal owner. Owner does not mean a public body or the instrumentality of any public body. The purposes of the Owner must include the promotion of the welfare of the elderly. The Owner may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom.

Private nonprofit organization means any incorporated private institution or foundation:

(1) That has tax-exempt status under section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*);

(2) No part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual;

(3) That has a governing board:

(i) The membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located; and

(ii) That is responsible for the operation of the housing assisted under this part; and

(4) That is approved by HUD as to administrative and financial responsibility.

Services expenses means those costs needed to provide the necessary services for the elderly tenants, which may include, but are not limited to: health related activities, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services as well as transportation as necessary to facilitate access to these services.

Sponsor means any private nonprofit entity, including a consumer cooperative:

(1) No part of the net earnings of which inures to the benefit of any private shareholder, member, founder, contributor, or individual;

(2) That is not controlled by, or under the direction of, persons or firms seeking to derive profit or gain therefrom; and

(3) That is approved by the Secretary as to administrative and financial capacity and responsibility. The term *Sponsor* does not mean a public body or the instrumentality of a public body.

[61 FR 11956, Mar. 22, 1996, as amended at 68 FR 67321, Dec. 1, 2003]

§ 891.210 Special project standards.

In addition to the applicable project standards in § 891.120, resident units in Section 202 projects are limited to efficiencies or one-bedroom units. If a resident manager is proposed for a project, up to two bedrooms could be provided for the resident manager unit.

§ 891.215 Limits on number of units.

(a) HUD may establish, through publication of a notice in the FEDERAL REGISTER, limits on the number of units that can be applied for by a Sponsor or Co-sponsor in a single geographical region and/or nationwide.

(b) Affiliated entities that submit separate applications shall be deemed to be a single entity for purposes of these limits.

(c) HUD may also establish, through publication of a notice in the FEDERAL REGISTER, the minimum size of a single project.

§ 891.220 Prohibited facilities.

Projects may not include facilities for infirmaries, nursing stations, or spaces for overnight care.

§ 891.225 Provision of services.

(a) In carrying out the provisions of this part, HUD shall ensure that housing assisted under this part provides services as described in section 202 (12 U.S.C. 1701q(g)(1)).

(b)(1) HUD shall ensure that Owners have the managerial capacity to perform the coordination of services described in 12 U.S.C. 1701q(g)(2).

(2) Any cost associated with this paragraph shall be an eligible cost under the contract for project rental assistance. Any cost associated with the employment of a service coordinator shall also be an eligible cost, except if the project is receiving congregate housing services assistance under section 802 of the National Affordable Housing Act. The HUD-approved service costs will be an eligible expense to be paid from project rental assistance, not to exceed $15 per unit per month. The balance of service costs shall be provided from other sources, which may include co-payment by the tenant receiving the service. Such co-payment shall not be included in the Total Tenant Payment.

§ 891.230 Selection preferences.

For purposes of the Section 202 Program, the selection preferences in 24 CFR part 5, subpart D apply.

Subpart C—Section 811 Supportive Housing for Persons With Disabilities

§ 891.300 Applicability.

The requirements set forth in this subpart C apply to the Section 811 Program of Supportive Housing for Persons with Disabilities only, and to applicants, Sponsors, and Owners under that program.

§ 891.305 Definitions.

As used in this part in reference to the Section 811 Program, and in addition to the applicable definitions in § 891.105:

Acquisition means the purchase of (or otherwise obtaining title to) existing structures to be used as housing for persons with disabilities.

Congregate space (hereinafter referred to as community space) means space for multipurpose rooms, common areas, and other space necessary for the provision of supportive services. Community space does not include commercial areas.

Disabled household means a household composed of:

(1) One or more persons at least one of whom is an adult (18 years or older) who has a disability;

(2) Two or more persons with disabilities living together, or one or more such persons living with another person who is determined by HUD, based upon a certification from an appropriate professional (e.g., a rehabilitation counselor, social worker, or licensed physician) to be important to their care or well being; or

(3) The surviving member or members of any household described in paragraph (1) of this definition who were living in a unit assisted under this part, with the deceased member of the household at the time of his or her death.

Nonprofit organization means any institution or foundation:

(1) That has tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*);

(2) No part of the net earnings of which inures to the benefit of any Board member, founder, contributor, or individual;

(3) That has a governing board;

(i) The membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located (including persons with disabilities); and

(ii) That is responsible for the operation of the housing assisted under this part; and

(4) That is approved by HUD as to financial responsibility.

Owner means a single-purpose nonprofit organization established by the Sponsor that will receive a capital advance and project rental assistance payments to develop and operate, as its legal owner, supportive housing for persons with disabilities under this part. The purposes of the Owner must include the promotion of the welfare of persons with disabilities. The Owner may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom.

Person with disabilities shall have the meaning provided in Section 811 (42 U.S.C. 8013(k)(2)). The term ''*person with disabilities*'' shall also include the following:

(1) A person who has a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5)), i.e., if he or she has a severe chronic disability which:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age twenty-two;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitation in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(2) A person with a chronic mental illness, i.e., a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and which impairment could be improved by more suitable housing conditions.

(3) A person infected with the human acquired immunodeficiency virus (HIV) and a person who suffers from alcoholism or drug addiction, provided they meet the definition of ''*person with disabilities*'' in Section 811 (42 U.S.C. 8013(k)(2)). A person whose sole impairment is a diagnosis of HIV positive or alcoholism or drug addiction (i.e., does not meet the qualifying criteria in section 811 (42 U.S.C. 8013(k)(2)) will not be eligible for occupancy in a section 811 project.

Sponsor means any nonprofit entity:

(1) That has tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*);

(2) No part of the net earnings of which inures to the benefit of any private shareholder, member, founder, contributor or individual;

(3) That is not controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom;

(4) That has a governing board the membership of which is selected in a manner to assure that there is significant representation of the views of persons with disabilities; and

(5) That is approved by HUD as to administrative and financial capacity and responsibility.

[61 FR 11956, Mar. 22, 1996, as amended at 68 FR 67321, Dec. 1, 2003]

§ 891.310 Special project standards.

In addition to the applicable project standards in § 891.120, the following special standards apply to the Section 811 Program and to projects funded under §§ 891.655 through 891.790:

(a) *Minimum group home standards.* Each group home must provide a minimum of 290 square feet of prorated space for each resident, including a minimum area of 80 square feet for each resident in a shared bedroom (with no more than two residents occupying a shared bedroom) and a minimum area of 100 square feet for a single occupant bedroom; at least one full bathroom for every four residents; space for recreation at indoor and outdoor locations on the project site; and sufficient storage for each resident in the bedroom and other storage space necessary for the operation of the home. If the project involves acquisition (with or without rehabilitation), the structure must at least be in compliance with applicable State requirements. In the absence of such requirements, the above standards shall apply.

(b) *Additional accessibility requirements.* In addition to the accessibility requirements in § 891.120(b), the following requirements apply to the Section 811 Program and to projects funded under §§ 891.655 through 891.790:

(1) All entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

(2) In projects for chronically mentally ill individuals, a minimum of 10 percent of all dwelling units in an independent living facility (or 10 percent of all bedrooms and bathrooms in a group home, but at least one of each such space), must be designed to be accessible or adaptable for persons with disabilities.

(3) In projects for developmentally disabled or physically disabled persons, all dwelling units in an independent living facility (or all bedrooms and bathrooms in a group home) must be designed to be accessible or adaptable for persons with physical disabilities. A project involving acquisition and/or rehabilitation may provide a lesser number if:

(i) The cost of providing full accessibility makes the project financially infeasible;

(ii) Fewer than one-half of the intended occupants have mobility impairments; and

(iii) The project complies with the requirements of 24 CFR 8.23.

(4) For the purposes of paragraph (b) of this section, the following definitions apply:

(i) *Accessible* describes a site, building, facility, or portion thereof that complies with the Uniform Federal Accessibility Standards and that can be approached, entered, and used by physically disabled people;

(ii) *Adaptability* means the ability of certain building spaces and elements, such as kitchen counters, sinks, and grab bars, to be added or altered so as to accommodate the needs of either disabled or nondisabled persons, or to accommodate the needs of either disabled or nondisabled persons, or to accommodate the needs of persons with different types or degrees of disability.

§ 891.315 Prohibited facilities.

This section shall apply to capital advances under the Section 811 Program, as well as loans financed under subpart E of this part. Project facilities may not include infirmaries, nursing stations, spaces dedicated to the delivery of medical treatment or physical therapy, padded rooms, or space for respite care or sheltered workshops, even if paid for from sources other than the HUD capital advance or loan. Except for office space used by the Owner (or Borrower, if applicable) exclusively for the administration of the project, project facilities may not include office space.

§ 891.320 Site and neighborhood standards.

In addition to the requirements in § 891.125 and § 891.680, if applicable, the following site and neighborhood requirements apply to the Section 811 Program:

(a) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for very low-income workers (or low-income workers, as applicable), must not be excessive.

(b) Projects should be located in neighborhoods where other family housing is located. Projects should not

be located adjacent to the following facilities, or in areas where such facilities are concentrated: schools or daycare centers for persons with disabilities, workshops, medical facilities, or other housing primarily serving persons with disabilities. Not more than one group home may be located on any one site and no such home may be located on a site contiguous to another site containing such a home.

§ 891.325 Lead-based paint requirements.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, J, and R of this title apply to the section 811 program and to projects funded under §§ 891.655 through 891.790.

[69 FR 34276, June 21, 2004]

Subpart D—Project Management

§ 891.400 Responsibilities of owner.

(a) *Marketing.* (1) The Owner must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability of the first unit or occupancy of the group home. Market activities shall include the provision of notices of the availability of housing under the program to operators of temporary housing for the homeless in the same housing market.

(2) Marketing must be done in accordance with a HUD-approved affirmative fair housing marketing plan and all Federal, State or local fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible households of similar income levels in the same housing market area have a like range of housing choices available to them regardless of discriminatory considerations such as their race, color, creed, religion, familial status, disability, sex or national origin.

(3) At the time of PRAC execution, the Owner must submit to HUD a list of leased and unleased assisted units (or in the case of a group home, leased and unleased residential spaces) with a justification for the unleased units or residential spaces, in order to qualify for vacancy payments for the unleased units or residential spaces.

(b) *Management and maintenance.* The Owner is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for households occupying assisted units or residential spaces, collection of tenant payments, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All functions must be performed in compliance with equal opportunity requirements.

(c) *Contracting for services.* (1) With HUD approval, the Owner may contract with a private or public entity for performance of the services or duties required in paragraphs (a) and (b) of this section. However, such an arrangement does not relieve the Owner of responsibility for these services and duties. All such contracts are subject to the restrictions governing prohibited contractual relationships described in § 891.130. (These prohibitions do not extend to management contracts entered into by the Owner with the Sponsor or its nonprofit affiliate.)

(2) Consistent with the objectives of Executive Order No. 11625 (36 FR 19967, 3 CFR, 1971–1975 Comp., p. 616; as amended by Executive Order No. 12007 (42 FR 42839, 3 CFR, 1977 Comp., p. 139)); Executive Order No. 12432 (48 FR 32551, 3 CFR, 1983 Comp., p. 198); and Executive Order No. 12138 (44 FR 29637, 3 CFR, 1979 Comp., p. 393; as amended by Executive Order No. 12608 (52 FR 34617, 3 CFR, 1987 Comp., p. 245)), the Owner will promote awareness and participation of minority and women's business enterprises in contracting and procurement activities.

(d) *Submission of financial and operating statements.* The Owner must submit to HUD:

(1) Within 60 days after the end of each fiscal year of project operations,

financial statements for the project audited by an independent public accountant and in the form required by HUD; and

(2) Other statements regarding project operation, financial conditions and occupancy as HUD may require to administer the PRAC and to monitor project operations.

(e) *Use of project funds.* The Owner shall maintain a separate interest bearing project fund account in a depository or depositories which are members of the Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund and shall deposit all tenant payments, charges, income and revenues arising from project operation or ownership to this account. All project funds are to be deposited in Federally insured accounts. All balances shall be fully insured at all times, to the maximum extent possible. Project funds must be used for the operation of the project (including required insurance coverage), and to make required deposits to the replacement reserve under § 891.405, in accordance with HUD-approved budget. Any remaining project funds in the project funds account (including earned interest) following the expiration of the fiscal year shall be deposited in a Federally-insured residual receipts account within 60 days following the end of the fiscal year. Withdrawals from this account may be made only for project purposes and with the approval of HUD. If there are funds remaining in the residual receipts account when the mortgage is satisfied, such funds shall be returned to HUD.

(f) *Reports.* The Owner shall submit such reports as HUD may prescribe to demonstrate compliance with applicable civil rights and equal opportunity requirements. See § 891.410(a).

(Approved by the Office of Management and Budget under control number 2502–0470)

§ 891.405 Replacement reserve.

(a) *Establishment of reserve.* The Owner shall establish and maintain a replacement reserve to aid in funding extraordinary maintenance and repair and replacement of capital items.

(b) *Deposits to reserve.* The Owner shall make monthly deposits to the replacement reserve in an amount determined by HUD.

(c) *Level of reserve.* The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve reach that level, the amount of the deposit to the reserve may be reduced with the approval of HUD.

(d) *Administration of reserve.* Replacement reserve funds must be deposited with HUD or in a Federally-insured depository in an interest-bearing account(s) whose balances(s) are fully insured at all times. All earnings including interest on the reserve must be added to the reserve. Funds may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD. With HUD approval, reserves may be used to reduce the number of dwelling units, provided that the purpose for the reduction is the retrofitting of obsolete or unmarketable units.

[61 FR 11956, Mar. 22, 1996, as amended at 68 FR 67321, Dec. 1, 2003]

§ 891.410 Selection and admission of tenants.

(a) *Written procedures.* The Owner shall adopt written tenant selection procedures that ensure nondiscrimination in the selection of tenants and that are consistent with the purpose of improving housing opportunities for very low-income elderly persons and persons with disabilities (as applicable); and reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. Owners shall promptly inform in writing any rejected applicant of the grounds for any rejection. Additionally, Owners shall maintain a written, chronological waiting list showing the name, race, gender, ethnicity, and date of each person applying for the program.

(b) *Application for admission.* The Owner must accept applications for admission to the project in the form prescribed by HUD, and (under the Section 202 Program only) is obligated to confirm all information provided by applicant families on the application. Applicant households applying for assisted

units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission. Applicant households must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B. Applicant families must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B. Both the Owner and the applicant household must complete and sign the application for admission. On request, the Owner must furnish copies of all applications for admission to HUD.

(c) *Determination of eligibility and selection of tenants.* (1) The Owner is responsible for determining whether applicants are eligible for admission and for the selection of households. To be eligible for admission, an applicant must be an elderly person or a person with disabilities, as applicable (as defined in §§891.205 and 891.305, respectively); must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B; must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B; and must be a very low-income family, as defined in §891.105.

(2) Under the Section 811 Program:

(i) In order to be eligible for admission, the applicant must also meet any project occupancy requirements approved by HUD.

(ii) Owners shall make selections in a nondiscriminatory manner without regard to considerations such as race, religion, color, sex, national origin, familial status, or disability. An Owner may, with the approval of the Secretary, limit occupancy within housing developed under this part 891 to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment. However, the Owner must permit occupancy by any qualified person with a disability who could benefit from the housing and/or services provided regardless of the person's disability.

(d) *Unit assignment.* If the Owner determines that the household is eligible and is otherwise acceptable and units (or residential spaces in a group home) are available, the Owner will assign the household a unit or residential space in a group home. If the household will occupy an assisted unit, the Owner will assign the household a unit of the appropriate size in accordance with HUD's general occupancy guidelines. If no suitable unit (or residential space in a group home) is available, the Owner will place the household on a waiting list for the project and notify the household when a suitable unit or residential space may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the Owner may advise the applicant that no additional applications for admission are being considered for that reason.

(e) *Ineligibility determination.* If the Owner determines that an applicant is ineligible for admission or the Owner is not selecting the applicant for other reasons, the Owner will promptly notify the applicant in writing of the determination, the reasons for the determination, and the applicant's right to request a meeting to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by a member of the Owner's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights (e.g., rights granted under Federal, State or local civil rights laws) if the applicant believes he or she is being discriminated against on a prohibited basis.

(f) *Records.* Records on applicants and approved eligible households, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be retained for three years. See §891.410(a).

(g) *Reexamination of household family income and composition*—(1) *Regular reexaminations.* The Owner must reexamine the income and composition of the household at least every 12 months. Upon verification of the information, the Owner must make appropriate adjustments in the total tenant payment in accordance with part 813 of this

chapter, as modified by § 891.105, and must determine whether the household's unit size is still appropriate. The Owner must adjust tenant payment and the project rental assistance payment, and must carry out any unit transfer in accordance with HUD standards. At the time of reexamination under paragraph (g)(1) of this section, the Owner must require the household to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B. For requirements regarding the signing and submitting of consent forms by families for obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5, subpart B.

(2) *Interim reexaminations.* The household must comply with the provisions in its lease regarding interim reporting of changes in income. If the Owner receives information concerning a change in the household's income or other circumstances between regularly scheduled reexaminations, the Owner must consult with the household and make any adjustments determined to be appropriate. See 24 CFR part 5, subpart B for the requirements for the disclosure and verification of Social Security Number at interim reexaminations involving new household members. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5, subpart B. Any change in the household's income or other circumstances that result in an adjustment in the total tenant payment, tenant payment, and project rental assistance payment must be verified.

(3) *Continuation of project rental assistance payment.* (i) A household shall remain eligible for project rental assistance payment until the total tenant payment equals or exceeds the gross rent (or a pro rata share of the gross rent in a group home). The termination of subsidy eligibility will not affect the household's other rights under its lease. Project rental assistance payment may be resumed if, as a result of changes in income, rent or other relevant circumstances during the term of the PRAC, the household meets the income eligibility requirements of 24 CFR part 813 (as modified in § 891.105) and project rental assistance is available for the unit or residential space under the terms of the PRAC. The household will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (c) of this section.

(ii) A household's eligibility for project rental assistance payment may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including information related to disclosure and verification of Social Security Numbers, as provided by 24 CFR part 5, subpart B or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 5, subpart B).

[61 FR 11956, Mar. 22, 1996, as amended at 65 FR 16724, Mar. 29, 2000]

§ 891.415 Obligations of the household or family.

This section shall apply to capital advances under the Section 202 Program and the Section 811 Program, as well as loans financed under subpart E of this part.

(a) *Requirements.* The household (or family, as applicable) shall:

(1) Pay amounts due under the lease directly to the Owner (or Borrower, as applicable);

(2) Supply such certification, release of information, consent, completed forms or documentation as the Owner (or Borrower, as applicable) or HUD determines necessary, including information and documentation relating to the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 5, subpart B, and the signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B;

(3) Allow the Owner (or Borrower, as applicable) to inspect the dwelling unit or residential space at reasonable times and after reasonable notice;

(4) Notify the Owner (or Borrower, as applicable) before vacating the dwelling unit or residential space; and

(5) Use the dwelling unit or residential space solely for residence by the household (or family, as applicable) and as the household's (or family's) principal place of residence.

(b) *Prohibitions.* The household (or family, as applicable) shall not:

(1) Assign the lease or transfer the unit or residential space; or

(2) Occupy, or receive assistance for the occupancy of, a unit or residential space governed under this part 891 while occupying, or receiving assistance for the occupancy of, another unit assisted under any Federal housing assistance program, including any section 8 program.

(Approved by the Office of Management and Budget under control number 2502–0470)

§ 891.420 Overcrowded and underoccupied units.

If the Owner determines that because of change in household size, an assisted unit is smaller than appropriate for the eligible household to which it is leased, or that the assisted unit is larger than appropriate, project rental assistance payment with respect to the unit will not be reduced or terminated until the eligible household has been relocated to an appropriate alternate unit. If possible, the Owner will, as promptly as possible, offer the household an appropriate alternate unit. The Owner may receive vacancy payments for the vacated unit if the Owner complies with the requirements of § 891.445.

§ 891.425 Lease requirements.

This section shall apply to capital advances under the Section 202 Program and the Section 811 Program, as well as loans financed under subpart E of this part.

(a) *Term of lease.* The term of the lease may not be less than one year. Unless the lease has been terminated by appropriate action, upon expiration of the lease term, the household and Owner (or family and Borrower, as applicable) may execute a new lease for a term not less than one year, or may take no action. If no action is taken, the lease will automatically be renewed for successive terms of one month.

(b) *Termination by the household (or family, as applicable).* All leases may contain a provision that permits the household (or family) to terminate the lease upon 30 days advance notice. A lease for a term that exceeds one year must contain such provision.

(c) *Form.* The Owner (or Borrower, as applicable) shall use the lease form prescribed by HUD. In addition to required provisions of the lease form, the Owner (or Borrower) may include a provision in the lease permitting the Owner (or Borrower) to enter the leased premises at any time without advance notice when there is reasonable cause to believe that an emergency exists or that health or safety of a family member is endangered.

§ 891.430 Denial of admission, termination of tenancy, and modification of lease.

(a) The provisions of part 5, subpart I, of this title apply to Section 202 and Section 811 capital advance projects.

(b) The provisions of part 247 of this title apply to all decisions by an owner to terminate the tenancy or modify the lease of a household residing in a unit (or residential space in a group home).

[66 FR 28798, May 24, 2001]

§ 891.435 Security deposits.

This section shall apply to capital advances under the Section 202 Program and the Section 811 Program, as well as loans financed under subpart E of this part. For loans financed under subpart E of this part, the requirements in § 891.635 also apply.

(a) *Collection of security deposits.* At the time of the initial execution of the lease, the Owner (or Borrower, as applicable) will require each household (or family, as applicable) occupying an assisted unit or residential space in a group home to pay a security deposit in an amount equal to one month's tenant payment or $50, whichever is greater. The household (or family) is expected to pay the security deposit from its own resources and other available public or private resources. The Owner (or Borrower) may collect the security deposit on an installment basis.

(b) *Security deposit provisions applicable to units—* (1) *Administration of security deposit.* The Owner (or Borrower, as applicable) must place the security deposits in a segregated interest-bearing

account. The amount of the segregated, interest-bearing account maintained by the Owner (or Borrower) must at all times equal the total amount collected from the households (or families, as applicable) then in occupancy plus any accrued interest and less allowable administrative cost adjustments. The Owner (or Borrower) must comply with any applicable State and local laws concerning interest payments on security deposits.

(2) *Household (or family, as applicable) notification requirement.* In order to be considered for the refund of the security deposit, a household (or family) must provide the Owner (or Borrower, as applicable) with a forwarding address or arrange to pick up the refund.

(3) *Use of security deposit.* The Owner (or Borrower, as applicable), subject to State and local law and the requirements of paragraphs (b)(1) and (b)(3) of this section, may use the household's (or family's, as applicable) security deposit balance as reimbursement for any unpaid amounts that the household (or family) owes under the lease. Within 30 days (or shorter time if required by State or local law) after receiving notification under paragraph (b)(2) of this section, the Owner (or Borrower) must:

(i) Refund to a household (or family) that does not owe any amount under the lease the full amount of the household's (or family's) security deposit balance;

(ii) Provide to a household (or family) owing amounts under the lease a list itemizing each amount, along with a statement of the household's (or family's) rights under State and local law. If the amount that the Owner (or Borrower) claims is owed by the household (or family) is less than the amount of the household's (or family's) security deposit balance, the Owner (or Borrower) must refund the excess balance to the household (or family). If the Owner (or Borrower) fails to provide the list, the household (or family) will be entitled to the refund of the full amount of the household's (or family's) security deposit balance.

(4) *Disagreements.* If a disagreement arises concerning reimbursement of the security deposit, the household (or family, if applicable) will have the right to present objections to the Owner (or Borrower, if applicable) in an informal meeting. The Owner (or Borrower) must keep a record of any disagreements and meetings in a tenant file for inspection by HUD. The procedures of this paragraph do not preclude the household (or family) from exercising its rights under State or local law.

(5) *Decedent's interest in security deposit.* Upon the death of a member of a household (or family, as applicable), the decedent's interest, if any, in the security deposit will be governed by State or local law.

(c) *Reimbursement by HUD for assisted units.* If the household's (or family's, if applicable) security deposit balance is insufficient to reimburse the Owner (or Borrower, if applicable) for any amount that the household (or family) owes under the lease for an assisted unit or residential space, and the Owner (or Borrower) has provided the household (or family) with the list required by paragraph (b)(3)(ii) of this section, the Owner (or Borrower) may claim reimbursement from HUD for an amount not to exceed the lesser of:

(1) The amount owed the Owner (or Borrower); or

(2) One month's per unit operating cost (or contract rent, if applicable), minus the amount of the household's (or family's) security deposit balance. Any reimbursement under this section will be applied first toward any unpaid tenant payment (or rent, if applicable) due under the lease. No reimbursement may be claimed for any unpaid tenant payment (or rent) for the period after termination of the tenancy. The Owner (or Borrower) may be eligible for vacancy payments following a vacancy in accordance with the requirements of § 891.445 (or §§ 891.650 or 891.790, as applicable).

§ 891.440 Adjustment of utility allowances.

This section shall apply to projects funded under the Section 202 Program, to independent living complexes funded under Section 811 Program, and to projects financed with loans under subpart E of this part. The Owner (or Borrower, as applicable) must submit an

analysis of any utility allowances applicable. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the utility allowances for assisted units. In addition, when utility rate changes would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Owner (or Borrower) must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Owner (or Borrower) will promptly notify affected households (or families, as applicable) and make a corresponding adjustment of the tenant payment (or rent, as applicable) and the amount of the project rental assistance payment (or housing or project assistance payment, as applicable).

(Approved by the Office of Management and Budget under control number 2502–0470)

§ 891.445 Conditions for receipt of vacancy payments for assisted units.

(a) *General.* Vacancy payments under the PRAC will not be made unless the conditions for receipt of these project rental assistance payments set forth in this section are fulfilled.

(b) *Vacancies during rent-up.* For each unit (or residential space in a group home) that is not leased as of the effective date of the PRAC, the Owner is entitled to vacancy payments in the amount of 50 percent of the per unit operating cost (or pro rata share of the group home operating cost) for the first 60 days of vacancy, if the Owner:

(1) Conducted marketing in accordance with § 891.400(a) and otherwise complied with § 891.400;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(c) *Vacancies after rent-up.* If an eligible household vacates an assisted unit (or residential space in a group home) the Owner is entitled to vacancy payments in the amount of 50 percent of the approved per unit operating cost (or pro rata share of the group home operating cost) for the first 60 days of vacancy if the Owner:

(1) Certifies that it did not cause the vacancy by violating the lease, the PRAC, or any applicable law;

(2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 891.400(a) (2) and (3) and § 891.445(b) (2) and (3); and

(4) For any vacancy resulting from the Owner's eviction of an eligible household, certifies that it has complied with § 891.430.

(d) *Prohibition of double compensation for vacancies.* If the Owner collects payments for vacancies from other sources (tenant payment, security deposits, payments under § 891.435(c), or governmental payments under other programs), the Owner shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed the approved per unit operating cost.

§ 891.450 HUD review.

HUD shall conduct periodic on-site management reviews of the Owner's compliance with the requirements of this part.

Subpart E—Loans for Housing for the Elderly and Persons with Disabilities

§ 891.500 Purpose and policy.

(a) *Purpose.* The program under subpart E of this part provides direct Federal loans under section 202 of the Housing Act of 1959 (42 U.S.C. 1701q) for housing projects serving elderly or handicapped families and individuals. The housing projects shall provide the necessary services for the occupants which may include, but are not limited to: Health, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services.

(b) *General policy.* A loan made under subpart E of this part shall be used to

finance the construction or the substantial rehabilitation of projects for elderly or handicapped families, or for the acquisition with or without moderate rehabilitation of existing housing and related facilities for group homes for nonelderly handicapped individuals.

(c) *Applicability*. Subpart E of this part applies to all fund reservations made before October 1, 1990, except for loans not initially closed that were converted to capital advances. Specifically, § 891.520 through 891.650 of subpart E apply to projects for elderly or handicapped families that received reservations under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and housing assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq*). Sections 891.655 through 891.790 of subpart E apply to projects for nonelderly handicapped families receiving reservations under section 202 and project assistance payments under section 202(h) of the Housing Act of 1959.

§ 891.505 Definitions.

For the purposes of this subpart E:

Act means section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q).

Borrower means a private nonprofit corporation or a nonprofit consumer cooperative that may be established by the Sponsor, which will obtain a Section 202 loan and execute a mortgage in connection therewith as the legal owner of the project. ''*Borrower*'' does not mean a public body or the instrumentality of any public body. The purposes of the Borrower must include the promotion of the welfare of elderly and/or handicapped families. No part of the net earnings of the Borrower may inure to the benefit of any private shareholder, contributor, or individual, and the Borrower may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. Because of the nonprofit nature of the Section 202 program, no officer or director, or trustee, member, stockholder or authorized representative of the Borrower is permitted to have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever.

Elderly family means:

(1) Families of two or more persons the head of which (or his or her spouse) is 62 years of age or older;

(2) The surviving member or members of any family described in paragraph (1) of this definition living in a unit assisted under subpart E of this part with the deceased member of the family at the time of his or her death;

(3) A single person who is 62 years of age or older; or

(4) Two or more elderly persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well being.

Handicapped family means:

(1) Families of two or more persons the head of which (or his or her spouse) is handicapped;

(2) The surviving member or members of any family described in paragraph (1) of this definition living in a unit assisted under subpart E of this part with the deceased member of the family at the time of his or her death;

(3) A single handicapped person over the age of 18; or

(4) Two or more handicapped persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well being.

Handicapped person or individual means:

(1) Any adult having a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions.

(2) A person with a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5), i.e., a person with a severe chronic disability that:

(i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;

(ii) Is manifested before the person attains age twenty-two;

(iii) Is likely to continue indefinitely;

(iv) Results in substantial functional limitation in three or more of the following areas of major life activity:

(A) Self-care;

(B) Receptive and expressive language;

(C) Learning;

(D) Mobility;

(E) Self-direction;

(F) Capacity for independent living;

(G) Economic self-sufficiency; and

(v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(3) A person with a chronic mental illness, i.e., if he or she has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and whose impairment could be improved by more suitable housing conditions.

(4) Persons infected with the human acquired immunodeficiency virus (HIV) who are disabled as a result of infection with the HIV are eligible for occupancy in section 202 projects designed for the physically disabled, developmentally disabled, or chronically mentally ill depending upon the nature of the person's disability. A person whose sole impairment is alcoholism or drug addition (i.e., who does not have a developmental disability, chronic mental illness, or physical disability that is the disabling condition required for eligibility in a particular project) will not be considered to be disabled for the purposes of the section 202 program.

Housing and related facilities means rental or cooperative housing structures constructed or substantially rehabilitated as permanent residences for use by elderly or handicapped families, or acquired with or without moderate rehabilitation for use by nonelderly handicapped families as group homes. The term includes structures suitable for use by families residing in the project or in the area, such as cafeterias or dining halls, community rooms, or buildings, or other essential service facilities. In the case of acquisition with or without moderate rehabilitation, at least three years must have elapsed from the later of the date of completion of the project or the beginning of occupancy to the date of the application for a Section 202 fund reservation. Except for intermediate care facilities for the mentally retarded and individuals with related conditions, this term does not include nursing homes, hospitals, intermediate care facilities, or transitional care facilities.

Nonelderly handicapped family means a handicapped family in which the head of the family (and spouse, if any) is less than 62 years of age at the time of the family's initial occupancy of a project.

Section 8 Program means the housing assistance payments program that implements section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f note).

§ 891.510 Displacement, relocation, and real property acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of subpart E of this part, Sponsors and Borrowers shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under subpart E of this part.

(b) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655), as implemented by 49 CFR part 24. A displaced person shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–3619). If the comparable replacement dwellings are located in areas of minority concentration, minority persons also must be given, if possible, referrals to suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(c) *Real property acquisition requirements.* The acquisition of real property

for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Appeals.* A person who disagrees with the Sponsor's/Borrower's determination concerning whether the person qualifies as a *''displaced person,''* or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the Sponsor/Borrower. A low-income person who is dissatisfied with the Sponsor's/Borrower's determination on his or her appeal may submit a written request for review of that determination to the HUD field office.

(e) *Responsibility of Sponsor/Borrower.* The Sponsor/Borrower shall certify that it will comply (i.e., provide assurance of compliance, as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to comply with these provisions. The Sponsor/Borrower shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The Sponsor/Borrower shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.

(f) *Definition of a displaced person.* (1) For purposes of this section, the term *displaced person* means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project including any permanent move from the real property that is made:

(i) After notice by the Sponsor/Borrower to move permanently from the property if the move occurs on or after:

(A) The date of the submission of an application to HUD that is later approved, if the Sponsor has control of an appropriate site; or

(B) The date that the Sponsor obtains control of an approvable site, if such control is obtained after the submission of an application to HUD:

(ii) Before the date described in paragraph (f)(1)(i) of this section, if the Sponsor, Borrower or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project;

(iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs;

(A) The tenant moves after execution of the Agreement between the Sponsor/Borrower and HUD, and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(*1*) The tenant's monthly rent and estimated average monthly utility costs before the Agreement; or

(*2*) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(B) The tenant is required to relocate temporarily, does not return to the building/complex, and either:

(*1*) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(*2*) Other conditions of the temporary relocation are not reasonable; or

(C) The tenant is required to move to another dwelling in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, however, a person does not qualify as a ''displaced person'' (and is not eligible for relocation assistance at URA levels), if:

(i) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, or local law, or other good cause, and

HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.

(ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., displacement, temporary relocation or a rent increase) and the fact that he or she will not qualify as a displaced person as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;

(3) The Sponsor/Borrower may request, at any time, a HUD determination of whether a displacement is or would be covered by this section.

§ 891.515 Audit requirements.

Nonprofits receiving assistance under this part are subject to the audit requirements in 24 CFR part 45.

SECTION 202 PROJECTS FOR THE ELDERLY OR HANDICAPPED—SECTION 8 ASSISTANCE

§ 891.520 Definitions applicable to 202/8 projects.

The following definitions apply to projects for eligible families receiving assistance under section 8 of the United States Housing Act of 1937 in addition to reservations under section 202 of the Housing Act of 1959 (202/8 projects):

Adjusted income as defined in part 5, subpart F of subtitle A of this title.

Assisted unit means a dwelling unit eligible for assistance under a HAP contract.

Contract rent means the total amount of rent specified in the HAP contract as payable by HUD and the tenant to the Borrower for an assisted unit.

Family (eligible family) means an elderly or handicapped family that meets the project occupancy requirements approved by HUD and, if the family occupies an assisted unit, meets the requirements described in part 813 of this chapter.

Gross rent is defined in part 5, subpart F of subtitle A of this title.

HAP contract (housing assistance payments contract) means the contract entered into by the Borrower and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the HAP contract.

Housing assistance payment means the payment made by HUD to the Borrower for assisted units as provided in the HAP contract. The payment is the difference between the contract rent and the tenant rent. An additional payment is made to a family occupying an assisted unit when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a ''vacancy payment,'' may be made to the Borrower when an assisted unit is vacant, in accordance with the terms of the HAP contract.

Project account means a specifically identified and segregated account for each project that is established in accordance with § 891.570(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the HAP contract each year.

Project occupancy requirements means that eligible populations to be served under the Section 202 program are qualified individuals or families whose head of household or spouse is elderly, physically handicapped, developmentally disabled, or chronically mentally ill. Projects are designed to meet the special needs of the particular tenant population that the Borrower was selected to serve. Individuals from one eligible group may not be accepted for occupancy in a project designed for a different tenant group. However, a Sponsor can propose to house eligible tenant groups other than the one it was selected to serve, but must apply to the HUD field office for permission to do so, based on a plan that demonstrates that it can adequately serve the proposed tenant group. Upon review and recommendation by the field office, HUD Headquarters will approve or disapprove the request.

Rent, in the case of a unit in a cooperative project, means the carrying charges payable to the cooperative with respect to occupancy of the unit.

Tenant rent means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.

Total tenant payment means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.

Utility allowance is defined in part 5, subpart F of subtitle A of this title and is determined or approved by HUD.

Utility reimbursement is defined in part 5, subpart F of subtitle A of this title.

Vacancy payment means the housing assistance payment made to the Borrower by HUD for a vacant assisted unit if certain conditions are fulfilled, as provided in the HAP contract. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

[61 FR 11956, Mar. 22, 1996, as amended at 66 FR 6225, Jan. 19, 2001; 66 FR 8174, Jan. 30, 2001]

§ 891.525 Amount and terms of financing.

(a) The amount of financing approved shall be the amount stated in the Notice of Section 202 Fund Reservation, including any increase approved by the field office prior to the final closing of a loan; provided, however, that the amount of financing provided shall not exceed the lesser of:

(1) The dollar amounts stated in paragraphs (b) through (f) of this section; or

(2) The total development cost of the project as determined by the field office.

(b) For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Assistant Secretary) the maximum loan amount, depending on the number of bedrooms, may not exceed:

(1) $28,032 per family unit without a bedroom.

(2) $32,321 per family unit with one bedroom.

(3) $38,979 per family unit with two bedrooms.

(c) In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the field office may increase the dollar limitations per family unit, as provided in paragraph (b) of this section, to not to exceed:

(1) $29,500 per family unit without a bedroom.

(2) $33,816 per family unit with one bedroom.

(3) $41,120 per family unit with two bedrooms.

(d) *Reduced loan amount—leaseholds.* In the event the loan is secured by a leasehold estate rather than a fee simple estate, the allowable cost of the property upon which the loan amount is based shall be reduced by the value of the leased fee.

(e) *Adjusted loan amount—rehabilitation projects.* A loan amount that involves a project to be rehabilitated shall be subject to the following additional limitations:

(1) *Property held in fee.* If the Borrower is the fee simple owner of the project not encumbered by a mortgage, the maximum loan amount shall not exceed 100 percent of the cost of the proposed rehabilitation.

(2) *Property subject to existing mortgage.* If the Borrower owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the Section 202 loan, the maximum loan amount shall not exceed the cost of rehabilitation plus such portion of the outstanding indebtedness as does not exceed the fair market value of such land and improvements prior to the rehabilitation, as determined by the field office.

(3) *Property to be acquired.* If the project is to be acquired by the Borrower and the purchase price is to be financed with a part of the Section 202 loan, the maximum loan amount shall not exceed the cost of the rehabilitation plus such portion of the purchase price as does not exceed the fair market value of such land and improvements prior to the rehabilitation, as determined by the field office.

(f) *Increased Mortgage Limits—High Cost Areas.* (1)(i) The Assistant Secretary may increase the dollar amount limitations in paragraphs (b) and (c) of this section:

(A) By not to exceed 110 percent in any geographical area in which the Assistant Secretary finds that cost levels so require; and

(B) By not to exceed 140 percent where the Assistant Secretary determines it necessary on a project-by-project basis.

(ii) In no case, however, may any such increase exceed 90 percent, where the Assistant Secretary determines that there is involved a mortgage purchased or to be purchased by the Government National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).

(2) If the Assistant Secretary finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum loan amounts provided in this section, the principal amount of mortgages may be increased by such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.

(g) *Loan interest rate.* Loans shall bear interest at a rate determined by HUD in accordance with this section.

(1) *Annual interest rate.* Except as provided under paragraph (g)(2), loans shall bear interest at the rate in effect at the time the loan is made. The loan interest rate shall not exceed:

(i) The average yield on the most recently issued 30-year marketable obligations of the United States during the 3-month period immediately preceding the fiscal year in which the loan is made (adjusted to the nearest one-eighth of one percent), plus an allowance to cover administrative costs and probable losses under the program; and

(ii) Any applicable statutory ceiling on the loan interest rate including the allowance to cover administrative costs and probable losses.

(2) *Optional interest rate.* The Borrower may elect an optional loan interest rate. To elect the optional rate, the Borrower must request that HUD determine the loan interest rate at the time of the Borrower's request for conditional or firm commitment for direct loan financing.

(i) If the Borrower elects the optional loan interest rate, the loan interest rate shall not exceed:

(A) The average yield on the most recently issued 30-year marketable obligations of the United States during the 3-month period immediately preceding the fiscal year in which the request for commitment is submitted (adjusted to the nearest one-eighth of one percent), plus an allowance to cover administrative costs and probable losses under the program;

(B) The average yield on the most recently issued 30-year marketable obligations of the United States during the 1-month period immediately preceding the month in which the request for commitment is submitted (adjusted to the nearest one-eighth of one percent), plus an allowance to cover the administrative costs and probable losses under the program; and (C) Any applicable statutory ceiling on the loan interest rate including an allowance to cover administrative costs and probable losses under the program.

(ii) The date of submission of a request for conditional or firm commitment is the date that the Borrower submits the complete and acceptable request to HUD. The date of the submission of a request for commitment will not be affected by any subsequent resubmission of the request by the Borrower or by any reprocessing of the request by HUD.

(iii) The Borrower may withdraw its election of the optional interest rate at any time before initial loan closing. If the Borrower elected the optional interest rate with its request for conditional commitment and withdraws its election, the loan will bear interest at the rate determined under paragraph (g)(1) of this section, unless the Borrower elects an optional interest rate with its request for firm commitment. If the Borrower withdraws its election after the date of submission of its request for firm commitment, the loan will bear interest at the rate determined under paragraph (g)(1) of this section.

(iv) If initial loan closing has not occurred within 18 months after the Notice of Section 202 Fund Reservation is issued, the Borrower's election of the optional rate will be cancelled and the loan will bear interest at the rate determined under paragraph (g)(1) of this section.

(3) *Allowance for administrative costs and probable losses.* For the purpose of computing the loan interest rate under paragraphs (g) (1) and (2) of this section, the allowance to cover administrative costs and probable losses under the program is one-fourth of one percent (.25%) per annum for both the construction and permanent loan periods.

(h) *Announcement of interest rates.* (1) HUD will annually announce the loan interest rate determination under paragraph (g)(1) of this section by publishing notice of the rate in the FEDERAL REGISTER. The FEDERAL REGISTER notice will include a statement explaining the basis for the interest rate determination.

(2) Upon the Borrower's request, HUD will provide available current information concerning the determination of the interest rate under paragraph (g)(2) of this section.

(i) The loan shall be secured by a first mortgage on real estate in fee simple or long term leasehold. The mortgage shall be repayable during a term not to exceed 40 years and shall be subject to such terms and conditions as shall be determined by the Assistant Secretary.

(j) In order to assure HUD of the Borrower's continued commitment to the development, management, and operation of the project, a minimum capital investment is required of Section 202 Borrowers of one-half of one percent (0.5%) of the mortgage amount committed to be disbursed, not to exceed the amount of $10,000. Section 106(b) loans made pursuant to section 106 of the Housing Act of 1968 may not be utilized to meet the minimum capital investment requirement. Such minimum capital investment shall be placed in escrow at the initial closing of the Section 202 loan and shall be held by HUD or other escrow agent acceptable to the field office for not less than a 3-year period from the date of initial occupancy and may be used for operating expenses or deficits as may be directed by the field office. Any unexpended balance remaining in the minimum capital investment account at the end of the escrow period shall be returned to the Borrower.

§ 891.530 Prepayment privileges.

(a) The prepayment (whether in whole or in part) or the assignment or transfer of physical and financial assets of any Section 202 project is prohibited, unless the Secretary gives prior written approval.

(b) The Secretary may not grant approval unless he or she has determined that the prepayment or transfer of the loan is part of a transaction that will ensure the continued operation of the project, until the original maturity date of the loan, in a manner that will provide rental housing for the elderly and handicapped on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 loan agreement and any other loan agreements entered into under other provisions of law.

§ 891.535 Requirements for awarding construction contracts.

(a) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed construction contract. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

(b) Each Borrower is permitted to use either competitive bidding (formal advertising) in selecting a construction contractor or the negotiated noncompetitive method of contract award under paragraph (c) of this section. In competitive bidding, sealed bids are publicly solicited and a firm, fixed-price contract is awarded (in accordance with the requirements of this paragraph (b)) to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. Regardless of which method a Borrower uses, there should be an opportunity for minority owned and women owned businesses to be awarded a contract.

(1) Bids shall be solicited from an adequate number of known contractors a reasonable time prior to the date set forth for opening of bids. In addition, the invitation shall be publicly advertised.

(2) The invitation for bids shall specify:

(i) The name of the Borrower;

(ii) A brief description of the proposed project and the proposed construction contract;

(iii) A preliminary estimate of cost;

(iv) That bids will be received at a specified place until a specified time at which time and place all bids will be publicly opened;

(v) The location where the proposed forms of contract and bid documents, including plans and specifications, are on file and may be obtained on payment of a specified returnable deposit;

(vi) That a certified check or bank draft or satisfactory bid bond in the amount of 5 percent of the bid shall be submitted with the bid;

(vii) That the successful bidder will be required to provide assurance of completion in the form of a performance and payment bond or cash escrow; and

(viii) That the Borrower reserves the right to reject any or all bids and to waive any informality.

(3) The bid form, which must be submitted by all bidders, must specify:

(i) The name of the project;

(ii) The name and address of the bidder;

(iii) That the bidder proposes to furnish all labor, materials, equipment and services required to construct and complete the project, as described in the invitation for bids (including the contents of all documents on file), for a specified lump-sum price;

(iv) That the security specified in paragraph (b)(2)(vi) of this section accompanies the bid;

(v) The period after the bid opening during which the bid shall not be withdrawn without the consent of the Borrower;

(vi) That the bidder will, if notified of acceptance of such bid within a specified period after the opening, execute and deliver a contract in the prescribed form and furnish the required bond within ten days thereafter;

(vii) That the bidder acknowledges any amendments to the invitation for bids; and

(viii) That the bidder certifies that the bid is in strict accordance with all terms of the invitation for bids (including the contents of all documents on file) and that the bid is signed by a person authorized to bind the bidder.

(4) Bidding shall be open to all general contractors who furnish the security guaranteeing their bid, as described in paragraph (b)(2)(vi) of this section.

(5) All bids shall be opened publicly at the time and place stated in the invitation for bids, in the presence of the HUD Regional Administrator or his designee.

(6) A firm, fixed-price contract award shall be made by written notice to the responsible bidder whose bid, conforming to the invitation for bids, is lowest. The contract may provide for an incentive payment to the contractor for an early completion.

(c) A Sponsor or Borrower may award a negotiated, noncompetitive construction contract.

§ 891.540 Loan disbursement procedures.

(a) Disbursements of loan proceeds shall be made directly by HUD to or for the account of the Borrower and may be made through an approved lender, mortgage servicer, title insurance company, or other agent satisfactory to the Borrower and HUD.

(b) All disbursements to the Borrower shall be made on a periodic basis in an amount not to exceed the HUD-approved cost of portions of construction or rehabilitation work completed and in place (except as modified in paragraph (d) of this section), minus the appropriate holdback, as determined by the field office.

(c) Requisitions for loan disbursements shall be submitted by the Borrower on forms to be prescribed by the Assistant Secretary and shall be accompanied by such additional information as the field office may require in order to approve loan disbursements under subpart E of this part, including

but not limited to evidence of compliance with the Davis-Bacon Act, Department of Labor regulations, all applicable zoning, building, and other governmental requirements, and such evidence of continued priority of the mortgage of the Borrower as the Assistant Secretary may prescribe.

(d) In loan disbursements for building components stored off-site, the term *building component* shall mean any manufactured or preassembled part of a structure as defined by HUD and that the Assistant Secretary has designated for off-site storage because it is of such size or weight that storage of the components required for timely construction progress at the construction site is impractical, or weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly. Each building component must be specifically identified for incorporation into the property as provided under paragraph (d)(1)(ii) of this section.

(1) *Storage.* (i) A loan disbursement may be made for up to 90 percent of the invoice value (to exclude costs of transportation and storage) of the building components stored off-site if the components are stored at a location approved by HUD.

(ii) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which loan disbursements have been made and separate and apart from similar units not for use in the project.

(iii) Storage costs, if any, shall be borne the general contractor.

(2) *Responsibility for transportation, storage and insurance of off-site building components.* The general contractor of the project shall have the responsibility for:

(i) Insuring the components in the name of the Borrower while in transit and storage; and

(ii) Delivering or contracting for the delivery of the components to the storage area and to the construction site, including payment of freight.

(3) *Loan disbursements.* (i) Before a loan disbursement for a building component stored off-site is made, the Borrower shall:

(A) Obtain a bill of sale for the component;

(B) Provide HUD with a security agreement pledged by a first lien on the building components with the exception of such other liens or encumbrances as may be approved by HUD; and

(C) File a financing statement in accordance with the Uniform Commercial Code.

(ii) Before each loan disbursement for building components stored off-site is made the manufacturer and the general contractor shall certify to HUD that the components, in their intended use, comply with HUD-approved contract plan and specifications.

(iii) Loan disbursements may be made only for components stored off-site in a quantity required to permit uninterrupted installation at the site.

(iv) At no time shall the invoice value of building components being stored off-site, for which advances have been insured, represent more than 25 percent of the total estimated construction costs for the insured mortgaged project as specified in the construction contract. Notwithstanding the preceding sentence and other regulatory requirements that set bonding requirements, the percentage of total estimated construction costs insured by advances under this section may exceed 25 percent but not 50 percent if the mortgagor furnishes assurance of completion in the form of a corporate surety bond for the payment and performance each in the amount of 100 percent of the amount of the construction contract. In no event will insurance of components stored off-site be made in the absence of a payment and performance bond.

(v) No single loan disbursement which is to be made shall be in an amount less than ten thousand ($10,000) dollars.

§ 891.545 Completion of project, cost certification, and HUD approvals.

(a) The Borrower must satisfy the requirements for completion of construction and substantial rehabilitation and

approvals by HUD before submission of a final requisition for disbursement of loan proceeds.

(b) The Borrower shall submit to the field office all documentation required for final disbursement of the loan, including:

(1) A Borrower's/Mortgagor's Certificate of Actual Cost, showing the actual cost to the mortgagor of the construction contract, architectural, legal, organizational, offsite costs, and all other items of eligible expense. The certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor or to any of its officers, directors, or members.

(2) A verification of the Certificate of Actual Cost by an independent Certified Public Accountant or independent public accountant acceptable to the field office.

(3) In the case of projects not subject to competitive bidding, a certification of the general contractor (and of such subcontractors, material suppliers, and equipment lessors as the Assistant Secretary or field office may require), on a form prescribed by the Assistant Secretary, as to all actual costs paid for labor, materials, and subcontract work under the general contract exclusive of the builder's fee and kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders, partners, or members.

(c) In lieu of the requirements set forth in paragraphs (c)(1) and (3) of this section, a simplified form of cost certification prescribed by the Secretary may be completed and submitted by the Borrower for projects with mortgages of $500,000 or less. The simplified cost certification shall be verified by an independent Certified Public Accountant or an independent public accountant in a manner acceptable to the Secretary.

(d) If the Borrower's certified costs provided in accordance with paragraph (c) or (d) of this section and as approved by HUD are less than the loan amount, the contract rents will be reduced accordingly.

(e) If the contract rents are reduced pursuant to paragraph (e) of this section, the maximum annual HAP Contract commitment will be reduced. If contract rents are reduced based on cost certification after HAP Contract execution, any overpayment after the effective date of the Contract will be recovered from the Borrower by HUD.

(Approved by the Office of Management and Budget under control number 2502–0044)

§ 891.555 Smoke detectors.

(a) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

(b) *Acceptability criteria.* The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

§ 891.560 HAP contract.

(a) *HAP contract.* The housing assistance payments contract sets forth rights and duties of the Borrower and HUD with respect to the project and the housing assistance payments.

(b) *HAP contract execution.* (1) Upon satisfactory completion of the project, the Borrower and HUD shall execute the HAP contract on the form prescribed by HUD.

(2) The effective date of the HAP contract may be earlier than the date of execution, but no earlier than the date of HUD's issuance of the permission to occupy.

(3) If the project is completed in stages, the procedures of paragraph (b) of this section shall apply to each stage.

(c) *Housing assistance payments to owners under the HAP contract.* The housing assistance payments made under the HAP contract are:

(1) *Payments to the Borrower to assist eligible families leasing assisted units.* The amount of the housing assistance

payment made to the Borrower for an assisted unit leased to an eligible family is equal to the difference between the contract rent for the unit and the tenant rent payable by the family.

(2) *Payments to the Borrower for vacant assisted units (vacancy payments).* The amount of and conditions for vacancy payments are described in § 891.650. The housing assistance payments are made monthly by HUD upon proper requisition by the Borrower, except payments for vacancies of more than 60 days, which are made semiannually by HUD upon requisition by the Borrower.

(d) *Payment of utility reimbursement.* As applicable, a utility reimbursement will be paid to a family occupying an assisted unit as an additional housing assistance payment. The HAP contract will provide that the Borrower will make this payment on behalf of HUD. Funds will be paid to the Borrower in trust solely for the purpose of making the additional payment. The Borrower may pay the utility reimbursement jointly to the family and the utility company, or, if the family and utility company consent, directly to the utility company.

§ 891.565 Term of HAP contract.

The term of the HAP contract for assisted units shall be 20 years. If the project is completed in stages, the term of the HAP contract for assisted units in each stage shall be 20 years. The term of the HAP contract for all assisted units in all stages of a project shall not exceed 22 years.

§ 891.570 Maximum annual commitment and project account.

(a) *Maximum annual commitment.* The maximum annual amount that may be committed under the HAP contract is the total of the contract rents and utility allowances for all assisted units in the project.

(b) *Project account.* (1) HUD will establish and maintain a specifically identified and segregated project account for each project. The project account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the HAP contract each year. HUD will make payments from this account for housing assistance payments as needed to cover increases in contract rents or decreases in tenant income and other payments for costs specifically approved by the Secretary.

(2) If the HUD-approved estimate of required annual payments under the HAP contract for a fiscal year exceeds the maximum annual commitment for that fiscal year plus the current balance in the project account, HUD will, within a reasonable time, take such steps authorized by section 8(c)(6) of the United States Housing Act of 1937 (42 U.S.C. 1437f note), as may be necessary, to assure that payments under the HAP contract will be adequate to cover increases in contract rents and decreases in tenant income.

§ 891.575 Leasing to eligible families.

(a) *Availability of assisted units for occupancy by eligible families.* (1) During the term of the HAP contract, a Borrower shall make available for occupancy by eligible families the total number of units for which assistance is committed under the HAP contract. For purposes of this section, making units available for occupancy by eligible families means that the Borrower:

(i) Is conducting marketing in accordance with § 891.600(a);

(ii) Has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families;

(iii) Has not rejected any such applicant family except for reasons acceptable to HUD.

(2) If the Borrower is temporarily unable to lease all units for which assistance is committed under the HAP contract to eligible families, one or more units may, with the prior approval of HUD, be leased to otherwise eligible families that do not meet the income eligibility requirements of part 813 of this chapter. Failure on the part of the Borrower to comply with these requirements is a violation of the HAP contract and grounds for all available legal remedies, including an action for specific performance of the HAP contract, suspension or debarment from HUD programs, and reduction of the

number of units under the HAP contract as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by the HAP contract.* HUD may reduce the number of units covered by the HAP contract to the number of units available for occupancy by eligible families if:

(1) The Borrower fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD, HUD determines that the inability to lease units to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the HAP contract to provide for subsequent restoration of any reduction made under paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The Borrower otherwise has a record of compliance with the Borrower's obligations under the HAP contract; and

(3) Contract and budget authority is available.

(d) *Applicability.* In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time will continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

(e) *Occupancy by families that are not elderly or handicapped.* HUD may permit units in the project to be leased to other than elderly or handicapped families if:

(1) The Borrower has made reasonable efforts to lease assisted and unassisted units to eligible families;

(2) The Borrower has been granted HUD approval under paragraph (a) of this section; and

(3) The Borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure under the Section 202 loan documents. HUD approval under paragraph (e)(3) of this section will be of limited duration. HUD may impose terms and conditions to this approval that are consistent with program objectives and necessary to protect its interest in the Section 202 loan.

§ 891.580 HAP contract administration.

HUD is responsible for the administration of the HAP contract.

§ 891.585 Default by Borrower.

(a) *HAP contract provisions.* The HAP contract will provide:

(1) That if HUD determines that the Borrower is in default under the HAP contract, HUD will notify the Borrower of the actions required to be taken to cure the default and of the remedies to be applied by HUD including an action for specific performance under the HAP contract, reduction or suspension of housing assistance payments and recovery of overpayments, where appropriate; and

(2) That if the Borrower fails to cure the default, HUD has the right to terminate the HAP contract or to take other corrective action.

(b) *Loan provisions.* Additional provisions governing default under the section 202 loan are included in the regulatory agreement and other loan documents.

§ 891.590 Notice upon HAP contract expiration.

(a) *Notice required.* The HAP contract will provide that the Borrower will, at least one year before the end of the HAP contract term, notify each family leasing an assisted unit of any increase in the amount the family will be required to pay as rent as a result of the expiration.

(b) *Service requirements.* The notice under paragraph (a) of this section shall be accomplished by sending a letter by first class mail, properly stamped and addressed, to the family at its address at the project, with a proper return address; and serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be

considered to be effective until both required notices have been accomplished. The date on which the notice shall be considered to be received by the family shall be the date on which the Borrower mails the first class letter provided for in paragraph (b) of this section, or the date on which the notice provided for in paragraph (b) of this section is properly given, whichever is later.

(c) *Contents of notice.* The notice shall advise each affected family that, after the expiration date of the HAP contract, the family will be required to bear the entire cost of the rent and that the Borrower may, subject to requirements and restrictions contained in the regulatory agreement, the lease, and State or local law, change the rent. The notice also shall state:

(1) The actual (if known) or the estimated rent that will be charged following the expiration of the HAP contract;

(2) The difference between the new rent and the total tenant payment toward rent under the HAP contract; and

(3) The date the HAP contract will expire.

(d) *Certification to HUD.* The Borrower shall give HUD a certification that families have been notified in accordance with this section and shall attach to the certification an example of the text of the notice.

(e) *Applicability.* This section applies to all HAP contracts entered into under an agreement to enter into a housing assistance payments contract executed on or after October 1, 1981, or entered into under such an agreement executed before October 1, 1981 but renewed or amended after February 9, 1995.

(Approved by the Office of Management and Budget under control number 2502–0371)

§ 891.595 HAP contract extension or renewal.

Upon expiration of the term of the HAP contract, HUD and the Borrower may agree (subject to available funds) to extend the term of the HAP contract or to renew the HAP contract. The number of assisted units under the extended or renewed HAP contract shall equal the number of assisted units under the original HAP contract, except that:

(a) HUD and the Borrower may agree to reduce the number of assisted units by the number of assisted units that are not occupied by eligible families at the time of the extension or renewal; and

(b) HUD and the Borrower may agree to permit reductions in the number of assisted units during the term of the extended or renewed HAP contract as assisted units are vacated by eligible families. Nothing in this section shall prohibit HUD from reducing the number of units covered under the extended or renewed HAP contract in accordance with § 891.575(b).

§ 891.600 Responsibilities of Borrower.

(a) *Marketing.* (1) The Borrower must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability for occupancy of the first unit of the project. Market activities shall include the provision of notices of availability of housing under the program to operators of temporary housing for the homeless in the same housing market.

(2) Marketing must be done in accordance with the HUD-approved affirmative fair housing marketing plan and all Federal, State, or local fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of discriminatory considerations, such as their race, color, creed, religion, familial status, disability, sex or national origin. Marketing must also be done in accordance with the communication and notice requirements of Section 504 at 24 CFR 8.6 and 24 CFR 8.54.

(3) At the time of HAP contract execution, the Borrower must submit to HUD a list of leased and unleased assisted units, with a justification for the unleased units, in order to qualify for vacancy payments for the unleased units.

(b) *Management and maintenance.* The Borrower is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for families occupying assisted units (or residential spaces, as applicable), collection of rents, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All functions must be performed in compliance with equal opportunity requirements.

(c) *Contracting for services.* (1) With HUD approval, the Borrower may contract with a private or public entity for performance of the services or duties required in paragraphs (a) and (b) of this section. However, such an arrangement does not relieve the Borrower of responsibility for these services and duties. All such contracts are subject to the restrictions governing prohibited contractual relationships described in §§ 891.130 and 891.505, if applicable. (These prohibitions do not extend to management contracts entered into by the Borrower with the Sponsor or its nonprofit affiliate).

(2) Consistent with the objectives of Executive Order No. 11625 (36 FR 19967, 3 CFR, 1971–1975 Comp., p. 616; as amended by Executive Order No. 12007 (42 FR 42839, 3 CFR, 1977 Comp., p. 139; unless otherwise noted); Executive Order No. 12432 (48 FR 32551, 3 CFR, 1983 Comp., p. 198; unless otherwise noted); and Executive Order No. 12138 (44 FR 29637, 3 CFR, 1979 Comp., p. 393; unless otherwise noted), the Borrower will promote awareness and participation of minority and women's business enterprises in contracting and procurement activities.

(d) *Submission of financial and operating statements.* The Borrower must submit to HUD:

(1) Within 60 days after the end of each fiscal year of project operations, financial statements for the project audited by an independent public accountant and in the form required by HUD; and

(2) Other statements regarding project operation, financial conditions and occupancy as HUD may require to administer the housing assistance payments contract (HAP contract) or the project assistance contract (PAC), as applicable, and to monitor project operations.

(e) *Use of project funds.* The Borrower shall maintain a separate project fund account in a depository or depositories that are members of the Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund and shall deposit all rents, charges, income and revenues arising from project operation or ownership to this account. All project funds are to be deposited in Federally-insured accounts. All balances shall be fully insured at all times, to the maximum extent possible. Project funds must be used for the operation of the project (including required insurance coverage), to make required principal and interest payments on the Section 202 loan, and to make required deposits to the replacement reserve under §§ 891.605 and 891.745 (as applicable), in accordance with a HUD-approved budget. Any project funds in the project funds account (including earned interest) following the expiration of the fiscal year shall be deposited in a Federally-insured residual receipts account within 60 days following the end of the fiscal year. Withdrawals from this account may be made only for project purposes and with the approval of HUD. If there are funds remaining in the residual receipts account when the mortgage is satisfied, such funds shall be returned to HUD.

(f) *Reports.* The Borrower shall submit such reports as HUD may prescribe to demonstrate compliance with applicable civil rights and equal opportunity requirements.

(Approved by the Office of Management and Budget under control number 2502–0371)

§ 891.605 Replacement reserve.

(a) *Establishment of reserve.* The Borrower shall establish and maintain a replacement reserve to aid in funding extraordinary maintenance, and repair and replacement of capital items.

(b) *Deposits to reserve.* The Borrower shall make monthly deposits to the replacement reserve in an amount determined by HUD. Further requirements regarding the amount of the deposits

for projects funded under §§ 891.655 through 891.790 are provided in § 891.745.

(c) *Level of reserve.* The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve reach that level, the amount of the deposit to the reserve may be reduced with the approval of HUD.

(d) *Administration of reserve.* Replacement reserve funds must be deposited with HUD or in a Federally-insured depository in an interest-bearing account(s) whose balances are fully insured at all times. All earnings including interest on the reserve must be added to the reserve. Funds may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

§ 891.610 Selection and admission of tenants.

(a) *Written procedures.* The Owner shall adopt written tenant selection procedures that ensure nondiscrimination in the selection of tenants and that are consistent with the purpose of improving housing opportunities for very low-income elderly or handicapped persons; and reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. Owners shall promptly notify in writing any rejected applicant of the grounds for any rejection. Additionally, owners shall maintain a written, chronological waiting list showing the name, race, gender, ethnicity and date of each person applying for the program.

(b) *Application for admission.* The Borrower must accept applications for admission to the project in the form prescribed by HUD and is obligated to confirm all information provided by the applicant families on the application. Applicant families must be requested to complete a release of information consent for verification of information. Applicants applying for assisted units must complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security Numbers, and sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B. Both the Borrower and the applicant must complete and sign the application for admission. On request, the Borrower must furnish copies of all applications for admission to HUD.

(c) *Determination of eligibility and selection of tenants.* The Borrower is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant must be an elderly or handicapped family as defined in § 891.505; meet any project occupancy requirements approved by HUD; meet the disclosure and verification requirements for Social Security Numbers and sign and submit consent forms for obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B; and, if applying for an assisted unit, be eligible for admission under part 813 of this chapter.

(d) *Unit assignment.* If the Borrower determines that the family is eligible and is otherwise acceptable and units are available, the Borrower will assign the family a unit. The Borrower will assign the family a unit of the appropriate size in accordance with HUD's general occupancy guidelines. If no suitable unit is available, the Borrower will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted within the next 12 months, the Borrower may advise the applicant that no additional applications for admission are being considered for that reason, except that the Borrower may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in 24 CFR part 5, subpart D.

(e) *Ineligibility determination.* If the Borrower determines that an applicant is ineligible for admission or the Borrower is not selecting the applicant for other reasons, the Borrower will

promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting with the Borrower or managing agent to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by a member of the Borrower's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights (e.g., rights granted under Federal, State, or local civil rights laws) if the applicant believes he or she is being discriminated against on a prohibited basis. The informal review provisions for the denial of a Federal preference are provided in § 5.410(g) of this title.

(f) *Records.* Records on applicants and approved eligible families, which provide racial, ethnic, gender, handicap status, and place of previous residency data required by HUD, must be retained for three years.

(g) *Reexamination of family income and composition.* (1) *Regular reexaminations.* The Borrower must reexamine the income and composition of the family at least every 12 months. Upon verification of the information, the Borrower shall make appropriate adjustments in the total tenant payment in accordance with part 813 of this chapter and determine whether the family's unit size is still appropriate. The Borrower must adjust tenant rent and the housing assistance payment and must carry out any unit transfer in accordance with the administrative instructions issued by HUD. At the time of reexamination under paragraph (g)(1) of this section, the Borrower must require the family to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B.

(2) *Interim reexaminations.* The family must comply with the provisions in its lease regarding interim reporting of changes in income. If the Borrower receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the Borrower must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the total tenant payment, tenant rent and housing assistance payment must be verified.

(3) *Continuation of housing assistance payments.* (i) A family shall remain eligible for housing assistance payments until the total tenant payment equals or exceeds the gross rent. The termination of subsidy eligibility will not affect the family's other rights under its lease. Housing assistance payments may be resumed if, as a result of changes in income, rent or other relevant circumstances during the term of the HAP contract, the family meets the income eligibility requirements of part 813 of this chapter and housing assistance is available for the unit under the terms of the HAP contract. The family will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (c) of this section.

(ii) A family's eligibility for housing assistance payments may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including information related to disclosure and verification of Social Security Numbers, or failure to sign and submit consent forms for the obtaining of wage and claim information from State wage information collection agencies, as provided by 24 CFR part 5, subpart B.

(Approved by the Office of Management and Budget under control number 2502–0371)

§ 891.615 Obligations of the family.

The obligations of the family are provided in § 891.415.

§ 891.620 Overcrowded and underoccupied units.

If the Borrower determines that because of change in family size, an assisted unit is smaller than appropriate for the eligible family to which it is leased, or that the assisted unit is larger than appropriate, housing assistance payments or project assistance payments (as applicable) with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate alternate unit. If possible, the Borrower will, as promptly as possible, offer the family

an appropriate alternate unit. The Borrower may receive vacancy payments for the vacated unit if the Borrower complies with the requirements of § 891.650.

§ 891.625 Lease requirements.

The lease requirements are provided in § 891.425.

§ 891.630 Denial of admission, termination of tenancy, and modification of lease.

(a) The provisions of part 5, subpart I, of this title apply to Section 202 direct loan projects.

(b) The provisions of part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit.

[66 FR 28798, May 24, 2001]

§ 891.635 Security deposits.

The general requirements for security deposits on assisted units are provided in § 891.435. For purposes of subpart E of this part, the additional requirements apply:

(a) The Borrower may require each family occupying an unassisted unit (or residential space in a group home) to pay a security deposit equal to one month's rent payable by the family.

(b) The Borrower shall maintain a record of the amount in the segregated interest-bearing account that is attributable to each family in residence in the project. Annually for all families, and when computing the amount available for disbursement under § 891.435(b)(3), the Borrower shall allocate to the family's balance the interest accrued on the balance during the year. Unless prohibited by State or local law, the Borrower may deduct for the family, from the accrued interest for the year, the administrative cost of computing the allocation to the family's balance. The amount of the administrative cost adjustment shall not exceed the accrued interest allocated to the family's balance for the year.

§ 891.640 Adjustment of rents.

(a) *Contract rents.* (1) *Adjustment based on approved budget.* If the HAP contract provides, or has been amended to provide, that contract rents will be adjusted based upon a HUD-approved budget, HUD will calculate contract rent adjustments based on the sum of the project's operating costs and debt service (as calculated by HUD), with adjustments for vacancies, the project's nonrental income, and other factors that HUD deems appropriate. The calculation will be made on the basis of information provided by the Borrower on a form acceptable to the Secretary. The automatic adjustment factor described in part 888 of this chapter is not used to adjust contract rents under paragraph (a)(1) of this section, except to the extent that the amount of the replacement reserve deposit is adjusted under § 880.602 of this chapter.

(2) *Annual and special adjustments.* If the HAP contract provides that contract rents will be adjusted based on the application of an automatic adjustment factor and by special additional adjustments:

(i) Consistent with the HAP contract, contract rents may be adjusted in accordance with part 888 of this chapter;

(ii) Special additional adjustments will be granted, to the extent determined necessary by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units that have resulted from substantial general increases in real property taxes, assessments, utility rates or similar costs (i.e., assessments and utilities not covered by regulated rates), and that are not adequately compensated for by an annual adjustment. The Borrower must submit to HUD required supporting data, financial statements, and certifications for the special additional adjustment.

(b) *Rent for unassisted units.* The rent payable by families occupying units that are not assisted under the HAP contract shall be equal to the contract rent computed under paragraph (a) of this section.

(Approved by the Office of Management and Budget under control number 2502–0371)

§ 891.645 Adjustment of utility allowances.

In connection with adjustments of contract rents as provided in

§ 891.640(a), the requirements for the adjustment of utility allowances provided in § 891.440 apply.

§ 891.650 Conditions for receipt of vacancy payments for assisted units.

(a) *General.* Vacancy payments under the HAP contract will not be made unless the conditions for receipt of these housing assistance payments set forth in this section are fulfilled.

(b) *Vacancies during rent-up.* For each unit that is not leased as of the effective date of the HAP contract, the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy, if the Borrower:

(1) Complied with § 891.600;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(c) *Vacancies after rent-up.* If an eligible family vacates a unit, the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the Borrower:

(1) Certifies that it did not cause the vacancy by violating the lease, the HAP contract, or any applicable law;

(2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 891.600(a)(2) and (3), and in paragraphs (b)(2) and (3) of this section; and

(4) For any vacancy resulting from the Borrower's eviction of an eligible family, certifies that it has complied with § 891.630.

(d) *Vacancies for longer than 60 days.* If a unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the Borrower may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up to 12 additional months for the unit if:

(1) The unit was in decent, safe, and sanitary condition during the vacancy period for which payment is claimed;

(2) The Borrower has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and

(3) The Borrower has demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the Borrower with revenues at least equal to project expenses (exclusive of depreciation) and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit; and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* If the Borrower collects payments for vacancies from other sources (tenant rent, security deposits, payments under § 891.435(c), or governmental payments under other programs), the Borrower shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed contract rent.

(Approved by the Office of Management and Budget under control number 2502–0371)

SECTION 202 PROJECTS FOR THE NON-ELDERLY HANDICAPPED FAMILIES AND INDIVIDUALS—SECTION 162 ASSISTANCE

§ 891.655 Definitions applicable to 202/162 projects.

The following definitions apply to projects for eligible families receiving project assistance payments under section 202(h) of the Housing Act of 1959 in addition to reservations under section 202 (202/162 projects):

Annual income is defined in part 813 of this chapter. In the case of an individual residing in an intermediate care facility for the mentally retarded that is assisted under Title XIX of the Social Security Act and subpart E of this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For the purposes of determining the total tenant payment, the income of such individuals shall be imputed to be the amount that the family would receive

if assisted under Title XVI of the Social Security Act.

Assisted unit means a dwelling unit that is eligible for assistance under a project assistance contract (PAC).

Contract rent means the total amount of rent specified in the PAC as payable by HUD and the family to the Borrower for an assisted unit or residential space.

Family (eligible family) means a handicapped family (as defined in § 891.505) that meets the project occupancy requirements approved by HUD and, if the family occupies an assisted unit, meets the low-income requirements described in § 813.102 of this chapter, as modified by the definition of ''*annual income*'' in this section.

Gross rent is defined in part 813 of this chapter.

Group home means a single family residential structure designed or adapted for occupancy by nonelderly handicapped individuals.

Housing for handicapped families means housing and related facilities occupied by handicapped families that are primarily nonelderly handicapped families.

Independent living complex means a project designed for occupancy by nonelderly handicapped families in separate dwelling units where each dwelling unit includes a kitchen and a bath.

Operating costs means expenses related to the provision of housing and excludes expenses related to administering, or managing the provision of, supportive services. Operating costs include:

(1) Administrative expenses, including salary and management expenses related to the provision of shelter;

(2) Maintenance expenses, including routine and minor repairs and groundskeeping;

(3) Security expenses;

(4) Utilities expenses, including gas, oil, electricity, water, sewer, trash removal, and extermination services. Operating costs exclude telephone services for families;

(5) Taxes and insurance; and

(6) Allowances for reserves.

PAC (project assistance contract) means the contract entered into by the Borrower and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PAC.

Project account means a specifically identified and segregated account for each project which is established in accordance with § 891.715(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PAC each year.

Project assistance payment means the payment made by HUD to the Borrower for assisted units as provided in the PAC. The payment is the difference between the contract rent and the tenant rent. An additional payment is made to a family occupying an assisted unit in an independent living complex when the utility allowance is greater than the total tenant payment. A project assistance payment, known as a ''vacancy payment,'' may be made to the Borrower when an assisted unit (or residential space in a group home) is vacant, in accordance with the terms of the PAC.

Rent is defined in § 891.505.

Tenant rent means the monthly amount defined in, and determined in accordance with part 813 of this chapter.

Total tenant payment means the monthly amount defined in, and determined in accordance with part 813 of this chapter.

Utility allowance is defined in part 813 of this chapter and is determined or approved by HUD.

Utility reimbursement is defined in part 813 of this chapter.

Vacancy payment means the project assistance payment made to the Borrower by HUD for a vacant assisted unit (or residential space in a group home) if certain conditions are fulfilled, as provided in the PAC. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

§ 891.660 Project standards.

(a) *Property standards.* The property standards for 202/162 projects are provided in § 891.120(a).

(b) *Minimum group home standards.* The minimum group home standards for 202/162 projects are provided in § 891.310(a).

(c) *Accessibility requirements.* The accessibility requirements for 202/162 projects are provided in §§ 891.120(b) and 891.310(b).

(d) *Smoke detectors.* The requirements for smoke detectors for 202/162 projects are provided in § 891.120(d).

§ 891.665 Project size limitations.

(a) *Maximum project size.* Projects funded under §§ 891.655 through 891.790 are subject to the following project size limitations:

(1) Group homes may not be designed to serve more than 15 persons on one site;

(2) Independent living complexes for chronically mentally ill individuals may not be designed to serve more than 20 persons on one site; and

(3) Independent living complexes for handicapped families in the developmental disability or physically handicapped occupancy categories may not have more than 24 units nor more than 24 households on one site. For the purposes of this section, *household* has the same meaning as *handicapped family,* except that unrelated handicapped individuals sharing a unit (other than a handicapped person living with another person who is essential to the handicapped person's well-being) are counted as separate households. For independent living complexes for handicapped families in the developmental disability or physically handicapped occupancy categories, units with three or more bedrooms may only be developed to serve handicapped families of one or two parents with children.

(b) *Additional limitations.* Based on the amount of loan authority appropriated for a fiscal year, HUD may have imposed additional limitations on the number of units or residents that may be proposed under an application for Section 202 loan fund reservation, as published in the annual notice of funding availability or the invitation for Section 202 fund reservation.

(c) *Exemptions.* On a case-by-case basis, HUD may approve independent living complexes that do not comply with the project size limitations prescribed in paragraphs (a)(2), (a)(3), or (b) of this section. HUD may approve such projects if the Sponsor demonstrates:

(1) The increased number of units is necessary for the economic feasibility of the project;

(2) A project of the size proposed is compatible with other residential development and the population density of the area in which the project is to be located;

(3) A project of the size proposed can be successfully integrated into the community; and

(4) A project of the size proposed is marketable in the community.

§ 891.670 Cost containment and modest design standards.

(a) *Restrictions on amenities.* Projects must be modest in design. Except as provided in paragraph (d) of this section, amenities must be limited to those amenities, as determined by HUD, that are generally provided in unassisted decent, safe, and sanitary housing for low-income families in the market area. Amenities not eligible for HUD funding include balconies, atriums, decks, bowling alleys, swimming pools, saunas, and jacuzzis. Dishwashers, trash compactors, and washers and dryers in individual units will not be funded in independent living complexes. The use of durable materials to control or reduce maintenance, repair, and replacement costs is not an excess amenity.

(b) *Unit sizes.* For independent living complexes, HUD will establish limitations on the size of units and number of bathrooms, based on the number of bedrooms that are in the unit.

(c) *Special spaces and accommodations.* (1) The costs of construction of special spaces and accommodations may not exceed 10 percent of the total cost of construction, except as provided in paragraph (d) of this section. Special spaces and accommodations include multipurpose rooms, game rooms, libraries, lounges, and, in independent living complexes, central kitchens and dining rooms.

(2) Special spaces and accommodations exclude offices, halls, mechanical rooms, laundry rooms, and parking areas; dwelling units and lobbies in

independent living complexes; and bedrooms, living rooms, dining and kitchen areas, shared bathrooms, and resident staff dwelling units in group homes.

(d) *Exceptions.* HUD may approve a project that does not comply with the cost containment and modest design standards of paragraphs (a) through (c) of this section if:

(1) The Sponsor demonstrates a willingness and ability to contribute the incremental development cost and continuing operating costs associated with the additional amenities or design features; or

(2) The proposed project involves substantial rehabilitation or acquisition with or without moderate rehabilitation, the additional amenities or design features were incorporated into the existing structure before the submission of the application, and the total development cost of the project with the additional amenities or design features does not exceed the cost limits.

§ 891.675 Prohibited facilities.

The requirements for prohibited facilities for 202/162 projects are provided in § 891.315, except that Section 202/162 projects may not include commercial spaces.

§ 891.680 Site and neighborhood standards.

The general requirements for site and neighborhood standards for 202/162 projects are provided in §§ 891.125 and 891.320. In addition to the requirements in §§ 891.125 and 891.320, the following requirements apply to 202/162 projects:

(a) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(b) Projects must be located in neighborhoods where other family housing is located. Except as provided below, projects may not be located adjacent to the following facilities, or in areas where such facilities are concentrated: schools or day care centers for handicapped persons, workshops, medical facilities, or other housing primarily serving handicapped persons. Projects may be located adjacent to other housing primarily serving handicapped persons if the projects together do not exceed the project size limitations under § 891.665(a).

§ 891.685 Prohibited relationships.

The requirements for prohibited relationships for 202/162 projects are provided in § 891.130.

§ 891.690 Other Federal requirements.

In addition to the Federal requirements set forth in 24 CFR part 5, other Federal requirements for the 202/162 projects are provided in §§ 891.155 and 891.325.

§ 891.695 Operating cost standards.

The requirements for the operating cost standards are provided in § 891.150.

§ 891.700 Prepayment of loans.

(a) *Prepayment prohibition.* The prepayment (whether in whole or in part) or the assignment or transfer of physical and financial assets of any Section 202 project is prohibited, unless the Assistant Secretary gives prior written approval.

(b) *HUD-approved prepayment.* Approval for prepayment or transfer will not be granted unless HUD determines that the prepayment or transfer of the loan is a part of a transaction that will ensure the continued operation of the project until the original maturity date of the loan in a manner that will provide rental housing for the handicapped families on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 loan agreement and any other loan agreements entered into under other provisions of law.

§ 891.705 Project assistance contract.

(a) *Project assistance contract (PAC).* The PAC sets forth rights and duties of the Borrower and HUD with respect to the project and the project assistance payments.

(b) *PAC execution.* (1) Upon satisfactory completion of the project, the Borrower and HUD shall execute the PAC on the form prescribed by HUD.

(2) The effective date of the PAC may be earlier than the date of execution, but no earlier than the date of HUD's issuance of the permission to occupy.

(3) If the project is completed in stages, the procedures of paragraph (b) of this section shall apply to each stage.

(c) *Project assistance payments to owners under the PAC.* The project assistance payments made under the PAC are:

(1) Payments to the Borrower to assist eligible families leasing assisted units. The amount of the project assistance payment made to the Borrower for an assisted unit (or residential space in a group home) that is leased to an eligible family is equal to the difference between the contract rent for the unit (or pro rata share of the contract rent in a group home) and the tenant rent payable by the family.

(2) Payments to the Borrower for vacant assisted units (''vacancy payments''). The amount of and conditions for vacancy payments are described in § 891.790. HUD makes the project assistance payments monthly upon proper requisition by the Borrower, except payments for vacancies of more than 60 days, which HUD makes semiannually upon requisition by the Borrower.

(d) *Payment of utility reimbursement.* If applicable, a utility reimbursement will be paid to a family occupying an assisted unit in an independent living complex as an additional project assistance payment. The PAC will provide that the Borrower will make this payment on behalf of HUD. Funds will be paid to the Borrower in trust solely for the purpose of making the additional payment. The Borrower may pay the utility reimbursement jointly to the family and the utility company, or, if the family and utility company consent, directly to the utility company.

§ 891.710 Term of PAC.

The term of the PAC shall be 20 years. If the project is completed in stages, the term of the PAC for each stage shall be 20 years. The term of the PAC for stages of a project shall not exceed 22 years.

§ 891.715 Maximum annual commitment and project account.

(a) *Maximum annual commitment.* The maximum annual amount that may be committed under the PAC is the total of the initial contract rents and utility allowances for all assisted units in the project.

(b) *Project account.* (1) HUD will establish and maintain a specifically identified and segregated project account for each project. The project account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PAC each year. HUD will make payments from this account for project assistance payments as needed to cover increases in contract rents or decreases in tenant income and other payments for costs specifically approved by the Secretary.

(2) If the HUD-approved estimate of required annual payments under the PAC for a fiscal year exceeds the maximum annual commitment for that fiscal year plus the current balance in the project account, HUD will, within a reasonable time, take such steps authorized by section 202(h)(4)(A) of the Housing Act of 1959, as may be necessary, to assure that payments under the PAC will be adequate to cover increases in contract rents and decreases in tenant income.

§ 891.720 Leasing to eligible families.

(a) *Availability of assisted units for occupancy by eligible families.* During the term of the PAC, a Borrower shall make all units (or residential spaces in a group home) available for eligible families. For purposes of this section, making units or residential spaces available for occupancy by eligible families means that the Borrower:

(1) Is conducting marketing in accordance with § 891.740(a);

(2) Has leased or is making good faith efforts to lease the units or residential spaces to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) Has not rejected any such applicant family except for reasons acceptable to HUD. If the Borrower is temporarily unable to lease all units or residential spaces to eligible families, one or more units or residential spaces may, with the prior approval of HUD, be leased to otherwise eligible families that do not meet the income requirements of part 813 of this chapter, as modified by § 891.505. Failure on the part of the Borrower to

comply with these requirements is a violation of the PAC and grounds for all available legal remedies, including an action for specific performance of the PAC, suspension or debarment from HUD programs, and reduction of the number of units (or in the case of group homes, reduction of the number of residential spaces) under the PAC as set forth in paragraph (b) of this section.

(b) *Reduction of number of units covered by the PAC.* HUD may reduce the number of units (or in the case of group homes, the number of residential spaces) covered by the PAC to the number of units or residential spaces available for occupancy by eligible families if:

(1) The Borrower fails to comply with the requirements of paragraph (a) of this section; or

(2) Notwithstanding any prior approval by HUD, HUD determines that the inability to lease units or residential spaces to eligible families is not a temporary problem.

(c) *Restoration.* HUD will agree to an amendment of the PAC to provide for subsequent restoration of any reduction made under paragraph (b) of this section if:

(1) HUD determines that the restoration is justified by demand;

(2) The Borrower otherwise has a record of compliance with the Borrower's obligations under the PAC; and

(3) Contract and budget authority is available.

(d) *Occupancy by families that are not handicapped.* HUD may relieve the Borrower of the requirement that all units in the project (or residential spaces in a group home) must be leased to handicapped families if:

(1) The Borrower has made reasonable efforts to lease to eligible families;

(2) The Borrower has been granted HUD approval under paragraph (a) of this section; and

(3) The Borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure under the Section 202 loan documents. HUD approval under this paragraph will be of limited duration. HUD may impose terms and conditions to this approval that are consistent with program objectives and necessary to protect its interest in the Section 202 loan.

§ 891.725 PAC administration.

HUD is responsible for the administration of the PAC.

§ 891.730 Default by Borrower.

(a) *PAC provisions.* The PAC will provide:

(1) That if HUD determines that the Borrower is in default under the PAC, HUD will notify the Borrower of the actions required to be taken to cure the default and of the remedies to be applied by HUD, including an action for specific performance under the PAC, reduction or suspension of project assistance payment and recovery of overpayments, as appropriate; and

(2) That if the Borrower fails to cure the default, HUD has the right to terminate the PAC or to take other corrective action.

(b) *Loan provisions.* Additional provisions governing default under the Section 202 loan are included in the regulatory agreement and other loan documents.

§ 891.735 Notice upon PAC expiration.

The PAC will provide that the Borrower will, at least 90 days before the end of the PAC contract term, notify each family occupying an assisted unit (or residential space in a group home) of any increase in the amount the family will be required to pay as rent as a result of the expiration. The notice of expiration will contain such information and will be served in such manner as HUD may prescribe.

§ 891.740 Responsibilities of Borrower.

(a) *Marketing.* (1) The Borrower must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability for occupancy of the group home or the anticipated date of availability of the first unit in an independent living complex. Market activities shall include the provision of notices of the availability of housing under the program to operators of temporary housing for the homeless in the same housing market.

(2) Marketing must be done in accordance with the HUD-approved affirmative fair housing marketing plan and all fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of their race, color, creed, religion, sex, or national origin.

(3) At the time of PAC execution, the Borrower must submit to HUD a list of leased and unleased assisted units (or in the case of a group home, leased and unleased residential spaces) with a justification for the unleased units or residential spaces, in order to qualify for vacancy payments for the unleased units or residential spaces.

(b) *Management and maintenance.* The responsibilities of the Borrower with regard to management and maintenance are provided in § 891.600(b).

(c) *Contracting for services.* The responsibilities of the Borrower with regard to contracting for services are provided in § 891.600(c).

(d) *Submission of financial and operating statements.* The responsibilities of the Borrower with regard to the submission of financial and operating statements are provided in § 891.600(d).

(e) *Use of project funds.* The responsibilities of the Borrower with regard to the use of project funds are provided in § 891.600(e).

(f) *Reports.* The responsibilities of the Borrower with regard to reports are provided in § 891.600(f).

§ 891.745 Replacement reserve.

The general requirements for the replacement reserve are provided in § 891.605. For projects funded under §§ 891.655 through 891.790, the amount of the deposits for the initial year of operation shall be an amount equal to 0.6 percent of the cost of the total structures (for new construction projects), 0.4 percent of the cost of the initial mortgage amount (for all other projects), or such higher rate as required by HUD. For the purposes of this section, total structures include main buildings, accessory buildings, garages, and other buildings. The amount of the deposits will be adjusted each year by the amount of the annual adjustment factor as described in part 888 of this chapter.

§ 891.750 Selection and admission of tenants.

(a) *Application for admission.* The Borrower must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security Numbers, and sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B. Both the Borrower and the applicant family must complete and sign the application for admission. On request, the Borrower must furnish copies of all applications for admission to HUD.

(b) *Determination of eligibility and selection of tenants.* The Borrower is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant family must be a handicapped family (as defined in § 891.505); meet any project occupancy requirements approved by HUD; meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B; and be a low-income family, as defined in § 813.102 of this chapter (as modified by § 891.505). Under certain circumstances, HUD may permit the leasing of units (or residential space in a group home) to ineligible families under § 891.720.

(1) *Local residency requirements are prohibited.* Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the Borrower's HUD-approved affirmative fair housing marketing plan. Preferences may not be based on the length of time the applicant has resided in the jurisdiction. With respect to any residency preference, persons expected to reside

in the community as a result of current or planned employment will be treated as residents.

(2) If the Borrower determines that the family is eligible and is otherwise acceptable and units (or residential spaces in a group home) are available, the Borrower will assign the family a unit or residential space in a group home. If the family will occupy an assisted unit the Borrower will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit (or residential space in a group home) is available, the Borrower will place the family on a waiting list for the project and notify the family when a suitable unit or residential space may become available. If the waiting list is so long that the applicant would not be likely to be admitted within the next 12 months, the Borrower may advise the applicant that no additional applications for admission are being considered for that reason.

(3) If the Borrower determines that an applicant is ineligible for admission or the Borrower is not selecting the applicant for other reasons, the Borrower will promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by the member of the Borrower's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights if the applicant believes the applicant is being discriminated against on the basis of race, color, creed, religion, sex, handicap, or national origin.

(4) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) *Reexamination of family income and composition*—(1) *Regular reexaminations.* If the family occupies an assisted unit (or residential space in a group home), the Borrower must reexamine the income and composition of the family at least every 12 months. Upon verification of the information, the Borrower shall make appropriate adjustments in the total tenant payment in accordance with part 813 of this chapter, as modified by § 891.505, and determine whether the family's unit size is still appropriate. The Borrower must adjust tenant rent and the project assistance payment and must carry out any unit transfer in accordance with HUD standards. At the time of the annual reexamination of family income and composition, the Borrower must require the family to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B.

(2) *Interim reexamination.* If the family occupies an assisted unit (or residential space in a group home) the family must comply with provisions in the lease regarding interim reporting of changes in income. If the Borrower receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the Borrower must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the total tenant payment, tenant rent, and project assistance payment must be verified.

(3) *Continuation of project assistance payment.* (i) A family occupying an assisted unit (or residential space in a group home) shall remain eligible for project assistance payment until the total tenant payment equals or exceeds the gross rent (or a pro rata share of the gross rent in a group home). The termination of subsidy eligibility will not affect the family's other rights under its lease. Project assistance payment may be resumed if, as a result of changes in income, rent, or other relevant circumstances during the term of the PAC, the family meets the income eligibility requirements of part 813 of this chapter (as modified in § 891.505) and project assistance is available for the unit or residential space under the terms of the PAC. The family will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (b) of this section.

(ii) A family's eligibility for project assistance payment may also be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B.

(Approved by the Office of Management and Budget under control number 2502–0204 and 2505–0267)

§ 891.755 Obligations of the family.

The obligations of the family are provided in § 891.415.

§ 891.760 Overcrowded and underoccupied units.

The requirements for overcrowded and underoccupied units are provided in § 891.620.

§ 891.765 Lease requirements.

The lease requirements are provided in § 891.425.

§ 891.770 Denial of admission, termination of tenancy, and modification of lease.

(a) The provisions of part 5, subpart I, of this title apply to Section 202 direct loan projects with Section 162 assistance for disabled families.

(b) The provisions of part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit (or residential space in a group home).

[66 FR 28798, May 24, 2001]

§ 891.775 Security deposits.

The general requirements for security deposits on assisted units are provided in § 891.435. For purposes of subpart E of this part, the additional requirements in § 891.635 apply.

§ 891.780 Adjustment of rents.

(a) *Contract rents.* HUD will calculate contract rent adjustments based on the sum of the project's operating costs and debt service (as calculated by HUD), with adjustments for vacancies, the project's nonrental income, and other factors that HUD deems appropriate. The calculation will be made on the basis of information provided by the Borrower on a form prescribed by HUD.

(b) *Rent for unassisted units.* The rent payable by families occupying units or residential spaces that are not assisted under the PAC shall be equal to the contract rent computed under paragraph (a) of this section.

§ 891.785 Adjustment of utility allowances.

In connection with adjustments of contract rents as provided in § 891.780(a), the requirements for the adjustment of utility allowances provided in § 891.440 apply.

§ 891.790 Conditions for receipt of vacancy payments for assisted units.

(a) *General.* Vacancy payments under the PAC will not be made unless the conditions for receipt of these project assistance payments set forth in this section are fulfilled.

(b) *Vacancies during rent-up.* For each unit (or residential space in a group home) that is not leased as of the effective date of the PAC, the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent (or pro rata share of the contract rent for a group home) for the first 60 days of vacancy, if the Borrower:

(1) Complied with § 891.740;

(2) Has taken and continues to take all feasible actions to fill the vacancy; and

(3) Has not rejected any eligible applicant except for good cause acceptable to HUD.

(c) *Vacancies after rent-up.* If an eligible family vacates an assisted unit (or residential space in a group home) the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent (or pro rata share of the contract rent in a group home) for the first 60 days of vacancy if the Borrower:

(1) Certifies that it did not cause the vacancy by violating the lease, the PAC, or any applicable law;

(2) Notified HUD of the vacancy or prospective vacancy and the reasons

for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 891.740(a)(2) and (3), and in paragraphs (b)(2) and (3) of this section; and

(4) For any vacancy resulting from the Borrower's eviction of an eligible family, certifies that it has complied with § 891.770.

(d) *Vacancies for longer than 60 days.* If an assisted unit (or residential space in a group home) continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, HUD may approve additional vacancy payments for 60-day periods up to a total of 12 months in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit (or, in the case of group homes, the residential space). Such payments may be approved if:

(1) The unit was in decent, safe, and sanitary condition during the vacancy period for which payment is claimed;

(2) The Borrower has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and

(3) The Borrower has demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the Borrower with revenues at least equal to project expenses (exclusive of depreciation) and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit (or residential space in a group home); and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* If the Borrower collects payments for vacancies from other sources (tenant rent, security deposits, payments under § 891.435(c), or governmental payments under other programs), the Borrower shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed contract rent.

Subpart F—For-Profit Limited Partnerships and Mixed-Finance Development for Supportive Housing for the Elderly or Persons With Disabilities

SOURCE: 68 FR 67321, Dec. 1, 2003, unless otherwise noted.

§ 891.800 Purpose.

The purpose of this subpart is to establish rules allowing for, and regulating the participation of, for-profit limited partnerships, of which the sole general partner is a Nonprofit Organization meeting the requirements of 12 U.S.C. 1701q(k)(4) or 42 U.S.C. 8032(k)(6), in the development of supportive housing for the elderly and persons with disabilities using mixed-finance development methods. These rules are intended to develop more supportive housing for the elderly and persons with disabilities by using Federal assistance, private capital and expertise, and tax credits.

§ 891.802 Applicability of other provisions.

The provisions of 24 CFR part 891, subparts A–D, apply to this subpart F unless otherwise stated.

§ 891.805 Definitions.

In addition to the definitions at § 891.105, the following definitions apply to this subpart:

Mixed-finance owner, for the purpose of the mixed-finance development of supportive housing under this subpart, means a for-profit limited partnership of which a Single-Purpose Private Nonprofit Organization (in the case of supportive housing for the elderly), or a Single-Purpose Nonprofit Organization with a 501(c)(3) tax exemption (in the case of supportive housing for the disabled) is the sole general partner. The purpose of the mixed-finance owner must include the promotion of the welfare of the elderly or persons with disabilities, as appropriate.

Single-Purpose Private Nonprofit Organization (in the case of supportive housing for the elderly) or *Single-Purpose Nonprofit Organization* (in the case of supportive housing for persons with disabilities) (for the purposes of this

subpart, both types of organization are referred to as ''Nonprofit Organization''), for the purpose of this subpart, means any institution or foundation:

(1) In the case of supportive housing for the elderly, that meets the requirements of the definition of ''private nonprofit organization'' found in §891.205 of this title; or

(2) In the case of supportive housing for persons with disabilities, that meets the requirements of the definition of ''nonprofit organization'' in §891.305 of this title; and that

(3) Is the general partner of a for-profit limited partnership, if the Nonprofit Organization meets the requirements of this definition and owns at least one-hundredth of one percent of the partnership assets, or is a nonprofit corporation wholly owned and controlled by a Nonprofit Organization meeting those requirements. If the project will include units financed with the use of Federal Low-Income Housing Tax Credits and the organization is a limited partnership, the limited partnership must meet the requirements of section 42 of the IRS code, including the requirements of section 42(h)(5).

§891.808 Capital advance funds.

(a) HUD is authorized to provide capital advance funds to expand the supply of housing for the elderly and persons with disabilities in accordance with the rules and regulations of the Section 202 and 811 supportive housing programs. For mixed-finance projects, HUD provides a capital advance funds reservation to the sponsor, which transfers the fund reservation to the Nonprofit Organization, which is general partner of a for-profit limited partnership meeting the requirements of this subpart. HUD then provides the capital advance funds to the Nonprofit Organization, which makes a non-amortizing loan to the mixed-finance owner to be repaid within 40 years at the 202 or 811 interest rate in effect on the date of the closing of the capital advance. The capital advance funds may be provided as a loan in the case of a mixed-finance project using a nine percent tax credit, and as a pass-through to the limited partnership in the case of mixed-finance projects using tax-exempt bonds with four percent tax credit. The capital advance funds will be disbursed under a disbursement escrow agreement upon HUD approval of the mixed-finance draw down.

(b) Developments built with mixed-finance funds may combine assisted supportive housing units with market rate units. However, the number of Section 202 or 811 units in the development funded with the capital advance must be not less than the number of units that could have been developed with the capital advance without the use of mixed funding sources. In the case of a Section 811 mixed-finance project, the additional units cannot cause the project to exceed the applicable Section 811 project size limit if they will also house persons with disabilities.

§891.809 Limitations on capital advance funds.

Capital advances are not available in connection with:

(a) Acquisition of facilities currently owned and operated by the sponsor as housing for the elderly, except with rehabilitation as defined in 24 CFR 891.105;

(b) The financing or refinancing of federally assisted or insured projects;

(c) Facilities currently owned and operated by the sponsor as housing for persons with disabilities, except with rehabilitation as defined in 24 CFR 891.105; or

(d) Units in Section 202 direct loan projects previously refinanced under the provisions of Section 811 of the American Homeownership and Economic Opportunity Act of 2000, 12 U.S.C. 1701q *note.*

§891.810 Project rental assistance.

Project Rental Assistance is defined in §891.105. Project Rental Assistance is provided for operating costs, not covered by tenant contributions, attributable to the number of units funded by capital advances under the Section 202 and 811 supportive housing programs, subject to the provisions of 24 CFR 891.445. The sponsor of a mixed-finance development must obtain the necessary funds from a source other than project rental assistance funds for operating costs related to non-202 or -811 units.

§ 891.813 Eligible uses for assistance provided under this subpart.

(a) Assistance under this subpart may be used to finance the construction, reconstruction, or rehabilitation of a structure or a portion of a structure; or the acquisition of a structure to be used as supportive housing for the elderly; or the acquisition of housing to be used as supportive housing for persons with disabilities. Such assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for the elderly and persons with disabilities.

(b) Assistance under this subpart may not be used for excess amenities, as stated in 24 CFR 891.120(c). Such amenities may be included in a mixed-finance development only if:

(1) The amenities are not financed with funds provided under the section 202 or 811 program;

(2) The amenities are not maintained and operated with section 202 or 811 funds;

(3) The amenities are designed with appropriate safeguards for the residents' health and safety; and

(4) The assisted residents are not required to use, participate in, or pay a fee for the use or maintenance of the amenities, although they are permitted to do so voluntarily. Any fee charged for the use, maintenance, or access to amenities by residents must be reasonable and affordable for all residents of the development.

(c) Notwithstanding any other provision of this section, §§ 891.220 and 891.315 on ''prohibited facilities'' apply to mixed-finance projects containing units assisted under section 202 or 811.

§ 891.815 Developer's fee.

(a) *Developer's fee cap.* No developer's fee shall be paid in excess of nine percent of the total project replacement costs.

(b) *Use of capital advance towards developer's fee.* A maximum of eight percent of the capital advance may be used towards payment of the developer's fee.

(c) *Eligible and ineligible uses of developer's fee.* (1) a developer's fee may be used to pay costs associated with developing the mixed-finance project, including, but not limited to:

(A) Reasonable profit and overhead of up to six percent of the total construction cost;

(B) The costs of necessary change orders approved by HUD prior to final project completion;

(C) Housing consultant services;

(D) Organizational expenses;

(E) The owner's cash requirement prior to initial closing, except as stated in paragraph (c)(2) of this section;

(F) Increased taxes and insurance caused by unavoidable delays in construction;

(G) Increases in otherwise eligible non-construction line items;

(H) Environmental studies;

(I) Appraisal costs;

(J) Capital expenditures, such as major moveable furnishings and equipment, including, but not limited to, office and maintenance equipment and furnishings for the public areas;

(K) Costs directly related to the rent-up of the project, such as advertisement;

(L) Accruals for taxes and insurance after completion of construction if current income from the project is insufficient to meet such accruals;

(M) Project contingency items for which two percent of the developer's fee is withheld at HUD approval of the capital advance; and

(N) Cost of obtaining a project cost estimate.

(2) A developer's fee may not be used for the following:

(A) Excess amenities;

(B) Fees to the architect and attorney above those contractually agreed to;

(C) Non-major equipment and furnishings;

(D) Items with short life cycles, such as office and maintenance supplies;

(E) Furnishings within the residential units; and

(F) Motor vehicles.

(d) *Unused developer's fee.* Amounts set aside from the 202 or 811 capital advance funds for the developer's fee that remain unused after the completion of construction are deposited in the

project's replacement reserve account at project completion.

§ 891.818 Firm commitment application.

(a) *New construction*. The mixed-finance owner and the Nonprofit Organization shall submit an application for a firm commitment for capital advance funding. The application shall consist of the required application form HUD 92013 and additional materials, including:

(1) Form HUD 92013–Supp, and any other supplementary forms or attachments to the application form that HUD requires;

(2) Organizational documents of the mixed-finance owner, including the partnership documents and organizational documents of the Nonprofit Organization that will receive the capital advance, together with an incumbency certificate listing all duly qualified and sitting officers and directors by title and the beginning and ending dates of each person's term;

(3) The name and address of the mixed-finance owner and the Nonprofit Organization, and the name, title, address, and telephone number of the respective officers to whom communications should be addressed;

(4) A balance sheet showing that the mixed-finance owner is adequately capitalized;

(5) Evidence that the sponsor, mixed-finance owner, or the Nonprofit Organization has control of the site of the proposed mixed-finance development, along with a legal description of the proposed site and a title report covering the site;

(6) The mixed-finance owner's submission showing proposed amounts and uses of the developer's fee, demonstrating compliance with 24 CFR 891.823;

(7) Evidence that the zoning for the site of the proposed mixed-finance project complies with existing zoning, or that any necessary zoning approvals or variances have been obtained;

(8) Number of units (with bedroom count) for which funds have been reserved under section 202 or 811, and, in the case of section 811 units, the population to be served in those units; the number of units (with bedroom count) funded or financed from sources other than section 202 or 811, if any (if 811, the population to be served in the non-811 units including the number of persons with disabilities, if applicable); the types and amounts of non-dwelling space to be provided; whether the assisted units will be floating or designated fixed units (Uniform Federal Accessibility Standards (UFAS) accessible units must always be designated fixed units); evidence demonstrating that the development will comply with all fair housing and accessibility requirements, including the design and construction requirements of the Fair Housing Act; evidence demonstrating that units serving persons with disabilities will be dispersed throughout the development in the most integrated environment possible and other requirements of section 504 of the Rehabilitation Act of 1973; evidence demonstrating that the project will comply with accessibility requirements, project standards, and site and neighborhood standards under 24 CFR 891.120, 891.125, 891.210, 891.310, and 891.320, as applicable; and evidence demonstrating that the project will comply with 24 CFR 8.4(b)(5), which prohibits the selection of a site or location which has the purpose or effect of excluding persons with disabilities from federally-assisted programs or activities;

(9) The proposed development schedule for completion of the mixed-finance development, including the estimated time to complete each major development stage. If a mixed-finance development proposal will be implemented in phases, the mixed-finance owner must include in its proposal a general description of each planned phase of development, including:

(A) The overall number of phases;

(B) The intended scope of each phase (including number of units);

(C) The anticipated sources and uses of financing for each phase; and

(D) A schedule (to be approved by HUD) for submission of a supplementary proposal for each phase;

(10) A previous participation certificate for all officers and directors of the sponsor, mixed-finance owner, Nonprofit Organization, developer, housing

consultant, general contractor, and management agent;

(11) Identification of the housing consultant, if one is employed;

(12) A mixed-finance owner-Architect Agreement;

(13) Final Working drawings and specifications with the architect's certificate that the project design has been reviewed and approved by the local Building Department;

(14) Topographic survey, surveyor's report, and soil test borings;

(15) Life Cycle cost analysis of utility combinations;

(16) Affirmative Fair Housing Marketing Plan;

(17) Current resumes of general contractor's development experience and general contractor's financial statements for the last three years;

(18) Contractor's cost breakdown and cost analysis;

(19) Resume of resident manager or management agent, which includes qualifications and experience;

(20) Schedule of capital expenditures such as furniture, supplies, equipment, and other items necessary to the basic operation of the project that will not be covered by proceeds from the capital advance, and a description of how the development will meet these costs;

(21) Certification/disclosure of lobbying activities by the mixed-finance owner and the Single-Purpose Nonprofit Organization;

(22) Consolidated owner certifications for the mixed-finance owner, including the certification required by OMB circular A–129; Equal Employment Opportunity certification; certification of drug-free workplace; certification of compliance with design and cost standards; the Uniform Federal Accessibility Standards, section 504 of the Rehabilitation Act of 1973; and, for covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, the design and construction requirements of the Fair Housing Act and the Americans with Disabilities Act where applicable, and HUD's implementing regulations;

(23) Certification of Compliance with Davis-Bacon prevailing wage requirements and related labor standards;

(24) Flood Disaster Protection Act of 1973 Certification;

(25) Certification of compliance with the National Environmental Policy Act and related environmental laws and authorities; and

(26) Certification that the information in the firm commitment application is true and accurate.

(b) *Acquisition with rehabilitation.* In the case of acquisition with rehabilitation, the mixed-finance owner must submit the documentation required in paragraph (a) of this section, as well as:

(1) An authorization to inspect the project;

(2) A description of the proposed rehabilitation and a description of any steps to be taken to make the development accessible to persons with disabilities;

(3) Final drawings and specifications of the units as proposed to be rehabilitated, including any structural changes, changes in floor plans, locations of the fixed UFAS accessible units and other units serving persons with disabilities dispersed within the project, or other significant alterations;

(4) A survey or site plan drawing of the development as built; and

(5) Drawings and specifications of the existing facilities, if such drawings can be obtained.

(c) *Acquisition without rehabilitation.* In the case of acquisition without rehabilitation, the mixed-finance owner must submit the documentation required in paragraph (a) of this section (except for paragraphs (a)(13) and (23)), as well as:

(1) An authorization to inspect the project;

(2) A narrative description of any repair work proposed, and the manner in which the project will be made accessible to persons with disabilities;

(3) A survey or site plan drawing of the development as built;

(4) Drawings and specifications of the existing facilities, if such drawings can be obtained.

(d) *Lead-based paint certification.* In the case of acquired developments constructed before 1978 in which any child under six years of age resides or is expected to reside, the mixed-finance owner must also submit a certification of compliance with the Lead-Based

Paint Poisoning Prevention Act and the Residential Lead-Based Paint Hazard Reduction Act of 1992.

§ 891.820 Mixed-finance proposal.

The mixed-finance owner must submit a mixed-finance proposal along with the firm commitment application. Each mixed-finance development proposal shall be in the form prescribed by HUD and must contain the following information:

(a) *Development description.* A description of the proposed project including: the number and types of units with bedroom count; the number of 202 or 811 units and the number of units to be financed from funds other than 202 or 811 funds; the types and amounts of non-dwelling space to be provided; schematic drawings and designs; the proposed building and unit plans including the location of the fixed UFAS accessible units and other units serving persons with disabilities dispersed within the project; and final plans and specifications.

(b) *Financing.* A detailed description of all financing necessary for the implementation of the proposal, specifying the sources, together with a 5-year operating performance projection, known as a ''pro forma'' (pro forma), for the development, including all underlying assumptions. In addition, the mixed-finance owner is required to submit to HUD for approval all documents relating to the financing of the proposal, including, but not limited to, any loan agreements, financing commitments, notes, mortgages, or deeds of trust, use restrictions, operating pro formas relating to the viability of the development, and other agreements or documents pertaining to the financing of the proposal. If tax credits are being used, the mixed-finance owner must submit official confirmation of the award of tax credits from the State allocating agency. Any financing commitments must be firm and irrevocable in order to be approved by HUD.

(c) *Sources and uses.* A statement of the sources and uses of financing; if a project is to be developed in phases, the sources and uses of financing for each phase;

(d) *Site information.* An identification and description of the proposed site, site plan, and neighborhood.

(e) *Development construction cost estimate.* A development construction cost estimate based on the schematic drawings and specifications and current construction costs prevailing in the area. In addition, a copy of the development schedule, including the architect or contractor estimate of the time required to complete each major development stage.

(f) *Life cycle analysis.* For mixed-finance projects with new construction or rehabilitation, the criteria to be used in equipping the proposed development with heating and cooling systems, which shall include a life-cycle cost analysis of the installation, maintenance, and operating costs of such systems.

(g) *Relocation plan.* Information concerning any displacement of current site occupants, including identification of each displacee, the distribution plan for notices, the anticipated cost and source for funding of relocation benefits, and compliance with 24 CFR 891.155(e).

(h) *Activities and relationship of participating parties.* Identification of: (1) The participating parties, together with full information as to any conflict-of-interest or identity-of-interest between any of the parties, including the general partner, limited partners, mixed-finance owner, Nonprofit Organization, 202 or 811 sponsors, and development team members;

(2) The activities to be undertaken by each of the participating parties; the legal and business relationships among the participating parties; and

(3) The rights and liabilities (financial and otherwise) and respective commitments of the parties with respect to the development;

(i) *Operating feasibility.* A demonstration of the operating feasibility of the development, which must be accomplished by:

(1) Showing that the estimated operating expenses of the development will not exceed its estimated operating income; and

(2) Submitting a 5-year operating pro forma for the development, and including all underlying assumptions and, if

the project is a tax-credit project, a pro forma showing how the project will continue to operate for the required period after the end of the tax-credit period;

(j) *Market analysis.* An analysis of the projected market for the proposed mixed-finance development;

(k) *Management and occupancy policies.* A summary of the proposed management and occupancy policies to be implemented for the assisted units at the development, consistent with § 891.410, and a description of application and tenant selection procedures for the units without HUD funding;

(l) *Facilities.* A statement addressing the adequacy of existing facilities and services for the prospective occupants of the development and a description of public improvements needed to ensure the viability of the proposed development with a description of the sources of funds available to carry out such improvements;

(m) *Environmental review.* Any additional environmental information HUD deems necessary in completing its environmental review;

(n) *Certifications and assurances.* (1) Certificates and assurances that the mixed-finance owner has authority under State and local law to develop housing for elderly persons or persons with disabilities and to enter into all agreements and provide all assurances required under this subpart. In addition, the Nonprofit Organization must certify that it has the legal authority to enter into the partnership agreement under which it acts as the sole general partner with for-profit limited partners and to fulfill all its obligations as partner. The Nonprofit Organization must also certify that it has obtained all necessary approvals for this purpose. The mixed-finance owner will be responsible to HUD for ensuring that the 202 or 811 units are developed and operated in accordance with all applicable HUD requirements. The mixed-finance owner must also warrant that it will provide for a mechanism to assure, to HUD's satisfaction, that the 202 or 811 units will remain available for use by very low-income families for 40 years;

(2) A certification of the mixed-finance owner's previous participation as stated in 24 CFR part 200, subpart H, and shall ensure that all participating parties submit a similar certification to HUD.

(o) *Other.* The mixed-finance owner must provide any other materials or information that HUD may from time to time require.

EFFECTIVE DATE NOTE: At 68 FR 67321, Dec. 1, 2003, § 891.820 was added. Paragraphs (a) through (e) and paragraphs (g) through (n) of this section contain information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 891.823 HUD review and approval.

HUD will review the firm commitment application and mixed-finance proposal as follows.

(a) *Initial screening.* HUD will perform an initial screening of the firm commitment application/mixed-finance proposal to determine that all required documentation and evidentiary materials have been submitted. HUD will advise the mixed-finance owner and Nonprofit Organization of any technical deficiencies in the application and proposal and indicate a date certain by which the remaining information must be submitted.

(b) *Firm commitment and proposal technical processing and approval.* Upon determining that the firm commitment and proposal are complete, HUD will process the firm commitment application and mixed-finance proposal for approval. The firm commitment application will be reviewed in accordance with applicable firm commitment and technical review guidelines. Upon determining that a proposal is acceptable for technical processing, HUD will evaluate the proposal to determine:

(1) Whether the mixed-finance owner has the legal capacity to enter into all necessary contracts and agreements to complete the development;

(2) Whether the proposed sources and uses of funds are eligible and reasonable, and show an appropriate proration of supportive housing funds and funds from other sources, and whether the project, including the market-rate units, is financially feasible and is projected to remain feasible for the 40-year term of the very low-income use

restrictions, given the available financing structure, firm financing commitments, and market for the project;

(3) Whether the mixed-finance owner has the resources and capacity to develop and operate the project for the required time period;

(4) Whether the HUD-assisted units are comparable in size, location, appearance, and design to any units without HUD assistance;

(5) Whether the mixed-finance owner will develop and operate the Section 202 or 811 assisted units in accordance with all HUD program requirements, including program regulations governing those units;

(6) Whether the documents include the required covenants and use restrictions, which must be recorded prior to release of HUD funds;

(7) Whether the mixed-finance owner has obtained all necessary State, local, and Federal approvals, zoning changes, or variances;

(8) Whether the design of the development meets applicable accessibility requirements;

(9) Whether the supportive services to be provided for the Section 202 or 811 units are at least equal to the services the sponsor proposed to provide in its 202 or 811 application for funding;

(10) Whether the assistance to be provided under this part, taking into account all assistance to be received by the project, is no more than necessary to provide affordable housing, as required by section 102(d) of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3545(d);

(11) Whether any other processing criteria that HUD may prescribe from time to time are satisfied;

(12) Whether the mixed-finance owner has certified to compliance:

(i) With all applicable Federal, State, or local civil rights laws and regulations;

(ii) With all environmental regulations;

(iii) With applicable wage rates determined in accordance with the Davis-Bacon Act and with related labor standards.

§ 891.825 Evidentiary materials.

Any updates or amendments to materials submitted at the firm commitment/mixed-finance proposal stage must be submitted as part of the evidentiary materials, even if not specifically requested.

(a) *General.* Except as otherwise expressly provided, a mixed-finance owner is required to submit for HUD review and approval prior to HUD's approval of the release or drawdown of capital advance funds all evidentiary materials required by HUD. Upon HUD approval of evidentiary materials, the evidentiary materials will be executed and recorded in the order required by HUD, along with other required documents. All the executed documents for the mixed-finance project will be made available for HUD's final review before drawdown of funds. The evidentiary materials must include:

(1) *Organizational documents.* Updated organizational documents of the mixed-finance owner, nonprofit organization, and all participating parties in the partnership showing that:

(i) One of the purposes of the mixed-finance owner is the promotion of the welfare of elderly persons or persons with disabilities;

(ii) There is no prohibited conflict of interest or prohibited identity of interest involving the sponsor, the nonprofit organization, or the mixed-finance owner, and the mixed-finance owner is not controlled by or under the direction of persons or firms seeking to derive profit or gain from the mixed-finance owner. Individual conflict of interest and identity of interest and disclosure certifications must be submitted by all directors, officers, shareholders, trustees, and agents of the mixed-finance owner and the nonprofit organization and all development team members; and

(iii) A partnership agreement has been entered into between the mixed-finance owner, its general partner, and any other participating entities that establishes the relationship of the partners with respect to implementation of the proposal.

(2) *Amendment to capital advance.* A mixed-finance amendment to the capital advance agreement.

(3) *Deed; declaration of covenants or deed restriction.* A deed or ground lease to the mixed-finance owner with a declaration of covenants or deed restriction, and a pro forma title policy. The first recorded document must be a covenant running with the land, deed restriction, Use Agreement, or other document of public record in the form prescribed by HUD that will assure to HUD's satisfaction that the HUD-assisted units will be available for use by eligible very low-income elderly or disabled families in accordance with all applicable requirements for no less than 40 years, and that any party that subsequently acquires the mixed-finance development will be fully bound under these covenants and deed restrictions;

(4) *Zoning.* Evidence that the zoning of the site permits construction of the mixed-finance development;

(5) *Site control.* Evidence that the sponsor, nonprofit organization, or mixed-finance owner has control of the site for such period of time as may be required by HUD, and a title policy or report evidencing that the site is free of any encumbrances, restrictions, or reverters that could adversely affect use of the site for the proposed project;

(6) *Development agreement.* Any development agreement or agreements, or other document showing the proposed development schedule; the respective responsibilities of each party for each development phase; the expected costs and financing for those costs; the allocation of risk of loss as between or among the parties; and guarantees of completion, insurance, and bonding requirements as applicable to regular 202 and 811 projects;

(7) *Regulatory agreement.* A regulatory or operating agreement that provides binding assurance that operation of the 202 or 811 units will be in accordance with the applicable Section 202 or 811 requirements;

(8) *Management agreement.* Any agreement relating to management of the Section 202 or 811 development by an entity other than the mixed-finance owner or the nonprofit organization, requiring that the management of the project will be in accordance with Section 202 or 811 requirements;

(9) *Financing documents.* Any updates to the financing and firm commitment documents required under the mixed-Finance Proposal;

(10) *Federal subsidies.* A description of the amount and source of any housing assistance that the project will receive from a state, unit of local government, or the Federal government, as required by section 102(d) of the HUD Reform Act of 1989, 42 U.S.C. 3545(d);

(11) *Certification of compliance with approved proposal.* The mixed-finance owner's certification that it will develop and operate the number of 202 or 811 units approved by HUD, in the configuration and with the bedroom sizes approved by HUD, within the approved cost limits; and comply with all applicable statutory, regulatory, and Executive Order requirements for the 40-year period required by law and in accordance with the HUD-approved proposal;

(12) *Legal opinion.* A legal opinion supporting the legal capacity of the mixed-finance owner and its affiliates to enter into all necessary agreements to develop and operate the mixed-finance project, as well as the validity and priority of the covenants and restrictions of the mixed-finance documents. The legal opinion must attest that the counsel has examined the availability of the participating parties' financing, the amounts and sources of financing committed to the mixed-finance project by the participating parties, and that such financing has been irrevocably committed for use in carrying out the project;

(13) *No assignment.* A statement by the mixed-finance owner and the nonprofit organization, which must be included in all agreements and contracts with participating parties, that a transfer of 202 or 811 capital advance funds or rental assistance to the mixed-finance owner shall not be deemed an assignment of the funds, and the transferee shall not succeed to any rights or benefits of the nonprofit organization under the capital advance agreement;

(14) *No third-party beneficiary relationship.* A statement to be included in the capital advance agreement and the mixed-finance amendment to the capital advance agreement that nothing in the capital advance agreement or

mixed-finance amendment to the capital advance agreement shall be deemed to create a relationship of third party beneficiary, principal-agent, or any relationship involving HUD.

(15) *Additional certifications.* The owner's certification to:

(i) Compliance with all applicable Federal, State, or local civil rights requirements;

(ii) Compliance with all deed conditions and covenants running with the land, including the requirement not to dispose of the development without the prior written approval of HUD for the entire period that the use restrictions for the assisted housing remain in effect;

(b) *Other.* The mixed-finance owner must submit such other evidentiary materials as HUD may require.

EFFECTIVE DATE NOTE: At 68 FR 67321, Dec. 1, 2003, § 891.825 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 891.828 Loan of capital advance funds to mixed-finance owner.

Upon issuance of the firm commitment for capital advance financing, the nonprofit organization to which has been transferred the fund reservation by the sponsor, shall execute a capital advance agreement and an agreement to enter into a Project Rental Assistance Contract with HUD. Upon approval of the mixed-finance proposal and the evidentiary materials, the mixed-finance owner shall provide a Note evidencing a non-amortizing loan of the capital advance funds for a period of not less than 40 years at the program interest rate in effect on the date of the Note. The mixed-finance owner shall execute and record a use agreement, which shall include a complete legal description of the project site and which shall be accompanied by a title insurance policy or commitment insuring the validity and priority of the use agreement. Capital advance funds can be drawn down under a disbursement and escrow agreement in accordance with § 891.830.

§ 891.830 Drawdown.

(a) Upon its approval of the executed evidentiary materials and other documents submitted and upon determining that such documents are satisfactory, HUD may approve the drawdown of capital advance funds in accordance with the HUD-approved drawdown schedule.

(b) The capital advance funds may only be drawn down in an approved ratio to other funds, in accordance with a drawdown schedule approved by HUD. The nonprofit organization and the mixed-finance owner shall certify, in a form prescribed by HUD, prior to the initial drawdown of capital advance funds, that they will not draw down more capital advance funds than necessary to meet the pro rata share of the development costs for the 202 or 811 units. The nonprofit organization and the mixed-finance owner shall draw down capital advance funds only when payment is due and after inspection and acceptance of work covered by the draw.

(c) Each drawdown of funds constitutes a certification by the mixed-finance owner and the nonprofit organization that:

(1) All the representations and warranties submitted in accordance with this subpart continue to be valid, true, and in full force and effect;

(2) All parties are in compliance with their obligations pursuant to this subpart which, by their terms, are applicable at the time of the drawdown of funds;

(3) All conditions precedent to the drawdown of the funds by the nonprofit organization and the mixed-finance owner have been satisfied;

(4) The capital advance funds drawn down will be used only for eligible costs actually incurred in accordance with the provisions of this subpart and the approved proposal; and

(5) The amount of the drawdown is consistent with the ratio of 202 or 811 units to other units.

§ 891.833 Monitoring and review.

HUD shall monitor and review the development during the construction and operational phases in accordance

with the requirements that HUD prescribes in the mixed-finance amendment to the capital advance agreement. In order for units assisted under the 202 and 811 programs to continue to receive project rental assistance, they must be operated in accordance with the mixed-finance amendment to the capital advance agreement and all other HUD regulations and requirements. It is the responsibility of the mixed-finance owner and nonprofit organization to ensure compliance with the preceding sentence.

§ 891.835 Eligible uses of project rental assistance.

(a) Section 202 or 811 project rental assistance may be used to pay the necessary and reasonable operating costs, as defined in 24 CFR 891.105 and approved by HUD, not met from project income and attributed to Section 202 or 811 units. Operating cost standards under 24 CFR 891.150 apply to developments under this part.

(b) Section 202 or 811 project rental assistance may not be used to pay for:

(1) Debt service on construction or permanent financing, or any refinancing thereof, for any units in the development, including the 202 or 811 units;

(2) Cash flow distributions to owners; or

(3) Creation of reserves for non-202 or -811 units.

(c) HUD-approved operating costs attributable to common areas or to the development as a whole, such as groundskeeping costs and general administrative costs, may be paid from project rental assistance on a pro-rata basis according to the percentage of 202 or 811 assisted units as compared to the total number of units.

§ 891.840 Site and neighborhood standards.

For Section 202 or 811 mixed-finance developments, the site and neighborhood standards described at § 891.125 and § 891.320 apply to the entire mixed-finance development.

§ 891.848 Project design and cost standards.

The project design and cost standards at § 891.120, with the exception of subsection (c), apply to mixed-finance developments under this subpart. Sections 891.220 and 891.315 on prohibited facilities shall apply to mixed-finance developments under this subpart.

§ 891.853 Development cost limits.

The Development cost limits for development activities, as established at § 891.140, apply to Section 202 or 811 units in mixed-finance developments under this subpart.

§ 891.855 Replacement reserves.

(a) The mixed-finance owner shall establish and maintain a replacement reserve account for section 202 or 811 units. This account must meet all the requirements of 24 CFR 891.405.

(b) The mixed-finance owner may obtain a disbursement from the reserve only if the funds will be used to pay for capital replacement costs for the Section 202 or 811 units in the mixed-finance development and in accordance with the terms of the regulatory and operating agreement. In the event of a disposition of the mixed-finance development, or the dissolution of the owner, any Section 202 or 811 funds remaining in the replacement reserve account must remain dedicated to the Section 202 or 811 units to ensure their long-term viability, or as otherwise agreed by HUD.

(c) Subject to HUD's approval, reserves may be used to reduce the number of dwelling units in the development for the purpose of retrofitting units that are obsolete or unmarketable.

§ 891.860 Operating reserves.

(a) The mixed-finance owner shall maintain an operating reserve account in an amount sufficient to cover the operating expenses of the development for a three-month period.

(b) Project income and tax credit equity may be used to fund the operating reserve account.

§ 891.863 Maintenance as supportive housing units for elderly persons and persons with disabilities.

(a) The mixed-finance owner must develop and continue to operate the same number of supportive housing units for

elderly persons or persons with disabilities, as stated in the mixed-finance amendment to the capital advance agreement, for a 40-year period.

(b) If a mixed-finance development proposal provides that the Section 202 or 811 supportive housing units will be floating units, the mixed-finance owner must operate the HUD-approved percentage of Section 202 or 811 supportive housing units, and maintain the percentage distribution of bedroom sizes of Section 202 or 811 supportive housing units, for the entire term of the very low-income use restrictions on the development. Any foreclosure, sale, or other transfer of the development must be subject to a covenant running with the land requiring the continued adherence to the very low-income use restrictions for the Section 202 or 811 supportive housing units.

(c) The Owner must ensure that Section 202 or 811 units in the development are and continue to be comparable to unassisted units in terms of location, size, appearance, and amenities.

§ 891.865 Sanctions.

In the event that Section 202 or 811 units are not developed and operated in accordance with all applicable Federal requirements, HUD may impose sanctions on the participating parties and seek legal or equitable relief in enforcing all requirements under section 202, the Housing Act of 1959, or section 811 of the National Affordable Housing Act, all implementing regulations and requirements and contractual obligations under the mixed-finance documents.

CHAPTER IX—OFFICE OF ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

EDITORIAL NOTE: Nomenclature changes to chapter IX appear at 59 FR 14090, Mar. 25, 1994.

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PART 901—PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM

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AUTHORITY: 42 U.S.C. 1437d(j); 42 U.S.C. 3535(d).

SOURCE: 61 FR 68933, Dec. 30, 1996, unless otherwise noted.

§ 901.1 Purpose, program scope and applicability.

(a) *Purpose.* This part establishes the Public Housing Management Assessment Program (PHMAP) to implement and augment section 6(j) of the 1937 Act. PHMAP provides policies and procedures to identify public housing agency (PHA), resident management corporation (RMC), and alternative management entity (AME) management capabilities and deficiencies, recognize high-performing PHAs, designate criteria for defining troubled PHAs and PHAs that are troubled with respect to the program under section 14 (Public Housing Modernization Program), and improve the management practices of troubled PHAs and mod-troubled PHAs.

(b) *Program scope.* The PHMAP reflects only one aspect of PHA operations, i.e., the results of its management performance in specific program areas. The PHMAP should not be viewed by PHAs, the Department or other interested parties as an all-inclusive and encompassing view of overall PHA operations. When viewing overall PHA operations, other criteria, including but not limited to, the quality of a PHA's housing stock, compliance issues, Fair Housing and Equal Opportunity issues, Board knowledge and oversight of PHA operation, etc., even though not covered under the PHMAP, are necessary in order to determine the adequacy of overall PHA operations. The PHMAP can never be designed to be the sole method of viewing a PHA's overall operations. A PHA should not manipulate the PHMAP system in the short-term in order to achieve a higher PHMAP score, thereby delaying or negating long-term improvement. Making a correct and viable long-term decision (doing the right thing) may hurt a PHA in the short-term (i.e., lower PHMAP score), but will result in improved housing stock and better overall management of a PHA over the long-term and a higher sustainable PHMAP score.

(c) *Applicability.* (1)(i) The provisions of this part remain applicable to PHAs and RMC/AMEs as described in paragraph (c)(1)(ii) until September 30, 1999.

(ii) The provisions of this part apply to PHAs and RMC/AMEs as noted in the sections of this part. The management assessment of an RMC/AME differs from that of a PHA. Because an RMC/AME enters into a contract with a PHA to perform specific management functions on a development-by-development or program basis, and because the scope of the management that is undertaken varies, not every indicator that applies to a PHA would be applicable to each RMC/AME.

(2) Due to the fact that the PHA and not the RMC/AME is ultimately responsible to the Department under the ACC, a PHA's score will be based on all of the developments covered by the ACC, including those with management functions assumed by an RMC or AME (pursuant to a court ordered receivership agreement, if applicable). This is necessary because of the limited nature of an RMC/AME's management functions and the regulatory and contractual relationships among the Department, PHAs and RMC/AMEs.

(3) A significant feature of RMC management is that 24 CFR §§964.225 (d) and (h) provide that a PHA may enter into a management contract with an RMC, but a PHA may not contract for assumption by the RMC of the PHA's underlying responsibilities to the Department under the Annual Contributions Contract (ACC).

(4) When a PHA's management functions have been assumed by an AME:

(i) If the AME assumes only a portion of the PHA's management functions, the provisions of this part that apply to RMCs apply to the AME (pursuant to a court ordered receivership agreement, if applicable); or

(ii) If the AME assumes all, or substantially all, of the PHA's management functions, the provisions of this part that apply to PHAs apply to the AME (pursuant to a court ordered receivership agreement, if applicable).

(5) To ensure quality management results from a contract between an AME and a PHA, or between an AME and HUD, minimum performance criteria that relate to the PHMAP indicators, as applicable, should be included in such contract. Failure to meet the performance criteria would be a basis for termination of the contract. However, even in the absence of explicit contractual provisions, this part applies to AMEs in accordance with paragraph (b)(4) of this section, above.

[61 FR 68933, Dec. 30, 1996, as amended at 63 FR 46617, Sept. 1, 1998]

§ 901.5 Definitions.

Actual vacancy rate is the vacancy rate calculated by dividing the total number of vacancy days in the fiscal year by the total number of unit days available in the fiscal year.

Adjusted vacancy rate is the vacancy rate calculated after excluding the vacancy days that are exempted for any of the eligible reasons. It is calculated by dividing the total number of adjusted vacancy days in the fiscal year by the total number of unit days available in the fiscal year.

Alternative management entity (AME) is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, or that is otherwise duly appointed or contracted (for example, by court order, pursuant to a court ordered receivership agreement, if applicable, or agency action), to manage all or part of a PHA's operations. Depending upon the scope of PHA management functions assumed by the AME, in accordance with §901.1(b)(2), the AME is treated as a PHA or an RMC for purposes of this part and, as appropriate, the terms PHA and RMC include AME.

Assessed fiscal year is the PHA fiscal year that has been reviewed for management performance using the PHMAP indicators. Unless otherwise indicated, the assessed fiscal year is the immediate past fiscal year of a PHA.

Assistant Secretary means the Assistant Secretary for Public and Indian Housing of the Department.

Available units are dwelling units, (occupied or vacant) under a PHA's Annual Contributions Contract, that are available for occupancy, after excluding or adjusting for units approved for non-dwelling use, employee-occupied units, and vacant units approved for deprogramming (units approved for demolition, disposition or units that have been combined).

Average number of days for non-emergency work orders to be completed is calculated by dividing the total of the:

(1) Number of days in the assessed fiscal year it takes to close active non-emergency work orders carried over from the previous fiscal year;

(2) The number of days it takes to complete non-emergency work orders issued and closed during the assessed fiscal year; and

(3) The number of days all active non-emergency work orders are open in the assessed fiscal year, but not completed, by the total number of non-

emergency work orders used in the calculation of paragraphs (1), (2) and (3), of this definition.

Average turnaround time is the annual average of the total number of turnaround days between the latter of the legal expiration date of the immediate past lease or the actual move-out date of the former tenant (whenever that occurred, including in some previous fiscal year) and the date a new lease takes effect. Each time an individual unit is re-occupied (turned around) during the fiscal year, the turnaround days for that unit shall be counted in the turnaround time. Average turnaround time is calculated by dividing the total turnaround days for all units re-occupied during the assessed fiscal year by the total number of units re-occupied during the assessed fiscal year.

Cash reserve is the amount of cash available for operations at the end of an annual reporting period after all necessary expenses of a PHA or development have been paid or funds have been set-aside for such payment. The cash reserve computation takes into consideration both short-term accounts receivable and accounts payable.

Confirmatory review is an on-site review for the purposes of State/Area Office verification of the performance level of a PHA, the accuracy of the data certified to by a PHA, and the accuracy of the data derived from State/Area Office files.

Correct means to improve performance in an indicator to a level of grade C or better.

Cyclical work orders are work orders issued for the performance of routine maintenance work that is done in the same way at regular intervals. Examples of cyclical work include, but are not limited to, mopping hallways; picking up litter; cleaning a trash compactor; changing light bulbs in an entryway; etc. (Cyclical work orders should not be confused with preventive maintenance work orders.)

Deficiency means any grade below C in an indicator or component.

Down time is the number of calendar days a unit is vacant between the later of the legal expiration date of the immediate past lease or the actual move-out date of the former resident, and the date the work order is issued to maintenance.

Dwelling rent refers to the resident dwelling rent charges reflected in the monthly rent roll(s) and excludes utility reimbursements, retroactive rent charges, and any other charges not specifically identified as dwelling rent, such as maintenance charges, excess utility charges and late charges.

Dwelling rent to be collected means dwelling rent owed by residents in possession at the beginning of the assessed fiscal year, plus dwelling rent charged to residents during the assessed fiscal year.

Dwelling rent uncollected means unpaid resident dwelling rent owed by any resident in possession during the assessed fiscal year, but not collected by the last day of the assessed fiscal year.

Dwelling unit is a unit that is either leased or available for lease to eligible low-income residents.

Effective lease date is the date when the executed lease contract becomes effective and rent is due and payable and all other provisions of the lease are enforceable.

Emergency means physical work items that pose an immediate threat to life, health, safety, or property, or that are related to fire safety.

Emergency status abated means that an emergency work order is either fully completed, or the emergency condition is temporarily eliminated and no longer poses an immediate threat. If the work cannot be completed, emergency status can be abated by transferring the resident away from the emergency situation.

Emergency work order is a work order, from any source, that involves a circumstance that poses an immediate threat to life, health, safety or property, or that is related to fire safety.

Employee occupied units refers to units that are occupied by employees who are required to live in public housing as a condition of their job, rather than the occupancy being subject to the normal resident selection process.

HQS means Housing Quality Standards as set forth at §982.401 of this title, except that §982.401(j) of this title

does not apply and instead part 35, subparts A, B, L, and R of this title apply.

Improvement Plan is a document developed by a PHA, specifying the actions to be taken, including timetables, that may be required to correct deficiencies where the grade for an indicator is a grade D or E, and shall be required to correct deficiencies of failed indicators, identified as a result of the PHMAP assessment when an MOA is not required.

Indicators means the major categories of PHA management functions that are examined under this program for assessment purposes. The list of individual indicators and the way they are graded is provided in § 901.10 through § 901.45.

Lease up time is the number of calendar days between the time the repair of a unit is completed and a new lease takes effect.

Local occupancy/housing codes are the minimum standards for human occupancy, if any, as defined by the local ordinance(s) of the jurisdiction in which the housing is located.

Maintenance plan is a comprehensive annual plan of a PHA's maintenance operation that contains the fiscal year's estimated work schedule and which is supported by a staffing plan, contract schedule, materials and procurement plan, training, and approved budget. The plan should establish a strategy for meeting the goals and time frames of the facilities management planning and execution, capital improvements, utilities, and energy conservation activities.

Major systems include, but are not limited to, structural/building envelopes which include roofing, walls, windows, hardware, flashing and caulking; mechanical systems which include heating, ventilation, air conditioning, plumbing, drainage, underground utilities (gas, electrical and water), and fuel storage tanks; electrical systems which include underground systems, above ground systems, elevators, emergency generators, door bells, electronic security devices, fire alarms, smoke alarms, outdoor lighting, and indoor lighting (halls, stairwells, public areas and exit signs); and transformers.

Make ready time is the number of calendar days between the date the unit is referred to maintenance for repair by a work order and occupancy is notified that the unit is ready for re-occupancy.

Memorandum of Agreement (MOA) is a binding contractual agreement between a PHA and HUD that is required for each PHA designated as troubled and/or mod-troubled. The MOA sets forth target dates, strategies and incentives for improving management performance; and provides sanctions if performance does not result.

Move-out date is the actual date when the resident vacates the unit, which may or may not coincide with the legal expiration of the lease agreement.

Non-emergency work order is any work order that covers a situation that is not an immediate threat to life, health, safety, or property, or that is unrelated to fire safety.

Percent of dwelling rent uncollected is calculated by dividing the amount of dwelling rent uncollected by the total dwelling rent to be collected.

PHA means a public housing agency. As appropriate in accordance with § 901.1(b)(2), PHA also includes AME.

Percentage of emergency work orders completed within 24 hours is the ratio of emergency work orders completed in 24 hours to the total number of emergency work orders. The formula for calculating this ratio is: total emergency work orders completed (or emergency status abated) in 24 hours or less, divided by the total number of emergency work orders.

PHA-generated work order is any work order that is issued in response to a request from within the PHA administration.

Preventive maintenance program is a program under which certain maintenance procedures are systematically performed at regular intervals to prevent premature deterioration of buildings and systems. The program is developed and regularly updated by the PHA, and fully documents what work is to be performed and at what intervals. The program includes a system for tracking the performance of preventive maintenance work.

Preventive maintenance work order is any work done on a regularly scheduled basis in order to prevent deterioration or breakdowns in individual units or major systems.

Reduced actual vacancy rate within the previous three years is a comparison of the vacancy rate in the PHMAP assessment year (the immediate past fiscal year) with the vacancy rate of that fiscal year which is two years previous to the assessment year. It is calculated by subtracting the vacancy rate in the assessment year from the vacancy rate in the earlier year. If a PHA elects to certify to the reduction of the vacancy rate within the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

Reduced the average time it took to complete non-emergency work orders during the previous three years is a comparison of the average time it took to complete non-emergency work orders in the PHMAP assessment year (the immediate past fiscal year) with the average time it took to complete non-emergency work orders of that fiscal year which is two years previous to the assessment year. It is calculated by subtracting the average time it took to complete non-emergency work orders in the PHMAP assessment year from the average time it took to complete non-emergency work orders in the earlier year. If a PHA elects to certify to the reduction of the average time it took to complete non-emergency work orders during the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

Resident-generated work order is a work order issued by a PHA in response to a request from a lease holder or family member of a lease holder.

Resident management corporation (RMC) means the entity that proposes to enter into, or that enters into, a management contract with a PHA in accordance with 24 CFR 964.120. As appropriate in accordance with §901.1(b)(2), RMC also includes AME.

Routine operating expenses are all expenses which are normal, recurring fiscal year expenditures. Routine expenses exclude those expenditures that are not normal fiscal year expenditures and those that clearly represent work of such a substantial nature that the expense is clearly not a routine occurrence.

Standards equivalent to HQS are housing/occupancy inspection standards that are equal to HUD's Section 8 HQS.

Substantial default means a PHA is determined by the Department to be in violation of statutory, regulatory or contractual provisions or requirements, whether or not these violations would constitute a substantial default or a substantial breach under explicit provisions of the relevant Annual Contributions Contract (ACC) or a Memorandum of Agreement.

Unit days available are the number of days that the available units were available for occupancy in a PHA fiscal year. Unit days available are calculated by adding the number of days that each unit was available for occupancy in the year.

Units approved for non-dwelling use refers to units approved for non-dwelling status for use in the provision of social services, charitable purposes, public safety activities and resident services, or used in the support of economic self-sufficiency and anti-drug activities.

Units vacant due to circumstances and actions beyond the PHA's control are dwelling units that are vacant due to circumstances and actions that prohibit the PHA from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating or modernizing the units. For purposes of this definition, circumstances and actions beyond the PHA's control are limited to:

(1) *Litigation.* The effect of court litigation such as a court order or settlement agreement that is legally enforceable. An example would be units that are required to remain vacant because of fire/police investigations, coroner's seal, or as part of a court-ordered or HUD-approved desegregation effort.

(2) *Laws.* Federal or State laws of general applicability, or their implementing regulations. This category does not include units vacant only because they do not meet minimum housing and building code standards pertaining to construction or habitability under Federal, State, or local laws or regulations, except when these code violations are caused for reasons beyond the control of the PHA, rather than as a result of management and/or

maintenance failures by the PHA. Examples of exempted units under this category are: vacant units that are documented to be uninhabitable for reasons beyond the PHA's control due to high/unsafe levels of hazardous/toxic materials (e.g., lead-based paint or asbestos), by order of the local health department or directive of the Environmental Protection Agency, where the conditions causing the order are beyond the control of the PHA, and units kept vacant because they became structurally unsound (e.g., buildings damaged by shrinking/swelling subsoil or similar situations). Other examples are vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law and vacant units required to remain vacant because of fire/police investigations, coroner's seal, or court order.

(3) *Changing market conditions.* Example of units in this category are small PHAs that are located in areas experiencing population loss or economic dislocations that face a lack of demand in the foreseeable future, even after the PHA has taken aggressive marketing and outreach measures. Where a PHA claims extraordinary market conditions, the PHA will be expected to document the market conditions to which it refers (the examples of changing population base and competing projects are the simplest), the explicit efforts that the PHA has made to address those conditions, the likelihood that those conditions will be mitigated or eliminated in the near term, and why the market conditions are such that the PHA is prevented from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating or modernizing the vacant units. In order to justify the adjustment, the PHA will need to document the specific market conditions that exist and document marketing and outreach efforts. The PHA will need to describe when the downturn in market conditions occurred, the location(s) of the unit(s) effected, the likelihood that these circumstances will be mitigated or eliminated in the near term and why the market conditions are such that they are preventing the PHA from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating, or modernizing the vacant units.

(4) *Natural disasters.* These are vacant units that are documented to be uninhabitable because of damaged suffered as a result of natural disasters such as floods, earthquakes, hurricanes, tornadoes, etc. In the case of a ''natural disaster'' claim, the PHA would be expected to point to a proclamation by the President or the Governor that the county or other local area in question has, in fact, been declared a disaster area.

(5) *Insufficient funding.* Lack of funding for otherwise approvable applications made for Comprehensive Improvement Assistance Program (CIAP) funds (only PHAs with less than 250 units are eligible to apply and compete for CIAP funds). This definition will cease to be used if CIAP is replaced by a formula grant.

(6) *Casualty Losses.* Vacant units that have sustained casualty damage and are pending resolution of insurance claims or settlements, but only until the insurance claim is adjusted, i.e., funds to repair the unit are received. The vacancy days exempted are those included in the period of time between the casualty loss and the receipt of funds from the insurer to cover the loss in whole or in part.

Vacancy day is a day when an available unit is not under lease by an eligible low-income resident. The maximum number of vacancy days for any unit is the number of days in the year, regardless of the total amount of time the unit has been vacant. Vacancy days are calculated by adding the total number of days vacant from all available units that were vacant for any reason during the PHA's fiscal year.

Vacant unit is an available unit that is not under lease to an eligible low-income family.

Vacant unit turnaround work order is a work order issued that directs a vacant unit to be made ready to lease to a new resident and reflects all work items to prepare the unit for occupancy.

Vacant unit undergoing modernization as defined in 24 CFR § 990.102. In addition, the following apply when computing time periods for a vacant unit undergoing modernization:

(1) If a unit is vacant prior to being included in a HUD-approved modernization budget, those vacancy days that had accumulated prior to the unit being included in the modernization budget must be included as non-exempted vacancy days in the calculation.

(2) The calculation of turnaround time for newly modernized units starts when the unit in turned over to the PHA from the contractor and ends when the lease is effective for the new or returning resident. Thus, the total turnaround time would be the sum of the pre-modernization vacancy time, and the post-modernization vacancy time.

(3) Unit-by-unit documentation, showing when a vacant unit was included in a HUD-approved modernization budget, when it was released to the PHA by the contractor, and when a new lease is effective for the new or returning resident, must be maintained by the PHA.

(4) Units remaining vacant more than two FFYs after the FFY in which the modernization funds are approved, may no longer be exempted from the calculation of the adjusted vacancy rate if the construction contract has not been let. These units may be exempted again, but only after a contract is let.

Vacant units approved for deprogramming exist when a PHA's application for the demolition and/or disposition of public housing units has received written approval from HUD; or when a PHA's application to combine/convert has received written approval from HUD.

Work order is a directive, containing one or more tasks issued to a PHA employee or contractor to perform one or more tasks on PHA property. This directive describes the location and the type of work to be performed; the date and time of receipt; date and time issued to the person or entity performing the work; the date and time the work is satisfactorily completed; the parts used to complete the repairs and the cost of the parts; whether the damage was caused by the resident; and the charges to the resident for resident-caused damage. The work order is entered into a log which indicates at all times the status of all work orders as to type (emergency, non-emergency), when issued, and when completed.

Work order completed during the immediate past fiscal year is any work order that is completed during the PHA's fiscal year regardless of when it may have been received.

Work order deferred for modernization is any work order that is combined with similar work items and completed within the current PHMAP assessment year, or will be completed in the following year if there are less than three months remaining before the end of the PHA fiscal year when the work order was generated, under the PHA's modernization program or other PHA capital improvements program.

[61 FR 68933, Dec. 30, 1996, as amended at 64 FR 50228, Sept. 15, 1999]

§ 901.10 Indicator #1, vacancy rate and unit turnaround time.

This indicator examines the vacancy rate, a PHA's progress in reducing vacancies, and unit turnaround time. Implicit in this indicator is the adequacy of the PHA's system to track the duration of vacancies and unit turnaround, including down time, make ready time, and lease up time. This indicator has a weight of x2.

(a) For the calculation of the actual and adjusted vacancy rate (and, if applicable, unit turnaround time), the following three categories of units (as defined in the rule at § 901.5), that are not considered available for occupancy, will be completely excluded from the computation:

(1) Units approved for non-dwelling use.

(2) Employee occupied units.

(3) Vacant units approved for deprogramming (i.e., demolition, disposition or units that have been combined).

(b) For the calculation of the adjusted vacancy rate and turnaround time, the vacancy days for units in the following categories (fully defined in the rule at § 901.5) shall be exempted:

(1) Vacant units undergoing modernization as defined in § 901.5.

(i) Only vacancy days associated with a vacant unit that meets the conditions of being a unit undergoing modernization will be exempted when calculating the adjusted vacancy rate or, if necessary, the unit turnaround time. Neither vacancy days associated with a vacant unit prior to that unit meeting the conditions of being a unit undergoing modernization nor vacancy days associated with a vacant unit after construction work has been completed or after the time period for placing the vacant unit under construction has expired shall be exempted.

(ii) A PHA must maintain the following documentation to support its determination of vacancy days associated with a vacant unit that meets the conditions of being a unit undergoing modernization:

(A) The date on which the unit met the conditions of being a vacant unit undergoing modernization: and

(B) The date on which construction work was completed or the time period for placing the vacant unit under construction expired.

(2) Units vacant due to circumstances and actions beyond the PHA's control as defined in § 901.5. Such circumstances and actions may include:

(i) Litigation, such as a court order or settlement agreement that is legally enforceable.

(ii) Federal or, when not preempted by Federal requirements, State law of general applicability or their implementing regulations.

(iii) Changing market conditions.

(iv) Natural disasters.

(v) Insufficient funding for otherwise approvable applications made for CIAP funds. This definition will cease to be used if CIAP is replaced by a formula grant.

(vi) Vacant units that have sustained casualty damage and are pending resolution of insurance claims or settlements, but only until the insurance claim is adjusted. A PHA must maintain at least the following documentation to support its determination of vacancy days associated with units vacant due to circumstances and actions beyond the PHA's control:

(A) The date on which the unit met the conditions of being a unit vacant due to circumstances and actions beyond the PHA's control;

(B) Documentation identifying the specific conditions that distinguish the unit as a unit vacant due to circumstances and actions beyond the PHA's control as defined in § 901.5;

(C) The actions taken by the PHA to eliminate or mitigate these conditions; and

(D) The date on which the unit ceased to meet such conditions and became an available unit.

(E) This supporting documentation is subject to review and may be requested for verification purposes at any time by HUD.

(c) *Component #1, vacancy percentage and progress in reducing vacancies.* A PHA may choose whether to use the actual vacancy rate, the adjusted vacancy rate or a reduction in the actual vacancy rate within the past three years. This component has a weight of x2.

(1) *Grade A:* The PHA is in one of the following categories:

(i) An actual vacancy rate of 3% or less; or

(ii) An adjusted vacancy rate of 2% or less.

(2) *Grade B:* The PHA is in one of the following categories:

(i) An actual vacancy rate of greater than 3% and less than or equal to 5%; or

(ii) An adjusted vacancy rate of greater than 2% and less than or equal to 3%.

(3) *Grade C:* The PHA is in one of the following categories:

(i) An actual vacancy rate of greater than 5% and less than or equal to 7%; or

(ii) An adjusted vacancy rate of greater than 3% and less than or equal to 4%; or

(iii) The PHA has reduced its actual vacancy rate by at least 15 percentage points within the past three years and has an adjusted vacancy rate of greater than 4% and less than or equal to 5%.

(4) *Grade D:* The PHA is in one of the following categories:

(i) An actual vacancy rate of greater than 7% and less than or equal to 9%; or

(ii) An adjusted vacancy rate of greater than 4% and less than or equal to 5%; or

(iii) The PHA has reduced its actual vacancy rate by at least 10 percentage points within the past three years and has an adjusted vacancy rate of greater than 5% and less than or equal to 6%.

(5) *Grade E:* The PHA is in one of the following categories:

(i) An actual vacancy rate of greater than 9% and less than or equal to 10%; or

(ii) An adjusted vacancy rate of greater than 5% and less than or equal to 6%; or

(iii) The PHA has reduced its actual vacancy rate by at least five percentage points within the past three years and has an adjusted vacancy rate of greater than 6% and less than or equal to 7%.

(6) *Grade F:* The PHA is in one of the following categories:

(i) An actual vacancy rate greater than 10%; or

(ii) An adjusted vacancy rate greater than 7%; or

(iii) An adjusted vacancy rate of greater than 6% and less than or equal to 7% and the PHA has not reduced its actual vacancy rate by at least five percentage points within the past three years.

(d) *Component #2, unit turnaround time.* This component is to be completed only by PHAs scoring below a grade C on component #1. This component has a weight of x1.

(1) *Grade A:* The average number of calendar days between the time when a unit is vacated and a new lease takes effect for units re-occupied during the PHA's assessed fiscal year, is less than or equal to 20 calendar days.

(2) *Grade B:* The average number of calendar days between the time when a unit is vacated and a new lease takes effect for units re-occupied during the PHA's assessed fiscal year, is greater than 20 calendar days and less than or equal to 25 calendar days.

(3) *Grade C:* The average number of calendar days between the time when a unit is vacated and a new lease takes effect for units re-occupied during the PHA's assessed fiscal year, is greater than 25 calendar days and less than or equal to 30 calendar days.

(4) *Grade D:* The average number of calendar days between the time when a unit is vacated and a new lease takes effect for units re-occupied during the PHA's assessed fiscal year, is greater than 30 calendar days and less than or equal to 40 calendar days.

(5) *Grade E:* The average number of calendar days between the time when a unit is vacated and a new lease takes effect for units re-occupied during the PHA's assessed fiscal year, is greater than 40 calendar days and less than or equal to 50 calendar days.

(6) *Grade F:* The average number of calendar days between the time when a unit is vacated and a new lease takes effect for units re-occupied during the PHA's assessed fiscal year, is greater than 50 calendar days.

§ 901.15 Indicator #2, modernization.

This indicator is automatically excluded if a PHA does not have a modernization program. This indicator examines the amount of unexpended funds over three Federal fiscal years (FFY) old, the timeliness of fund obligation, the adequacy of contract administration, the quality of the physical work, and the adequacy of budget controls. All components apply to both the Comprehensive Grant Program (CGP), the Comprehensive Improvement Assistance Program (CIAP) and lead based paint risk assessment funding (1992–1995), and any successor program(s) to the CGP or the CIAP. Only components #3, #4 and #5 apply to funding under the Hope VI Program and the Vacancy Reduction Program for the assessment of this indicator. This indicator has a weight of x1.5.

(a) *Component #1, unexpended funds over three Federal fiscal years (FFYs) old.* This component has a weight of x1.

(1) *Grade A:* The PHA has no unexpended funds over three FFYs old or is able to demonstrate one of the following:

(i) The unexpended funds are leftover funds and will be recaptured after audit;

(ii) There are no unexpended funds past the original HUD-approved implementation schedule deadline that allowed longer than three FFYs; or

(iii) The PHA has extended the time within 30 calendar days after the expenditure deadline and the time extension is based on reasons outside of the PHA's control, such as need to use leftover funds, unforeseen delays in contracting or contract administration, litigation, material shortages, or other non-PHA institutional delay.

(2) *Grade F:* The PHA has unexpended funds over three FFYs old and is unable to demonstrate any of the above three conditions; or the PHA requests HUD approval of a time extension based on reasons within the PHA's control.

(b) *Component #2, timeliness of fund obligation.* This component has a weight of x2.

(1) *Grade A:* The PHA has no unobligated funds over two FFYs old or is able to demonstrate one of the following:

(i) There are no unobligated funds past the original HUD-approved implementation schedule deadline that allowed longer than two FFYs; or

(ii) The PHA has extended the time within 30 calendar days after the obligation deadline and the time extension is based on reasons outside of the PHA's control, such as need to use leftover funds, unforeseen delays in contracting or contract administration, litigation, material shortages, or other non-PHA institutional delay.

(2) *Grade F:* The PHA has unobligated funds over two FFYs old and is unable to demonstrate any of the above two conditions; or the PHA requests HUD approval of a time extension based on reasons within the PHA's control.

(c) *Component #3, adequacy of contract administration.* For the purposes of this component, the term ''findings'' means a violation of a statute, regulation, Annual Contributions Contract or other HUD requirement in the area of contract administration. This component has a weight of x1.5.

(1) *Grade A:* Based on HUD's latest on-site inspection and/or audit, where a written report was provided to the PHA at least 75 calendar days before the end of the PHA's fiscal year, there were no findings related to contract administration or the PHA has corrected all such findings.

(2) *Grade C:* Based on HUD's latest on-site inspection and/or audit, where a written report was provided to the PHA at least 75 calendar days before the end of the PHA's fiscal year, there were findings related to contract administration and the PHA is in the process of correcting all such findings.

(3) Grade F: Based on HUD's latest on-site inspection and/or audit, where a written report was provided to the PHA at least 75 calendar days before the end of the PHA's fiscal year, there were findings related to contract administration and the PHA has failed to initiate corrective actions for all such findings or those actions which have been initiated have not resulted in progress toward remedying all of the findings.

(d) *Component #4, quality of the physical work.* For the purposes of this component, the term ''findings'' means a violation of a statute, regulation, Annual Contributions Contract or other HUD requirement in the area of physical work quality. This component has a weight of x3.

(1) *Grade A:* Based on HUD's latest on-site inspection, where a written report was provided to the PHA at least 75 calendar days before the end of the PHA's fiscal year, there were no findings related to the quality of the physical work or the PHA has corrected all such findings.

(2) *Grade C:* Based on HUD's latest on-site inspection, where a written report was provided to the PHA at least 75 calendar days before the end of the PHA's fiscal year, there were findings related to the quality of the physical work and the PHA is in the process of correcting all such findings.

(3) *Grade F:* Based on HUD's latest on-site inspection, where a written report was provided to the PHA at least 75 calendar days before the end of the PHA's fiscal year, there were findings related to the quality of the physical work and the PHA has failed to initiate corrective actions for all such findings or those actions which have been initiated have not resulted in progress toward remedying all of the findings.

(e) *Component #5, adequacy of budget controls.* This component has a weight of x1.

(1) *Grade A:* The CGP PHA has expended modernization funds only on work in HUD-approved CGP Annual Statements, CGP Five-Year Action Plan, excluding emergencies, or CIAP Budgets, or has obtained prior HUD approval for required budget revisions. The CIAP PHA has expended modernization funds only on work in HUD-approved CIAP Budgets or related to originally approved work or has obtained prior HUD approval for required budget revisions.

(2) *Grade F:* The *CGP PHA* has expended modernization funds on work that was not in HUD-approved CGP Annual Statements, CGP Five-Year Action Plan, excluding emergencies, or CIAP Budgets, and did not obtain prior HUD approval for required budget revisions. The *CIAP PHA* has expended modernization funds on work that was not in HUD-approved CIAP Budgets or was unrelated to originally approved work and did not obtain prior HUD approval for required budget revisions.

§ 901.20 Indicator #3, rents uncollected.

This indicator examines the PHA's ability to collect dwelling rent owed by residents in possession during the immediate past fiscal year by measuring the balance of dwelling rents uncollected as a percentage of total dwelling rents to be collected. This indicator has a weight of x1.5.

(a) *Grade A:* The percent of dwelling rent uncollected in the immediate past fiscal year is less than or equal to 2% of total dwelling rent to be collected.

(b) *Grade B:* The percent of dwelling rent uncollected in the immediate past fiscal year is greater than 2% and less than or equal to 4% of total dwelling rent to be collected.

(c) *Grade C:* The percent of dwelling rent uncollected in the immediate past fiscal year is greater than 4% and less than or equal to 6% of total dwelling rent to be collected.

(d) *Grade D:* The percent of dwelling rent uncollected in the immediate past fiscal year is greater than 6% and less than or equal to 8% of total dwelling rent to be collected.

(e) *Grade E:* The percent of dwelling rent uncollected in the immediate past fiscal year is greater than 8% and less than or equal to 10% of total dwelling rent to be collected.

(f) *Grade F:* The percent of dwelling rent uncollected in the immediate past fiscal year is greater than 10% of total dwelling rent to be collected.

§ 901.25 Indicator #4, work orders.

This indicator examines the average number of days it takes for a work order to be completed, and any progress a PHA has made during the preceding three years to reduce the period of time required to complete maintenance work orders. Implicit in this indicator is the adequacy of the PHA's work order system in terms of how a PHA accounts for and controls its work orders, and its timeliness in preparing/issuing work orders. This indicator has a weight of x1.

(a) *Component #1, emergency work orders completed within 24 hours or less.* All emergency work orders should be tracked. This component has a weight of x1.

(1) *Grade A:* At least 99% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(2) *Grade B:* At least 98% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(3) *Grade C:* At least 97% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(4) *Grade D:* At least 96% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(5) *Grade E:* At least 95% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(6) *Grade F:* Less than 95% of emergency work orders were completed or the emergency was abated within 24 hours or less during the PHA's immediate past fiscal year.

(b) *Component #2, average number of days for non-emergency work orders to be*

completed. All non-emergency work orders that were active during the assessed fiscal year should be tracked (including preventive maintenance work orders), except non-emergency work orders from the date they are deferred for modernization, issued to prepare a vacant unit for re-rental, or issued for the performance of cyclical maintenance. This component has a weight of x2.

(1) *Grade A:* All non-emergency work orders are completed within an average of 25 calendar days.

(2) *Grade B:* All non-emergency work orders are completed within an average of greater than 25 calendar days and less than or equal to 30 calendar days.

(3) *Grade C:* The PHA is in one of the following categories:

(i) All non-emergency work orders are completed within an average of greater than 30 calendar days and less than or equal to 40 calendar days; or

(ii) The PHA has reduced the average time it takes to complete non-emergency work orders by at least 15 days during the past three years.

(4) *Grade D:* The PHA is in one of the following categories:

(i) All non-emergency work orders are completed within an average of greater than 40 calendar days and less than or equal to 50 calendar days; or

(ii) The PHA has reduced the average time it takes to complete non emergency work orders by at least 10 days during the past three years.

(5) *Grade E:* The PHA is in one of the following categories:

(i) All non-emergency work orders are completed within an average of greater than 50 calendar days and less than or equal to 60 calendar days; or

(ii) The PHA has reduced the average time it takes to complete non-emergency work orders by at least 5 days during the past three years.

(6) *Grade F:* The PHA is in one of the following categories:

(i) All non-emergency work orders are completed within an average of greater than 60 calendar days; or

(ii) The PHA has not reduced the average time it takes to complete non-emergency work orders by at least 5 days during the past three years.

§ 901.30 Indicator #5, annual inspection of units and systems.

This indicator examines the percentage of units that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term modernization needs. Implicit in this indicator is the adequacy of the PHA's inspection program in terms of the quality of a PHA's inspections, and how a PHA tracks both inspections and needed repairs. All occupied units are required to be inspected. This indicator has a weight of x1.

(a) Units in the following categories are exempted and not included in the calculation of the total number of units, and the number and percentage of units inspected. Systems that are a part of individual dwelling units that are exempted, or a part of a building where all of the dwelling units in the building are exempted, are also exempted from the calculation of this indicator:

(1) Occupied units where the PHA has made two documented attempts to inspect, but only if the PHA can document that appropriate legal action (up to and including eviction of the legal or illegal occupant(s)), has been taken under provisions of the lease to ensure that the unit can be subsequently inspected.

(2) Units vacant for the full immediate past fiscal year for the following reasons, as defined at § 901.5:

(i) Vacant units undergoing modernization; and

(ii) Vacant units that are documented to be uninhabitable for reasons beyond a PHA's control due to:

(A) High/unsafe levels of hazardous/toxic materials;

(B) By order of the local health department or a directive of the Environmental Protection Agency;

(C) Natural disasters; and

(D) Units kept vacant because they became structurally unsound.

(b) *Component #1, annual inspection of units.* This component refers to an inspection using either the local housing and/or occupancy code, or HUD HQS if there is no local code or the local code is less stringent that HQS. This component has a weight of x1.

(1) *Grade A:* The PHA inspected 100% of its units and, if repairs were necessary for local code or HQS compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred similar work items to the current year's modernization program, or to next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was completed.

(2) *Grade B:* The PHA inspected less than 100% but at least 97% of its units and, if repairs were necessary for local code or HQS compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred similar work items to the current year's modernization program, or to next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was completed.

(3) *Grade C:* The PHA inspected less than 97% but at least 95% of its units and, if repairs were necessary for local code or HQS compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred similar work items to the current year's modernization program, or to next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was completed.

(4) *Grade D:* The PHA inspected less than 95% but at least 93% of its units and, if repairs were necessary for local code or HQS compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred similar work items to the current year's modernization program, or to next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was completed.

(5) *Grade E:* The PHA inspected less than 93% but at least 90% of its units and, if repairs were necessary for local code or HQS compliance, either completed the repairs during the inspection; issued work orders for the repairs; or referred similar work items to the current year's modernization program, or to next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was completed.

(6) *Grade F:* The PHA has failed to inspect at least 90% of its units; or failed to correct deficiencies during the inspection or issue work orders for the repairs; or failed to refer similar work items to the current year's modernization program, or to next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was completed.

(c) *Component #2, annual inspection of systems.* This component examines the inspection of buildings and sites according to the PHA's maintenance plan, including performing the required maintenance on structures and systems in accordance with manufacturer's specifications and established local/PHA standards, or issuing work orders for maintenance/repairs, or including identified deficiencies in this year's modernization program, or in next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was performed. This component has a weight of x1.

(1) *Grade A:* The PHA inspected all major systems at 100% of its buildings and sites, according to its maintenance plan. The inspection included performing the required maintenance on structures and systems in accordance with manufacturer's specifications and established local/PHA standards, or issuing work orders for maintenance/repairs, or including identified deficiencies in the current year's modernization program, or in next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was performed.

(2) *Grade B:* The PHA inspected all major systems of at least a minimum of 90% but less than 100% of its buildings and sites, according to its maintenance plan. The inspection included performing the required maintenance

on structures and systems in accordance with manufacturer's specifications and established local/PHA standards, or issuing work orders for maintenance/ repairs, or including identified deficiencies in the current year's modernization program, or in next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was performed.

(3) *Grade C:* The PHA inspected all major systems of at least a minimum of 80% but less than 90% of its buildings and sites, according to its maintenance plan. The inspection included performing the required maintenance on structures and systems in accordance with manufacturer's specifications and established local/PHA standards, or issuing work orders for maintenance/ repairs, or including identified deficiencies in the current year's modernization program, or in next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was performed.

(4) *Grade D:* The PHA inspected all major systems of at least a minimum of 70% but less than 80% of its buildings and sites, according to its maintenance plan. The inspection included performing the required maintenance on structures and systems in accordance with manufacturer's specifications and established local/PHA standards, or issuing work orders for maintenance/ repairs, or including identified deficiencies in the current year's modernization program, or in next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was performed.

(5) *Grade E:* The PHA inspected all major systems of at least a minimum of 60% but less than 70% of its buildings and sites, according to its maintenance plan. The inspection included performing the required maintenance on structures and systems in accordance with manufacturer's specifications and established local/PHA standards, or issuing work orders for maintenance/ repairs, or including identified deficiencies in the current year's modernization program, or in next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was performed.

(6) *Grade F:* The PHA failed to inspect all major systems of at least 60% of its buildings and sites and perform the required maintenance on these systems in accordance with manufacturers specifications and established local/ PHA standards, or did not issue work orders for maintenance/repairs, or did not include identified deficiencies in the current year's modernization program, or in next year's modernization program if there are less than three months remaining before the end of the PHA fiscal year when the inspection was performed.

§ 901.35 Indicator #6, financial management.

This indicator examines the amount of cash reserves available for operations and, for PHAs scoring below a grade C on cash reserves, energy/ utility consumption expenses. This indicator has a weight of x1.

(a) *Component #1, cash reserves.* This component has a weight of x2.

(a) *Grade A:* Cash reserves available for operations are greater than or equal to 15% of total actual routine expenditures, or the PHA has cash reserves of $3 million or more.

(2) *Grade B:* Cash reserves available for operations are greater than or equal to 12.5%, but less than 15% of total actual routine expenditures.

(3) *Grade C:* Cash reserves available for operations are greater than or equal to 10%, but less than 12.5% of total actual routine expenditures.

(4) *Grade D:* Cash reserves available for operations are greater than or equal to 7.5%, but less than 10% of total actual routine expenditures.

(5) *Grade E:* Cash reserves are greater than or equal to 5%, but less than 7.5% of total actual routine expenditures.

(6) *Grade F:* Cash reserves available for operations are less than 5% of total actual routine expenditures.

(b) *Component #2, energy consumption.* Either option A or option B of this component is to be completed only by

PHAs that score below a grade C on component #1. Regardless of a PHA's score on component #1, it will not be scored on component #2 if all its units have tenant paid utilities. Annual energy/utility consumption expenses includes water and sewage usage. This component has a weight of x1.

(1) *Option A, annual energy/utility consumption expenses.*

(i) *Grade A:* Annual energy/utility consumption expenses, as compared to the average of the three years' rolling base consumption expenses, have not increased.

(ii) *Grade B:* Annual energy/utility consumption expenses, as compared to the average of the three years' rolling base consumption expenses, have not increased by more than 3%.

(iii) *Grade C:* Annual energy/utility consumption expenses, as compared to the average of the three years' rolling base consumption expenses, have increased by more than 3% and less than or equal to 5%.

(iv) *Grade D:* Annual energy/utility consumption expenses, as compared to the average of the three years' rolling base consumption expenses, have increased by more than 5% and less than or equal to 7%.

(v) *Grade E:* Annual energy/utility consumption expenses, as compared to the average of the three years' rolling base consumption expenses, have increased by more than 7% and less than or equal to 9%.

(vi) *Grade F:* Annual energy/utility consumption expenses, as compared to the average of the three years' rolling base consumption expenses, have increased by more than 9%.

(2) *Option B, energy audit.*

(i) *Grade A:* The PHA has completed or updated its energy audit within the past five years and has implemented all of the recommendations that were cost effective.

(ii) *Grade C:* The PHA has completed or updated its energy audit within the past five years, has developed an implementation plan and is on schedule with the implementation plan, based on available funds. The implementation plan identifies at a minimum, the items from the audit, the estimated cost, the planned funding source, and the anticipated date of completion for each item.

(iii) *Grade F:* The PHA has not completed or updated its energy audit within the past five years, or has not developed an implementation plan or is not on schedule with its implementation plan, or has not implemented all of the recommendations that were cost effective, based on available funds.

§ 901.40 Indicator #7, resident services and community building.

This indicator examines the PHA's efforts to deliver quality customer services and to encourage partnerships with residents, resident organizations, and the local community, including non-PHA service providers, that help improve management operations at the PHA; and to encourage programs that promote individual responsibility, self improvement and community involvement among residents and assist them to achieve economic uplift and develop self-sufficiency. Also, if applicable, this indicator examines PHA performance under any special HUD grant(s) administered by the PHA. PHAs can get credit for performance under non-HUD funded programs if they choose to be assessed for these programs. PHAs with fewer than 250 units or with 100% elderly developments will not be assessed under this indicator unless they request to be assessed at the time of PHMAP certification submission. This indicator has a weight of x1.

(a) *Component #1, economic uplift and self-improvement.* PHAs will be assessed for all the programs that the PHA has HUD funding to implement. Also, PHAs can get credit for implementation of programs through partnerships with non-PHA providers, even if the programs are not funded by HUD or the PHA, if they choose to be assessed for them. PHAs must select either to be assessed for all or none of the non-HUD funded programs. This component has a weight of x1.

(1) *Grade A:* The PHA Board of Commissioners, by resolution, has adopted one or more economic uplift and self-improvement programs, examples include but are not limited to, the Section 3 program, homeownership, PHA

support for resident education, training, child-care, job-placement programs, Head Start, etc., and the PHA can document that it has implemented these programs in developments covering at least 90% of its family occupied units, either directly or through partnerships with non-PHA providers, and the PHA monitors performance under the programs and issues reports concerning progress, including residents receiving services and residents employed, under these programs.

(2) *Grade C:* The PHA Board of Commissioners, by resolution, has adopted one or more economic uplift and self-improvement programs, including but not limited to, the programs described in grade A, above, and the PHA can document that it has implemented these programs in developments covering at least 60% of its family occupied units, either directly or through partnerships with non-PHA providers, and the PHA staff monitors performance under the programs and issues reports to the Board concerning progress, including residents receiving services and residents employed, under these programs.

(3) Grade F: The PHA Board of Commissioners, by resolution, has not adopted one or more economic uplift and self-improvement programs, including but not limited to, the programs described in grade A, above, or the PHA has not implemented these programs in developments covering at least 60% of its family occupied units, either directly or through partnerships with non-PHA providers.

(b) *Component #2, resident organization.* This component has a weight of x1.

(1) *Grade A:* The PHA can document formal recognition of, a system of communication and collaboration with, and support for resident councils where these exist, and where no resident council exists, the PHA can document its encouragement for the formation of such councils.

(2) *Grade F:* The PHA cannot document formal recognition of, or a system of communication and collaboration with, or document its support for resident councils where these exist, or where no resident council exists, the PHA cannot document its encouragement for the formation of such councils.

(c) *Component #3, resident involvement.* Implicit in this component is the need to ensure a PHA's delivery of quality customer services to residents. This component has a weight of x1.

(1) *Grade A:* The PHA Board of Commissioners, by resolution, provides for resident representation on the Board and committees, and the PHA has implemented measures that ensure the opportunity for regular resident input into plans and the evaluation for ongoing quality of life and housing management conditions, including but not limited to, modernization and development programs, screening and other occupancy matters, relocation, the operating budget, resident programs, security and maintenance programs.

(2) *Grade C:* The PHA Board of Commissioners, by resolution, provides for resident representation on the Board and committees, and the PHA has implemented measures that ensure the opportunity for regular resident input into plans and the evaluation for ongoing quality of life and housing management conditions in the modernization and development programs and at least three of the remaining six areas described in grade A, above.

(3) *Grade F:* The PHA Board of Commissioners, by resolution, did not provide for resident representation on the Board and committees, or the PHA has not implemented measures that ensure the opportunity for regular resident input into plans and the evaluation for ongoing quality of life and housing management conditions in the modernization and development programs and at least three of the remaining six areas described in grade A, above.

(d) *Component* #4, *resident programs management.* This component examines a PHA's management of HUD funded resident programs. However, PHAs can also get credit for performance under non-HUD funded programs if they choose to be assessed for them. PHAs must select either to be assessed for all or none of the non-HUD funded programs. This component has a weight of x1.

(1) *Grade A:* If the PHA has any HUD funded special programs that benefit the residents, including but not limited

to, the Family Investment Center (FIC), Youth Sports (YS), Food Banks, Health Clinics, Youth Apprenticeship Program (YAP), Family Self-Sufficiency (FSS), or a Resident Management (RM) or Tenant Opportunity Programs (TOP) where the PHA is the contract administrator, the PHA can document that it is meeting at least 90% of its goals under the implementation plan for any and all of these programs.

(2) *Grade C:* If the PHA has any HUD-funded special programs that benefit the residents, including but not limited to, the programs described in grade A, above, the PHA can document that it is meeting at least 60% of its goals under the implementation plan for any and all of these programs.

(3) *Grade F:* If the PHA has any HUD-funded special programs that benefit the residents, including but not limited to, the programs described in grade A, above, the PHA cannot document that it is meeting at least 60% of its goals under the implementation plan for all of these programs.

§ 901.45 Indicator #8, security.

This indicator evaluates the PHAs performance in tracking crime related problems in their developments, reporting incidence of crime to local law enforcement agencies, the adoption and implementation of tough applicant screening and resident eviction policies and procedures, and, as applicable, PHA performance under any HUD drug prevention or crime reduction grant(s). PHAs can get credit for performance under non-HUD funded programs if they choose to be assessed for these programs. PHAs with fewer than 250 units will not be assessed under this indicator unless they request to be assessed at the time of PHMAP certification submission. This indicator has a weight of x1.

(a) Component #1, Tracking and Reporting Crime Related Problems. This component has a weight of x1.

(1) *Grade A:* The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it (1) tracks crime and crime-related problems in at least 90% of its developments, and (2) has a cooperative system for tracking and reporting incidents of crime to local police authorities to improve law enforcement and crime prevention.

(2) *Grade C:* The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it (1) tracks crime and crime-related problems in at least 60% of its developments, and (2) reports incidents of crime to local police authorities to improve law enforcement and crime prevention.

(3) *Grade F:* The PHA Board, by resolution, has not adopted policies and the PHA has not implemented procedures or cannot document that it (1) tracks crime and crime-related problems in at least 60% of its developments, or (2) reports incidents of crime to local police authorities to improve law enforcement and crime prevention.

(b) *Component #2, Screening of Applicants.* This component has a weight of x1.

(1) *Grade A:* The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it successfully screens out and denies admission to a public housing applicant who:

(i) Has a recent history of criminal activity involving crimes to persons or property and/or other criminal acts that would adversely affect the health, safety or welfare of other residents or PHA personnel;

(ii) Was evicted, because of drug-related criminal activity, from housing assisted under the U.S. Housing Act of 1937, for a minimum of a three year period beginning on the date of such eviction, unless the applicant has successfully completed, since the eviction, a rehabilitation program approved by the public housing agency;

(iii) The PHA has reasonable cause to believe is illegally using a controlled substance; or

(iv) The PHA has reasonable cause to believe abuses alcohol in a way that causes behavior that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA personnel.

(2) *Grade C:* The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures, but cannot document results in successfully screening out and denying admission to a public housing applicant who

meets the criteria as described in grade A, above.

(3) *Grade F:* The PHA has not adopted policies or has not implemented procedures that result in screening out and denying admission to a public housing applicant who meets the criteria as described in grade A, above, or the screening procedures do not result in the denial of admission to a public housing applicant who meets the criteria as described in grade A, above.

(c) *Component* #3, *Lease Enforcement.* This component has a weight of x1.

(1) *Grade A:* The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it appropriately evicts any public housing resident who:

(i) The PHA has reasonable cause to believe engages in any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA personnel;

(ii) The PHA has reasonable cause to believe engages in any drug-related criminal activity (as defined at section 6(l) of the 1937 Act (42 U.S.C. 1437d(l)) on or off the PHA's property; or

(iii) The PHA has reasonable cause to believe abuses alcohol in such a way that causes behavior that may interfere with the health, safety, or right to peaceful enjoyment of the premises by other residents or PHA personnel.

(2) *Grade C:* The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures, but cannot document results in appropriately evicting any public housing resident who meets the criteria as described in grade A, above.

(3) *Grade F:* The PHA has not adopted policies or has not implemented procedures that document results in the eviction of any public housing resident who meets the criteria as described in grade A, above, or the eviction procedures do not result in the eviction of public housing residents who meet the criteria as described in grade A, above.

(d) *Component* #4, *Grant Program Goals.* This component examines a PHA's management of HUD-funded drug prevention or crime reduction programs. However, PHAs can also get credit for performance under non-HUD funded programs if they choose to be assessed for them. PHAs must select either to be assessed for all or none of the non-HUD funded programs. This component has a weight of x1.

(1) *Grade A:* If the PHA has any special drug prevention program or crime reduction program funded by any HUD funds, the PHA can document that the goals are related to drug and crime rates, and it is meeting at least 90% of its goals under the implementation plan for any and all of these programs.

(2) *Grade C:* If the PHA has any special drug prevention program or crime reduction program funded by any HUD funds, the PHA can document that the goals are related to drug and crime rates, and it is meeting at least 60% of its goals under the implementation plan for any and all of these programs.

(3) *Grade F:* If the PHA has any special drug prevention program or crime reduction program funded by any HUD funds, the PHA does not have a system for documenting or cannot document that the goals are related to drug and crime rates, or cannot document that it is meeting 60% or more of its goals under the implementation plan for any and all of these programs.

§ 901.100 Data collection.

(a) Information on some of the indicators will be derived by the State/Area Office from existing reporting and data forms.

(b) A PHA shall provide certification as to data on indicators not collected according to paragraph (a) of this section, by submitting a certified questionnaire within 60 calendar days after the end of the fiscal year covered by the certification:

(1) The certification shall be approved by PHA Board resolution, and signed and attested to by the Executive Director.

(2) PHAs shall maintain documentation for three years verifying all certified indicators for HUD on-site review.

(3) A PHA may include along with its certification submission, rather than through an exclusion or modification request, any information bearing on the accuracy or completeness of the data used by HUD (corrected data, late reports, previously omitted required reports, etc.) in grading an indicator.

HUD will consider this assertion in grading the affected indicator.

(4) If a PHA does not submit its certification, or submits its certification late, appropriate sanctions may be imposed, including a presumptive rating of failure in all of the PHMAP indicators, which may result in troubled and mod-troubled designations.

(5) A PHA that cannot provide justifying documentation to HUD during the conduct of a confirmatory review, or other verification review(s), for any indicator(s) or component(s) certified to, shall receive a failing grade in that indicator(s) or component(s), and its overall PHMAP score shall be lowered.

(6) If the data for any indicator(s) or component(s) that a PHA certified to cannot be verified by HUD during the conduct of a confirmatory review, or any other verification review(s), the State/Area Office shall change a PHA's grade for any indicator(s) or component(s), and its overall PHMAP score, as appropriate, to reflect the verified data obtained during the conduct of such review.

(7) A PHA that cannot provide justifying documentation to the independent auditor for the indicator(s) or component(s) that the PHA certified to, as reflected in the audit report, shall receive a grade of F for that indicator(s) or component(s), and its overall PHMAP score shall be lowered.

(8) A PHA's PHMAP score for individual indicators or components, or its overall PHMAP score, may be changed by the State/Area Office pursuant to the data included in the independent audit report, as applicable.

(9) A PHA's certification and supporting documentation will be post-reviewed by HUD during the next on-site review as determined by risk management, but is subject to verification at any time. Appropriate sanctions for intentional false certification will be imposed, including suspension or debarment of the signatories, the loss of high performer designation, a lower grade for individual indicators and a lower PHMAP total weighted score.

(c) For those developments of a PHA where management functions have been assumed by an RMC, the PHA's certification shall identify the development and the management functions assumed by the RMC. The PHA shall obtain a certified questionnaire from the RMC as to the management functions undertaken by the RMC. The PHA shall submit the RMC's certified questionnaire along with its own. The RMC's certification shall be approved by its Executive Director or Chief Executive Officer of whatever title.

§ 901.105 Computing assessment score.

(a) Grades within indicators and components have the following point values:

(1) Grade A = 10.0 points;

(2) Grade B = 8.5 points;

(3) Grade C = 7.0 points;

(4) Grade D = 5.0 points;

(5) Grade E = 3.0 point; and

(6) Grade F = 0.0 points.

(b) If indicators or components are designated as having additional weight (e.g., x1.5 or x2), the points in each grade will be multiplied times the additional weight.

(c) Indicators will be graded individually. Components within an indicator will be graded individually, and then will be used to determine a single grade for the indicator, by dividing the total number of component points by the total number of component weights and rounding off to two decimal places. The total number of component weights for this purpose includes a one for components that are unweighted (i.e., they are weighted x1, rather than x1.5 or x2).

(d) *Adjustment for physical condition and neighborhood environment.* The overall PHMAP score will be adjusted by adding additional points that reflect the adjustment to be given to the differences in the difficulty of managing developments that result from physical condition and neighborhood environment:

(1) Adjustments shall apply to the following three indicators only:

(i) Indicator #1, vacancy rate and unit turnaround;

(ii) Indicator #4, work orders; and

(iii) Indicator #5, annual inspection and condition of units and systems.

(2) Definitions of physical condition and neighborhood environment are:

(i) *Physical condition:* refers to units located in developments over ten years

old that require major capital investment in order to meet local codes or minimum HQS standards, whichever is applicable. This excludes developments that have been comprehensively modernized.

(ii) *Neighborhood environment:* refers to units located within developments where the immediate surrounding neighborhood (that is a majority of the census tracts or census block groups on all sides of the development) has at least 51% of families with incomes below the poverty rate as documented by the latest census data.

(3) Any PHA with 5% or more of its units subject to either or both of the above conditions shall, if they so choose, be issued an adjusted PHMAP score in addition to the regular score based solely upon the certification of the PHA. The adjusted score shall be calculated as follows:

Percent of units subject to physical condition and/or neighborhood environment	Extra points
At least 5% but less than 10%	.5
At least 10% but less than 20%	.6
At least 20% but less than 30%	.7
At least 30% but less than 40%	.8
At least 40% but less than 50%	.9
At least 50%	1.0

(i) These extra points will be added to the score (grade) of the indicator(s) to which these conditions may apply. A PHA is required to certify on form HUD–50072, PHMAP Certification, the extent to which the conditions apply, and to which of the indicators the extra scoring points should be added.

(ii) Units in developments that have received substantial rehabilitation within the past ten years are not eligible to be included in the calculation of total PHA units due to physical condition only.

(iii) A PHA that receives a grade of A under indicators #4 and/or #5 may not claim the additional adjustment for indicator #1 based on physical condition of its developments, but may claim additional adjustment based on neighborhood environment.

(iv) A PHA that receives the maximum potential weighted points on indicators #1, #4 and/or #5 may not claim any additional adjustment for physical condition and/or neighborhood environment for the respective indicator(s).

(v) A PHA's score for indicators #1, #4 and/or #5, after any adjustment(s) for physical condition and/or neighborhood environment, may not exceed the maximum potential weighted points assigned to the respective indicator(s).

(4) If only certain units or developments received substantial rehabilitation, the additional adjustment shall be prorated to exclude the units or developments with substantial rehabilitation.

(5) The Date of Full Availability (DOFA) shall apply to scattered site units, where the age of units and buildings vary, to determine whether the units have received substantial rehabilitation within the past ten years and are eligible for a adjusted score for the physical condition factor.

(6) PHAs shall maintain supporting documentation to show how they arrived at the number and percentage of units out of their total inventory that are subject to adjustment.

(i) If the basis was neighborhood environment, the PHA shall have on file the appropriate maps showing the census tracts or census block groups surrounding the development(s) in question with supporting census data showing the level of poverty. Units that fall into this category but which have already been removed from consideration for other reasons (permitted exemptions and modifications and/or exclusions) shall not be counted in this calculation.

(ii) For the physical condition factor, a PHA would have to maintain documentation showing the age and condition of the units and the record of capital improvements, indicating that these particular units have not received modernization funds.

(iii) PHAs shall also document that in all cases, units that were exempted for other reasons were not included in the calculation.

§ 901.110 PHA request for exclusion or modification of an indicator or component.

(a) A PHA shall have the right to request the exclusion or modification of any indicator or component in its management assessment, thereby excluding

or modifying the impact of those indicator's or component's grades in its PHMAP total weighted score.

(b) Exclusion and modification requests shall be submitted by a PHA at the time of its PHMAP certification submission to the State/Area Office along with supporting documentary justification, rather than during the appeal process.

(c) Requests for exclusions and modifications that do not include supporting documentary justification will not be considered.

(d) Indicator #2, modernization, shall be automatically excluded by the State/Area Office if a PHA does not have an open modernization program.

(e) Indicator #7, resident services and community building, shall be automatically excluded by the State/Area Office for PHAs with fewer than 250 units, or with 100% elderly developments, unless they request to be assessed at the time of the PHMAP certification submission.

(f) Indicator #8, security, shall be automatically excluded by the State/Area Office for PHAs with fewer than 250 units unless they request to be assessed at the time of the PHMAP certification submission.

§901.115 PHA score and status.

(a) PHAs that achieve a total weighted score of 90% or greater shall be designated high performers. A PHA shall not be designated as a high performer if it scores below a grade of C for any indicator. High performers will be afforded incentives that include relief from reporting and other requirements, as described in §901.130.

(b) PHAs that achieve a total weighted score of 90% or greater on its overall PHMAP score and on indicator #2, modernization, shall be designated mod-high performers.

(c) PHAs that achieve a total weighted score of less than 90% but not less than 60% shall be designated standard. Standard performers will be afforded incentives that include relief from reporting and other requirements, as described in §901.130.

(d) PHAs that achieve a total weighted score of less than 60% shall be designated as troubled.

(e) PHAs that achieve 60% of the maximum calculation for indicator #2, modernization, shall be designated as mod-troubled.

(f) Each PHA shall post a notice of its final PHMAP score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and status. In addition, HUD will publish every PHA's score and status in the FEDERAL REGISTER.

(g) A PHA that cannot provide justifying documentation to HUD during the conduct of a confirmatory review, or other verification review(s), for any indicator(s) or component(s) certified to, shall receive a failing grade in that indicator(s) or component(s), and its overall PHMAP score shall be lowered.

(h) If the data for any indicator(s) or component(s) that a PHA certified to cannot be verified by HUD during the conduct of a confirmatory review, or any other verification review(s), the State/Area Office shall change a PHA's grade for any indicator(s) or component(s), and its overall PHMAP score, as appropriate, to reflect the verified data obtained during the conduct of such review.

(i) A PHA that cannot provide justifying documentation to the independent auditor for the indicator(s) or component(s) that the PHA certified to, as reflected in the audit report, will receive a grade of F for that indicator(s), and its overall PHMAP score will be lowered.

(j) A PHA's PHMAP score for individual an indicator(s), component(s) or its overall PHMAP score may be changed by the State/Area Office pursuant to the data included in the independent audit report, as applicable.

(k) In *exceptional circumstances,* even though a PHA has satisfied all of the indicators for high or standard performer designation, the State/Area Office may conduct any review as necessary, including a confirmatory review, and deny or rescind incentives or high performer status, as described in paragraphs (a) and (b) of this section in the case of a PHA that:

(1) Is operating under a special agreement with HUD;

(2) Is involved in litigation that bears directly upon the management of a PHA;

(3) Is operating under a court order;

(4) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certification of indicators is not supported by the facts, resulting from such sources as a confirmatory review, routine reports and reviews, an Office of Inspector General investigation/audit, an independent auditor's audit or an investigation by any appropriate legal authority; or

(5) Demonstrates substantial noncompliance in one or more areas (including areas not assessed by the PHMAP). Areas of substantial noncompliance include, but are not limited to, noncompliance with statutes (e.g., Fair Housing and Equal Opportunity statutes); regulations (e.g., 24 CFR § 85); or the Annual Contributions Contract (ACC) (e.g., the ACC, form HUD–53012A, Section 4, Mission of the PHA). Substantial noncompliance would cast doubt on the PHA's capacity to preserve and protect its public housing developments and operate them consistent with Federal law and regulations.

(l) When a State/Area Office Public Housing Director acts for any of the reasons stated in paragraph (k) of this section, the State/Area Office will send written notification to the PHA with a specific explanation of the reasons. An information copy will be forwarded to the Assistant Secretary for Public and Indian Housing.

(m) A PHA may appeal denial of high performer status in accordance with § 901.125.

§ 901.120 State/Area Office functions.

(a) The State/Area Office will assess each PHA within its jurisdiction on an annual basis:

(1) The State/Area Office will make determinations for high-performing, standard, troubled PHAs and mod-troubled PHAs in accordance with a PHA's PHMAP weighted score.

(2) The State/Area Office will also make determinations for exclusion and modification requests.

(b) Each State/Area Office will notify each PHA of the PHA's grade and the grade of the RMC (if any) assuming management functions at any of the PHA's developments, in each indicator; the PHA's management assessment total weighted score and status, and if applicable; its adjustment for physical condition and neighborhood environment; any determinations concerning exclusion and modification requests; and any deadline date by which appeals must be received. PHA notification should include offers of pertinent technical assistance in problem areas, suggestions for means of improving problem areas, and areas of relief and incentives as a result of high performer status. The PHA must notify the RMC (if any) in writing, immediately upon receipt of the State/Area Office notification, of the RMC's grades.

(c) An on-site confirmatory review may be conducted of a PHA by HUD. The purpose of the on-site confirmatory review is to verify those indicators for which a PHA provides certification, as well as the accuracy of the information received in the State/Area Office pertaining to the remaining indicators.

(1) Whenever practicable, a confirmatory review should be conducted by HUD prior to the issuance of a PHA's initial notification letter. The results of the confirmatory review shall be included in the PHA's initial notification letter.

(2) If, in an exceptional circumstance, a confirmatory review is conducted after the State/Area Office issues the initial notification letter, the State/Area Office shall explain the results of the confirmatory review in writing, correct the PHA's total weighted score, as appropriate, and reissue the initial notification letter to the PHA.

(3) The State/Area Office shall conduct a confirmatory review of a PHA with 100 or more units under management that scores less than 60% for its total weighted score, or less than 60% on indicator #2, modernization, before initially designating the PHA as troubled or mod-troubled. The results of the confirmatory review shall be included in the PHA's initial notification letter.

(4) The State/Area Office shall conduct a confirmatory review on a yearly

basis of all troubled and mod-troubled PHAs.

(5) The State/Area Office shall conduct a confirmatory review of a PHA with 100 or more units under management prior to the removal of troubled or mod-troubled designation.

(6) Independent confirmatory reviews (team members from other State/ Area Offices) shall be conducted of troubled PHAs with 1250 or more units under management prior to the removal of troubled designation.

(d) A PHA that cannot provide justifying documentation to HUD during the conduct of a confirmatory review, or other verification review(s), for any indicator(s) or component(s) certified to, shall receive a failing grade in that indicator(s) or component(s), and its overall PHMAP score shall be lowered by the State/Area Office. The State/Area Office shall explain to the PHA the reason(s) for the change(s) in writing, correct the PHA's grade for an individual component(s) and/or indicator(s) and total weighted score, as appropriate, and reissue the initial notification letter to the PHA.

(e) If the data for any indicator(s) or component(s) that a PHA certified to cannot be verified by HUD during the conduct of a confirmatory review, or any other verification review(s), the State/Area Office shall change a PHA's grade for any indicator(s) or component(s), and its overall PHMAP score, as appropriate, to reflect the verified data obtained during the conduct of such review. The State/Area Office shall explain to the PHA the reason(s) for the change(s) in writing, correct the PHA's grade for an individual component(s) and/or indicator(s) and total weighted score, as appropriate, and reissue the initial notification letter to the PHA.

(f) A PHA that cannot provide justifying documentation to the independent auditor for the indicator(s) or component(s) that the PHA certified to, as reflected in the audit report, will receive a grade of F for that indicator(s), and its overall PHMAP score will be lowered by the State/Area Office. The State/Area Office shall explain to the PHA the reason(s) for the change(s) in writing, correct the PHA's grade for an individual component(s) and/or indicator(s) and total weighted score, as appropriate, and reissue the initial notification letter to the PHA.

(g) A PHA's PHMAP score for an individual indicator(s), component(s) or its overall PHMAP score may be changed by the Area/State Office pursuant to the data included in the independent audit report, as applicable. The State/Area Office shall explain to the PHA the reason(s) for the change(s) in writing, correct the PHA's grade for an individual component(s) and/or indicator(s) and total weighted score, as appropriate, and reissue the initial notification letter to the PHA.

(h) Determinations on appeals and on petitions to remove troubled or mod-troubled status will be made by the State/Area Office.

(i) Determinations of intentional false certifications will be made by the State/Area Office. State/Area Offices shall consult with the local Office of Inspector General for guidance in cases of determinations of intentional false certification.

(j) In exceptional circumstances, the State/Area Office may deny or rescind a PHA's status as a standard or high performer, in accordance with §901.115(i), so that it will not be entitled to any of the areas of relief and incentives.

(k) The State/Area Office will maintain PHMAP files for public inspection in accordance with §901.155.

§901.125 PHA right of appeal.

(a) A PHA has the right to appeal its PHMAP score to the State/Area Office, including a troubled designation or a mod-troubled designation. A PHA may appeal its management assessment rating on the basis of data errors (any dispute over the accuracy, calculation, or interpretation of data employed in the grading process that would affect a PHA's PHMAP score), the denial of exclusion or modification requests when their denial affects a PHA's total weighted score, the denial of an adjustment based on the physical condition and neighborhood environment of a PHA's developments, or a determination of intentional false certification:

(1) A PHA may appeal its management assessment rating to the State/

Area Office only for the reasons stated in paragraph (a) of this section:

(i) A PHA may not appeal its PHMAP score to the State/Area Office unless it has submitted its certification to the State/Area Office.

(ii) A PHA may not appeal its PHMAP score to the State/Area Office if the reason the PHA received a deficient grade in any indicator or component was due to the fact the PHA did not submit a required report in a timely manner or without an approved time extension.

(iii) A PHA may not appeal its PHMAP score to the State/Area Office if the reason the PHA received a failing grade in any indicator or component was due to the fact that the PHA did not provide justifying documentation to the independent auditor for any indicator(s) or component(s) the PHA certified to.

(2) The appeal shall be submitted to the State/Area Office and shall include supporting documentary justification of the reasons for the appeal.

(3) The State/Area Office will make determinations on initial appeals and will transmit the determination of the appeal to the PHA in a notification letter that will also include the date and place for submitting any further appeal.

(4) Appeals submitted to the State/Area Office without appropriate documentation will not be considered and will be returned to the PHA.

(b) Appeals of rescission of high performer designation shall be made directly to the Assistant Secretary for Public and Indian Housing.

(c) A PHA may appeal the denial of an initial appeal by the State/Area Office to the Assistant Secretary for Public and Indian Housing for the following reasons:

(1) Initial appeals denying high performer designation;

(2) Initial appeals denying the removal of troubled designation;

(3) Initial appeals denying the removal of mod-troubled designation;

(4) The denial of an appeal of a determination of intentional false certification;

(5) Data errors;

(6) The denial of exclusion or modification requests when their denial affects a PHA's total weighted score;

(7) The denial of an adjustment based on the physical condition and neighborhood environment of a PHA's developments;

(8) The refusal of a petition in accordance with § 901.140 to remove troubled or mod-troubled designations.

(d) A PHA may appeal its management assessment rating to the Assistant Secretary for Public and Indian Housing only for the reasons stated in paragraph (c) of this section.

(e) A PHA may not appeal its PHMAP score to the Assistant Secretary unless it has submitted its certification to the State/Area Office.

(f) Appeals submitted to the Assistant Secretary for Public and Indian Housing without appropriate documentation will not be considered and will be returned to the PHA.

(g) The date and place by which any appeal must be submitted will be specified in the letter from the State/Area Office notifying the PHA of any determination or action. For example, the State/Area Office initial notification letter or denial of initial appeal letter will specify the date and place by which appeals must be received. The date specified will be the 15th calendar day after the letter is mailed, not counting the day the letter is mailed. If the 15th day falls on a weekend or holiday, the date specified will be the next day that is not on a weekend or a holiday. Any appeal not received by the specified time and place will not be considered.

§ 901.130 Incentives.

(a) A PHA that is designated high performer or standard performer will be relieved of specific HUD requirements, effective upon notification of high or standard performer designation.

(b) A PHA shall not be designated a mod-high performer and be entitled to the applicable incentives unless it has been designated an overall high performer.

(c) High-performing PHAs, and RMCs that receive a grade of A on each of the indicators for which they are assessed,

will receive a Certificate of Commendation from the Department as well as special public recognition.

(d) Representatives of high-performing PHAs may be requested to serve on Departmental working groups that will advise the Department in such areas as troubled PHAs and performance standards for all PHAs.

(e) State/Area Offices may award incentives to PHAs on an individual basis for a specific reason(s), such as a PHA making the right decision that impacts long-term overall management or the quality of a PHA's housing stock, with prior concurrence from the Assistant Secretary.

(f) Relief from any standard procedural requirements does not mean that a PHA is relieved from compliance with the provisions of Federal law and regulations or other handbook requirements. For example, although a high or standard performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, it must still comply with all other Federal and State requirements that remain in effect, such as those for competitive bidding or competitive negotiation (see 24 CFR 85.36):

(1) PHAs will still be subject to regular independent auditor (IA) audits.

(2) Office of Inspector General (OIG) audits or investigations will continue to be conducted as circumstances may warrant.

(g) In exceptional circumstances, the State/Area Office will have discretion to subject a PHA to any requirement that would otherwise be omitted under the specified relief, in accordance with §901.115(i).

§901.135 Memorandum of Agreement.

(a) After consulting the independent assessment team and reviewing the report identified in section 6(j)(2)(b) of the 1937 Act, a Memorandum of Agreement (MOA), a binding contractual agreement between HUD and a PHA, shall be required for each PHA designated as troubled and/or mod-troubled. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which should be raw data but may be the PHA's score in each of the indicators identified as a problem, or other relevant areas identified as problematic;

(2) Annual and quarterly performance targets, which may be the attainment of a higher grade within an indicator that is a problem, or the description of a goal to be achieved, for example, the reduction of rents uncollected to 6% or less by the end of the MOA annual period;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

(4) Technical assistance to the PHA provided or facilitated by the Department, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of troubled or mod-troubled designation and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets, including such sanctions as the imposition of budgetary limitations, declaration of substantial default and subsequent actions, limited denial of participation, suspension, debarment, or the imposition of operating funding and modernization thresholds; and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas and authority to make preliminary/tentative commitments of support, financial or otherwise.

(b) A MOA shall be executed by:

(1) The PHA Board Chairperson and accompanied by a Board resolution, or

a receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME-designated Chief Executive Officer;

(3) The Director, State/Area Office of Public Housing, except as stated in (d) of this section; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the State/Area Office.

(c) The Department encourages the inclusion of the resident leadership in MOA negotiations and the execution of the MOA.

(d) Upon designation of a large PHA (1250 or more units under management) as troubled, the State/Area Office shall make a referral to HUD Headquarters for appropriate recovery intervention and the execution of an MOA by the Assistant Secretary for Public and Indian Housing.

(e) A PHA will monitor MOA implementation to ensure that performance targets are met in terms of quantity, timeliness and quality.

§ 901.140 Removal from troubled status and mod-troubled status.

(a) A PHA has the right to petition the State/Area Office for the removal of a designation as troubled or mod-troubled.

(b) A PHA may appeal any refusal to remove troubled and mod-troubled designation to the Assistant Secretary for Public and Indian Housing in accordance with § 901.125.

(c) A PHA with fewer that 1250 units under management will be removed from troubled status by the State/Area Office upon a determination by the State/Area Office that the PHA's assessment reflects an improvement to a level sufficient to remove the PHA from troubled status, or mod-troubled, i.e., a total weighted management assessment score of 60% or more, and upon the conduct of a confirmatory review for PHAs with 100 or more units under management.

(d) A PHA with 1250 units or more under management will be removed from troubled status by the Assistant Secretary for Public and Indian Housing upon a recommendation by the State/Area Office when a PHA's assessment reflects an improvement to a level sufficient to remove the PHA from troubled or mod-troubled status, i.e., a total weighted management assessment score of 60% or more, and upon the conduct of an independent confirmatory review (team members from other State/Area Offices).

§ 901.145 Improvement Plan.

(a) After receipt of the State/Area Office notification letter in accordance with § 901.120(b) or receipt of a final resolution of an appeal in accordance with § 901.125 or, in the case of an RMC, notification of its indicator grades from a PHA, a PHA or RMC shall correct any deficiency indicated in its management assessment within 90 calendar days.

(b) A PHA shall notify the State/Area Office of its action to correct a deficiency. A PHA shall also forward to the State/Area Office an RMC's report of its action to correct a deficiency.

(c) If the State/Area Office determines that a PHA or RMC has not corrected a deficiency as required within 90 calendar days after receipt of its final notification letter, the State/Area Office may require a PHA, or a RMC through the PHA, to prepare and submit to the State/Area Office an Improvement Plan within an additional 30 calendar days:

(1) The State/Area Office shall require a PHA or RMC to submit an Improvement Plan, which includes the information stated in (d) of this section, for each indicator that a PHA or RMC scored a grade of F.

(2) The State/Area Office may require, on a risk management basis, a PHA or RMC to submit an Improvement Plan, which includes the information stated in paragraph (d) of this section, for each indicator that a PHA scored a grade D or E, as well as other performance and/or compliance deficiencies as may be identified as a result of an on-site review of the PHA's operations.

(d) An Improvement Plan shall:

(1) Identify baseline data, which should be raw data but may be the PHA's score in each of the indicators identified as a problem in a PHA's or

RMC's management assessment, or other relevant areas identified as problematic;

(2) Describe the procedures that will be followed to correct each deficiency; and

(3) Provide a timetable for the correction of each deficiency.

(e) The State/Area Office will approve or deny a PHA's or RMC's Improvement Plan, and notify the PHA of its decision. A PHA must notify the RMC in writing, immediately upon receipt of the State/Area Office notification, of the State/Area Office approval or denial of the RMC's Improvement Plan.

(f) An Improvement Plan that is not approved will be returned to the PHA with recommendations from the State/Area Office for revising the Improvement Plan to obtain approval. A revised Improvement Plan shall be resubmitted by the PHA or RMC within 30 calendar days of its receipt of the State/Area Office recommendations.

(g) If a PHA or RMC fails to submit an acceptable Improvement Plan, or to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, the State/Area Office will notify the PHA of its or the RMC's noncompliance. The PHA, or the RMC through the PHA, will provide HUD its reasons for lack of progress in submitting or carrying out the Improvement Plan within 30 calendar days of its receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress and, if unacceptable, will notify the PHA that it will be subject to sanctions provided for in the ACC and HUD regulations.

§ 901.150 PHAs troubled with respect to the program under section 14 (mod-troubled PHAs).

(a) PHAs that achieve a total weighted score of less than 60% on indicator #2, modernization, may be designated as mod-troubled.

(b) PHAs designated as mod-troubled may be subject, under the Comprehensive Grant Program, to a reduction of formula allocation or other sanctions (24 CFR § 968, Subpart C) or under the Comprehensive Improvement Assistance Program to disapproval of new funding or other sanctions (24 CFR § 968, Subpart B).

§ 901.155 PHMAP public record.

The State/Area Office will maintain PHMAP files, including certifications, the records of exclusion and modification requests, appeals, and designations of status based on physical condition and neighborhood environment, as open records, available for public inspection for three years consistent with the Freedom of Information Act (5 U.S.C. 552) and in accordance with any procedures established by the State/Area Office to minimize disruption of normal office operations.

§ 901.200 Events or conditions that constitute substantial default.

(a) The Department may determine that events have occurred or that conditions exist that constitute a substantial default if a PHA is determined to be in violation of Federal statutes, including but not limited to, the 1937 Act, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the relevant ACC.

(b) The Department may determine that a PHA's failure to satisfy the terms of a Memorandum of Agreement entered into in accordance with § 901.135 of this part, or to make reasonable progress to meet time frames included in a Memorandum of Agreement, are events or conditions that constitute a substantial default.

(c) The Department shall determine that a PHA that has been designated as troubled and does not show significant improvement (10 percentage point increase) in its PHMAP score within one year after final notification of its PHMAP score are events or conditions that constitute a substantial default:

(1) A PHA shall be notified of such a determination in accordance with § 901.205(c).

(2) A PHA may waive, in writing, receipt of explicit notice from the Department as to a finding of substantial default, and voluntarily consent to a determination of substantial default. The PHA must concur on the existence of substantial default conditions which

can be remedied by technical assistance, and the PHA shall provide the Department with written assurances that all deficiencies will be addressed by the PHA. The Department will then immediately proceed with interventions as provided in § 901.210.

(d) The Department may declare a substantial breach or default under the ACC, in accordance with its terms and conditions.

(e) The Department may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by development(s).

§ 901.205 Notice and response.

(a) If information from an annual assessment, as described in § 901.100, a management review or audit, or any other credible source indicates that there may exist events or conditions constituting a substantial breach or default, the Department shall advise a PHA of such information. The Department is authorized to protect the confidentiality of the source(s) of such information in appropriate cases. Before taking further action, except in cases of apparent fraud or criminality, and/or in cases where emergency conditions exist posing an imminent threat to the life, health, or safety of residents, the Department shall afford the PHA a timely opportunity to initiate corrective action, including the remedies and procedures available to PHAs designated as ''troubled PHAs,'' or to demonstrate that the information is incorrect.

(b) In any situation determined to be an emergency, or in any case where the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Assistant Secretary is authorized to intercede to protect the residents' and the Department's interests by causing the proposed interventions to be implemented without further appeals or delays.

(c) Upon a determination or finding that events have occurred or that conditions exist that constitute a substantial default, the Assistant Secretary shall provide written notification of such determination or finding to the affected PHA. Written notification shall be transmitted to the Executive Director, the Chairperson of the Board, and the appointing authority(s) of the Board, and shall include, but need not necessarily be limited to:

(1) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in noncompliance;

(2) Identification of the specific events, occurrences, or conditions that constitute the determined noncompliance;

(3) Citation of the communications and opportunities to effect remedies afforded pursuant to paragraph (a) of this section;

(4) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions as described in paragraph (a) of this section, nor more than 30 calendar days, during which the PHA shall be required to demonstrate that the determination or finding is not substantively accurate; and

(5) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (d) of this section, the Department will take control of the PHA, using any or all of the interventions specified in § 901.210, and determined to be appropriate to remedy the noncompliance, citing § 901.210, and any additional authority for such action.

(d) Upon receipt of the notification described in paragraph (c) of this section, the PHA must demonstrate, within the time period permitted in the notification, factual error in the Department's description of events, occurrences, or conditions, or show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, or covenants or conditions to which the PHA is cited in the notification.

§ 901.210 Interventions.

(a) Interventions under this part (including an assumption of operating responsibilities) may be limited to one or more of a PHA's specific operational

areas (e.g., maintenance, modernization, occupancy, or financial management) or to a single development or a group of developments. Under this limited intervention procedure, the Department could select, or participate in the selection of, an AME to assume management responsibility for a specific development, a group of developments in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, operational areas, and developments not so designated.

(b) Upon determining that a substantial default exists under this part, the Department may initiate any interventions deemed necessary to maintain decent, safe, and sanitary dwellings for residents. Such intervention may include:

(1) Providing technical assistance for existing PHA management staff;

(2) Selecting or participating in the selection of an AME to provide technical assistance or other services up to and including contract management of all or any part of the public housing developments administered by a PHA;

(3) Assuming possession and operational responsibility for all or any part of the public housing administered by a PHA; and

(4) The provision of intervention and assistance necessary to remedy emergency conditions.

(c) HUD may take the actions described in this part sequentially or simultaneously in any combination.

§ 901.215 Contracting and funding.

(a) Upon a declaration of substantial default or breach, and subsequent assumption of possession and operational responsibility, the Department may enter into agreements, arrangements, and/or contracts for or on behalf of a PHA, or to act as the PHA, and to expend or authorize expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default.

(b) In entering into contracts or other agreements for or on behalf of a PHA, the Department shall comply with requirements for competitive procurement consistent with 24 CFR 85.36, except that, upon determination of public exigency or emergency that will not permit a delay, the Department can enter into contracts or agreements on a noncompetitive basis, consistent with the standards of 24 CFR 85.36(d)(4).

§ 901.220 Resident participation in competitive proposals to manage the housing of a PHA.

(a) When a competitive proposal to manage the housing of a PHA in substantial default is solicited in a Request for Proposals (RFP) pursuant to section 6(j)(3)(A)(i) of the 37 Act, the RFP, in addition to publishing the selection criteria, will:

(1) Include a requirement for residents to notify the Department if they want to be involved in the selection process; and

(2) Include a requirement for the PHA that is the subject of the RFP to post a notice and a copy of the RFP in a prominent location on the premises of each housing development that would be subject to the management chosen under the RFP, for the purposes of notifying affected residents that:

(i) Invites residents to participate in the selection process; and

(ii) Provides information, to be specified in the RFP, on how to notify the Department of their interest.

(b) Residents must notify the Department by the RFP's application due date of their interest in participating in the selection process. In order to participate, the total number of residents that notify the Department must equal at least 20 percent of the residents, or the notification of interest must be from an organization or organizations of residents whose membership must equal at least 20 percent of the PHA's residents.

(c) If the required percentage of residents notify the Department, a minimum of one resident may be invited to serve as an advisory member on the evaluation panel that will review the applications in accordance with applicable procurement procedures. Resident advisory members are subject to all applicable confidentiality and disclosure restrictions.

§ 901.225 Resident petitions for remedial action.

The total number of residents that petition the Department to take remedial action pursuant to sections 6(j)(3)(A)(i) through (iv) of the 1937 Act must equal at least 20 percent of the residents, or the petition must be from an organization or organizations of residents whose membership must equal at least 20 percent of the PHA's residents.

§ 901.230 Receivership.

(a) Upon a determination that a substantial default has occurred and without regard to the availability of alternate remedies, the Department may petition the court for the appointment of a receiver to conduct the affairs of the PHA in a manner consistent with statutory, regulatory, and contractual obligations of the PHA and in accordance with such additional terms and conditions that the court may provide. The court shall have authority to grant appropriate temporary or preliminary relief pending final disposition of any petition by HUD.

(b) The appointment of a receiver pursuant to this section may be terminated upon the petition to the court by the PHA, the receiver, or the Department, and upon a finding by the court that the circumstances or conditions that constituted substantial default by the PHA no longer exist and that the operations of the PHA will be conducted in accordance with applicable statutes and regulations, and contractual covenants and conditions to which the PHA and its public housing programs are subject.

§ 901.235 Technical assistance.

(a) The Department may provide technical assistance to a PHA that is in substantial default.

(b) The Department may provide technical assistance to a troubled or non-troubled PHA if the assistance will enable the PHA to achieve satisfactory performance on any PHMAP indicator. The Department may provide such assistance if a PHA demonstrates a commitment to undertake improvements appropriate with the given circumstances, and executes an Improvement Plan in accordance with § 901.145.

(c) The Department may provide technical assistance to a PHA if without abatement of prevailing or chronic conditions, the PHA can be projected to be designated as troubled by its next PHMAP assessment.

(d) The Department may provide technical assistance to a PHA that is in substantial default of the ACC.

(e) The Department may provide technical assistance to a PHA whose troubled designation has been removed and where such assistance is necessary to prevent the PHA from being designated as troubled within the next two years.

PART 902—PUBLIC HOUSING ASSESSMENT SYSTEM

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AUTHORITY: 42 U.S.C. 1437d(j), 42 U.S.C. 3535(d).

SOURCE: 65 FR 1738, Jan. 11, 2000, unless otherwise noted.

Subpart A—General Provisions

§ 902.1 Purpose and general description.

(a) *Purpose.* The purpose of the Public Housing Assessment System (PHAS) is to improve the delivery of services in public housing and enhance trust in the public housing system among public housing agencies (PHAs), public housing residents, HUD and the general public by providing a management tool for effectively and fairly measuring the performance of a public housing agency in essential housing operations, including rewards for high performers and consequences for poor performers.

(b) *Responsible office for PHAS assessments.* The Real Estate Assessment Center (REAC) is responsible for assessing and scoring the performance of PHAs.

(c) *PHAS indicators of a PHA's performance.* REAC will assess and score a PHA's performance based on the following four indicators:

(1) PHAS Indicator #1—the physical condition of a PHA's properties (addressed in subpart B of this part);

(2) PHAS Indicator #2—the financial condition of a PHA (addressed in subpart C of this part);

(3) PHAS Indicator #3—the management operations of a PHA (addressed in subpart D of this part); and

(4) PHAS Indicator #4—the resident service and satisfaction feedback on a PHA's operations (addressed in subpart E of this part).

(d) *Assessment tools.* REAC will make use of uniform and objective protocols for the physical inspection of properties and the financial assessment of the PHA, and will gather relevant data from the PHA and the PHA's public housing residents to assess management operations and resident services and satisfaction, respectively. On the basis of this data, REAC will assess and score the results, advise PHAs of their scores and identify low scoring and failing PHAs so that these PHAs will receive the appropriate attention and assistance.

(e) *Limitation of change of PHA's fiscal year.* To allow for a period of consistent assessment of the PHAS indicators, a PHA is not permitted to change its fiscal year for the first three full fiscal years following October 1, 1998, unless such change is approved by HUD.

§ 902.3 Scope.

The PHAS is a strategic measure of a PHA's essential housing operations. The PHAS, however, does not evaluate a PHA's compliance with or response to every Department-wide or program specific requirement or objective. Although not specifically referenced in this part, PHAs remain responsible for complying with such requirements as fair housing and equal opportunity requirements, requirements under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and requirements of programs under which the PHA is receiving assistance. A PHA's adherence

to these requirements will be monitored in accordance with the applicable program regulations and the PHA's Annual Contributions Contract (ACC).

§ 902.5 Applicability.

(a) *PHAs, RMCs, AMEs.* (1) *Scoring of RMCs and AMEs.* This part applies to PHAs, Resident Management Corporations (RMCs) and Alternate Management Entities (AMEs), as described in this section. As described in this section, this part is also applicable to RMCs that receive direct funding from HUD in accordance with section 20 of the 1937 Act (DF-RMCs).

(i) RMCs and DF-RMCs will be assessed and issued their own numeric scores under the PHAS based on the public housing developments or portions of public housing developments that they manage and the responsibilities they assume which can be scored under PHAS. References in this part to PHAs include RMCs and this part is applicable to RMCs unless stated otherwise. References in this part to RMCs include DF-RMCs and this part is applicable to DF-RMCs unless otherwise stated.

(ii) AMEs are not issued PHAS scores. The performance of the AME contributes to the PHAS score of the PHA or PHAs for which they assumed management responsibilities.

(2) *PHA ultimate responsible entity under ACC, except where DF-RMC assumes management operations.* (i) Because the PHA and not the RMC/AME is ultimately responsible to HUD under the ACC, the PHAS score of a PHA will be based on all of the developments covered by the ACC, including those with management operations assumed by an RMC or AME (including a court ordered receivership agreement, if applicable).

(ii) A PHA's PHAS score will not be based on developments managed by a DF-RMC.

(b) *Implementation of PHAS.* The regulations in this part are applicable to PHAs with fiscal years ending on and after June 30, 2000, unless HUD, through FEDERAL REGISTER, notice revises the implementation date to later date.

(1) *For PHAs that are not issued PHAS scores.* Under certain circumstances, PHAs may not be issued PHAS scores. For these PHAs, in lieu of a PHAS score, HUD will issue the following:

(i) *PHAS Advisory Score.* A PHA will be issued a PHAS advisory score for all PHAS indicators—Indicators #1 (Physical), #2 (Financial), #3 (Management Operations), and #4 (Resident Service and Satisfaction). The PHA must comply with the requirements of this part so that HUD may issue the advisory score. Physical inspections required to be conducted by PHAs under the Management Operations Indicator will be conducted using HUD uniform physical inspection protocol, unless HUD provides, through FEDERAL REGISTER notice, that PHAs may use HUD's Housing Quality Standards.

(ii) *Management Assessment Score.* A PHA will receive an assessment score on the basis of HUD's assessment of the PHA's management operations in accordance with subpart D of this part.

[65 FR 36044, June 6, 2000]

§ 902.7 Definitions.

As used in this part:

Act means the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*)

Adjustment for physical condition (development age) and neighborhood environment is a total of three additional points added to PHAS Indicator #1 (Physical Condition). The three additional points, however, shall not result in a total point value exceeding the total points available for PHAS Indicator #1 (established in subpart B of this part).

Alternative management entity (AME) is a receiver, private contractor, private manager, or any other entity that is under contract with a PHA, under a Regulatory and Operating Agreement with a PHA, or that is otherwise duly appointed or contracted (for example, by court order or agency action), to manage all or part of a PHA's operations.

Assessed fiscal year is the PHA fiscal year that has been assessed under the PHAS.

Average number of days nonemergency work orders were active is calculated:

(1) By dividing the total of—

(i) The number of days in the assessed fiscal year it takes to close active nonemergency work orders carried over from the previous fiscal year;

(ii) The number of days it takes to complete nonemergency work orders issued and closed during the assessed fiscal year; and

(iii) The number of days all active nonemergency work orders are open in the assessed fiscal year, but not completed;

(2) By the total number of nonemergency work orders used in the calculation of paragraphs (1)(i), (ii) and (iii) of this definition.

Days in this part, unless otherwise specified, refer to calendar days.

Deficiency means any PHAS score below 60 percent of the available points in any indicator, sub-indicator or component. (In the context of physical condition and physical inspection, deficiency refers to a physical condition and is defined for purposes of subpart B of this part in §902.24)

Improvement plan is a document developed by a PHA, specifying the actions to be taken, including timetables, that shall be required to correct deficiencies identified under any of the sub-indicators and components within the indicator(s), identified as a result of the PHAS assessment when a Memorandum of Agreement (MOA) is not required.

Occupancy loss is the sum of the number one (1) minus the unit months leased divided by unit months available (or Occupancy loss = 1−(unit months leased/unit months available).

Property is a project/development with a separate identifying project number.

Reduced actual vacancy rate within the previous three years is a comparison of the vacancy rate in the PHAS assessed fiscal year (the immediate past fiscal year) to the vacancy rate of that fiscal year two years prior to the assessed fiscal year. It is calculated by subtracting the vacancy rate in the assessed fiscal year from the vacancy rate in the earlier year. If a PHA elects to certify to the reduction of the vacancy rate within the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review. Reduced actual vacancy rate within the previous three years only applies to PHAs with fiscal years ending September 30, 1999, and December 31, 1999.

Reduced average time nonemergency work orders were active during the previous three years is a comparison of the average time nonemergency work orders were active in the PHAS assessment year (the immediate past fiscal year) to the average time nonemergency work orders were active in that fiscal year two years prior to the assessment year. It is calculated by subtracting the average time nonemergency work orders were active in the PHAS assessment year from the average time nonemergency work orders were active in the earlier year. If a PHA elects to certify to the reduction of the average time nonemergency work orders were active during the previous three years, the PHA shall retain justifying documentation to support its certification for HUD post review.

Tenant Receivable Outstanding is defined in §902.35(b)(3).

Unit months available is the total number of units managed by a PHA multiplied by 12 (adjusted by new units entering a PHA's public housing stock during the fiscal year) exclusive of unit months vacant due to: demolition; conversion; ongoing modernization; and units approved for non-dwelling purposes.

Unit months leased is the actual number of months each unit was rented during the fiscal year based on the PHA's tenant rent rolls or Housing Assistance Payments records.

Work order deferred to the Capital Fund Program is any work order that is combined with similar work items and completed within the current PHAS assessment year, or will be completed in the following year when there are less than three months remaining before the end of the PHA fiscal year from the time the work order was generated, under the PHA's Capital Fund Program or other PHA capital improvements program.

§902.9 Frequency of PHAS scoring for small PHAs.

REAC will assess and score the performance of a PHA with less than 250

public housing units every other PHA fiscal year, unless the small PHA:

(a) Elects to have its performance assessed on an annual basis; or

(b) Is designated as troubled, in accordance with § 902.67.

[68 FR 37671, June 24, 2003]

Subpart B—PHAS Indicator #1: Physical Condition

§ 902.20 Physical condition assessment.

(a) *Objective.* The objective of the Physical Condition Indicator is to determine whether a PHA is meeting the standard of decent, safe, sanitary, and in good repair (DSS/GR), as this standard is defined in § 902.23 (a standard that provides acceptable basic housing conditions) and the level to which the PHA is maintaining its public housing in accordance with this standard.

(b) *Physical inspection under PHAS Indicator #1.* (1) To achieve the objective of paragraph (a) of this section, REAC will provide for an independent physical inspection of a PHA's property or properties that includes, at minimum, a statistically valid sample of the units in the PHA's public housing portfolio to determine the extent of compliance with the DSS/GR standard.

(2) Only occupied units will be inspected as dwelling units (except units approved by HUD for non-dwelling purposes, e.g., daycare or meetings, which are inspected as common areas). Vacant units that are not under lease at the time of the physical inspection will not be inspected, but vacant units are assessed under the Financial Condition Indicator #2 (§ 902.35(b)(4)). The categories of vacant units not under lease that are exempted from physical inspection are as follows:

(i) Units undergoing vacant unit turnaround—vacant units that are in the routine process of turn over; *i.e.,* the period between which one resident has vacated a unit and a new lease takes effect;

(ii) Units undergoing rehabilitation—vacant units that have substantial rehabilitation needs already identified, and there is an approved implementation plan to address the identified rehabilitation needs and the plan is fully funded;

(iii) Off-line units—vacant units that have repair requirements such that the units cannot be occupied in a normal period of time (considered to be between 5 and 7 days) and which are not included under an approved rehabilitation plan;

(c) *PHA physical inspection requirement.* The HUD-conducted physical inspections required by this part do not relieve the PHA of the responsibility to inspect public housing units as provided in section 6(f)(3) of the Act (42 U.S.C. 1437d(f)(3)), and § 902.43(a).

(d) *Compliance with State and local codes.* The physical condition standards in this subpart do not supersede or preempt State and local building and maintenance codes with which the PHA's public housing must comply. PHAs must continue to adhere to these codes.

[65 FR 1738, Jan. 11, 2000, as amended at 65 FR 36044, June 6, 2000]

§ 902.23 Physical condition standards for public housing—decent, safe, and sanitary housing in good repair (DSS/GR).

(a) *General.* Public housing must be maintained in a manner that meets the physical condition standards set forth in this part in order to be considered decent, safe, sanitary and in good repair (standards that constitute acceptable basic housing conditions). These standards address the major physical areas of public housing: site; building exterior; building systems; dwelling units; and common areas (see paragraph (b) of this section). These standards also identify health and safety considerations (see paragraph (c) of this section). These standards address acceptable basic housing conditions, not the adornment, decor or other cosmetic appearance of the housing.

(b) *Major inspectable areas.* The five major inspectable areas of public housing are the following:

(1) *Site.* The site includes components, such as fencing and retaining walls, grounds, lighting, mailboxes, signs (such as those identifying the development or areas of the development), parking lots/driveways, play areas and equipment, refuse disposal,

roads, storm drainage and walkways. The site must be free of health and safety hazards and be in good repair. The site must not be subject to material adverse conditions, such as abandoned vehicles, dangerous walks or steps, poor drainage, septic tank backups, sewer hazards, excess accumulations of trash, vermin or rodent infestation or fire hazards.

(2) *Building exterior.* Each building on the site must be structurally sound, secure, habitable, and in good repair. The building's exterior components such as doors, fire escapes, foundations, lighting, roofs, walls, and windows, where applicable, must be free of health and safety hazards, operable, and in good repair.

(3) *Building systems.* The building's systems include components such as domestic water, electrical system, elevators, emergency power, fire protection, HVAC, and sanitary system. Each building's systems must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(4) *Dwelling units.* (i) Each dwelling unit within a building must be structurally sound, habitable, and in good repair. All areas and aspects of the dwelling unit (for example, the unit's bathroom, call-for-aid, ceiling, doors, electrical systems, floors, hot water heater, HVAC (where individual units are provided), kitchen, lighting, outlets/switches, patio/porch/balcony, smoke detectors, stairs, walls, and windows) must be free of health and safety hazards, functionally adequate, operable, and in good repair.

(ii) Where applicable, the dwelling unit must have hot and cold running water, including an adequate source of potable water.

(iii) If the dwelling unit includes its own sanitary facility, it must be in proper operating condition, usable in privacy, and adequate for personal hygiene and the disposal of human waste.

(iv) The dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit.

(5) *Common areas.* The common areas must be structurally sound, secure, and functionally adequate for the purposes intended. The common areas include components such as basement/garage/carport, restrooms, closets, utility, mechanical, community rooms, day care, halls/corridors, stairs, kitchens, laundry rooms, office, porch, patio, balcony, and trash collection areas, if applicable. The common areas must be free of health and safety hazards, operable, and in good repair. All common area ceilings, doors, floors, HVAC, lighting, outlets/switches, smoke detectors, stairs, walls, and windows, to the extent applicable, must be free of health and safety hazards, operable, and in good repair.

(c) *Health and safety concerns.* All areas and components of the housing must be free of health and safety hazards. These areas include, but are not limited to, air quality, electrical hazards, elevators, emergency/fire exits, flammable materials, garbage and debris, handrail hazards, infestation, and lead-based paint. For example, the buildings must have fire exits that are not blocked and have hand rails that are undamaged and have no other observable deficiencies. The housing must have no evidence of infestation by rats, mice, or other vermin, or of garbage and debris. The housing must have no evidence of electrical hazards, natural hazards, or fire hazards. The dwelling units and common areas must have proper ventilation and be free of mold, odor (*e.g.*, propane, natural gas, methane gas), or other observable deficiencies. The housing must comply with all regulations and requirements related to the ownership of pets, and the evaluation and reduction of lead-based paint hazards and have available proper certifications of such (see 24 CFR part 35).

§ 902.24 Physical inspection of PHA properties.

(a) *The inspection, generally.* The score for PHAS Indicator #1 is based upon an independent physical inspection of a PHA's properties provided by REAC and using HUD's uniform physical inspection protocols.

(1) During the physical inspection of a property, an inspector looks for deficiencies for each inspectable item within the inspectable areas, such as holes (deficiencies) in the walls (item) of a dwelling unit (area). The dwelling

units inspected in a property are a randomly selected, statistically valid sample of the units in the property, excluding vacant units not under lease at the time of the physical inspection, as provided in § 902.20(b)(2).

(2) To ensure prompt correction of health and safety deficiencies before leaving the site, the inspector gives the property representative the list of every observed exigent/fire safety health and safety deficiency that calls for immediate attention or remedy. The property representative acknowledges receipt of the deficiency report by signature.

(3) After the inspection is completed, the inspector transmits the results to REAC where the results are verified for accuracy and then scored in accordance with the procedures in this subpart.

(b) *Definitions.* The following definitions apply to the physical condition scoring process in this subpart:

Criticality means one of five levels that reflect the relative importance of the deficiencies for an inspectable item.

(1) Based on the importance of the deficiency, reflected in its criticality value, points are deducted from the score for an inspectable area.

Criticality	Level
Critical	5
Very important	4
Important	3
Contributes	2
Slight contribution	1

(2) The Item Weights and Criticality Levels document lists all deficiencies with their designated levels, which vary from 1 to 5, with 5 as the most critical, and the point values assigned to them.

Deficiencies means the specific problems, comparable to problems noted under Housing Quality Standards (HQS), such as a hole in a wall or a damaged refrigerator in the kitchen, that can be recorded for inspectable items.

Dictionary of Deficiency Definitions refers to the Dictionary of Deficiency Definitions document which is included as an appendix to the PHAS Notice on the Physical Condition Scoring Process and contains specific definitions of each severity level for deficiencies under this subpart. HUD will publish for comment any significant proposed amendments to this document. After comments have been considered HUD will publish a notice adopting the final Dictionary of Deficiency Definitions document or the amendments to the document. The Dictionary of Deficiency Definitions that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

Inspectable areas (or area) means any of the five major components of the property that are inspected, which are: site; building exteriors; building systems; dwelling units; and common areas.

Inspectable item means the individual parts, such as walls, kitchens, bathrooms, and other things, to be inspected in an inspectable area. The number of inspectable items varies for each area. Weights are assigned to each item as shown in the Item Weights and Criticality Levels document.

Item Weights and Criticality Levels Document refers to the Item Weights and Criticality Levels document which is included as an appendix to the PHAS Notice on the Physical Condition Scoring Process and contains a listing of the inspectable items, item weights, observable deficiencies, criticality levels and values, and severity levels and values that apply to this subpart. HUD will publish for comment any significant proposed amendments to this document. After comments have been considered HUD will publish a notice adopting the final Item Weights and Criticality Levels document or the amendments to the document. The Item Weights and Criticality Levels document that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

Normalized weights mean weights adjusted to reflect the inspectable items or areas that are present to be inspected.

Score means a number on a scale of 0 to 100 that reflects the physical condition of a property, inspectable area, or

sub-area. To record a health or safety deficiency, a specific designation (such as a letter—a, b, or c) is added to the property score that highlights that a health or safety deficiency (or deficiencies) exists. If smoke detectors are noted as inoperable or missing, another designation (such as an asterisk (*)) is added to the property score. Although inoperable or missing smoke detectors do not reduce the score, they are included in the health and safety deficiencies list that the inspector gives the PHA's property representative. The PHA is expected to promptly address all health and safety deficiencies.

Severity means one of three levels, level 1 (minor), level 2 (major), and level 3 (severe), that reflect the extent of the damage or problem associated with each deficiency. The Item Weights and Criticality Levels document shows the severity levels for each deficiency. Based on the severity of each deficiency, the score is reduced. Points deducted are calculated as the product of the item weight and the values for criticality and severity. For specific definitions of each severity level, see REAC's ''Dictionary of Deficiency Definitions''.

Sub-area means an inspectable area for one building. For example, if a property has more than one building, each inspectable area for each building in the property is treated as a sub-area.

(c) *Compliance with civil rights/nondiscrimination requirements.* HUD will review certain elements during the physical inspection to determine possible indications of noncompliance with the Fair Housing Act (42 U.S.C. 3601–19) and section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). A PHA will not be scored on those elements. Any indication of possible noncompliance will be referred to HUD's Office of Fair Housing and Equal Opportunity.

(d) *HUD access to PHA properties.* PHAs are required by the ACC to provide the Government with full and free access to all facilities contained in the development. PHAs are required to provide HUD or its representative with access to the development, all units and appurtenances thereto in order to permit physical inspections under this part. Access to the units must be provided whether or not the resident is home or has installed additional locks for which the PHA did not obtain keys. In the event that the PHA fails to provide access as required by HUD or its representative, the PHA will be given ''0'' points for the development or developments involved which will be reflected in the physical condition and overall PHAS score.

§ 902.25 Physical condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #1, REAC will calculate a score for the overall condition of a PHA's public housing portfolio following the procedures described in the PHAS Notice on the Physical Condition Scoring Process (PHAS PASS Notice 3), which will be published in the FEDERAL REGISTER. HUD may revise this notice in the future, but HUD will publish for comment any significant proposed amendments to this notice. After comments have been considered, HUD will publish a notice adopting a final notice or amendment. The PHAS Notice on the Physical Condition Scoring Process that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

(b) *Adjustment for physical condition (property age) and neighborhood environment.* In accordance with section 6(j)(1)(I)(2) of the Act (42 U.S.C. 1437d(j)(1)(I)(2)), the overall physical score for a property will be adjusted upward to the extent that negative conditions are caused by situations outside the control of the PHA. These situations are related to the poor physical condition of the property or the overall depressed condition of the immediately surrounding neighborhood. The intent of this adjustment is to avoid penalizing the PHA through appropriate application of the adjustment. (See paragraph (c) of this section which provides for further adjustments of physical condition score under certain circumstances.)

(1) *Adjustments in three areas.* Adjustments to the PHA physical condition score will be made in three factually observed and assessed areas (inspectable areas):

(i) Physical condition of the site;

(ii) Physical condition of the common areas on the property; and

(iii) Physical condition of the building exteriors.

(2) *Definitions.* Definitions and application of physical condition and neighborhood environment factors are:

(i) Physical condition applies to properties over 10 years old and that have not received substantial rehabilitation in the last 10 years.

(ii) Neighborhood environment applies to properties located where the immediate surrounding neighborhood (that is a majority of the population that resides in the census tracts or census block groups on all sides of the development) has at least 51 percent of families with incomes below the poverty rate as documented by the most recent census data.

(3) *Adjustment for physical condition (property age) and neighborhood environment.* HUD will adjust the physical score of a PHA's property subject to both the physical condition (property age) and neighborhood environment conditions. The adjustments will be made to the scores assigned to the applicable inspectable areas so as to reflect the difficulty in managing. In each instance where the actual physical condition of the inspectable area (site, common areas, building exterior) is rated below the maximum score for that area, 1 point will be added, but not to exceed the maximum number of points available to that inspectable area.

(i) These extra points will be added to the score of the specific inspectable area, by property, to which these conditions may apply. A PHA is required to certify in the manner prescribed by HUD, the extent to which the conditions apply, and to which inspectable area the extra scoring point should be added.

(ii) A PHA that receives the maximum potential weighted points on the inspectable areas may not claim any additional adjustments for physical condition and/or neighborhood environments for the respective inspectable area(s). In no circumstance shall a property's score for the inspectable area, after any adjustment(s) for physical condition and/or neighborhood environments, exceed the maximum potential weighted points assigned to the respective property's inspectable area(s).

(4) *Scattered site properties.* The Date of Full Availability (DOFA) shall apply to scattered site properties, where the age of units and buildings vary, to determine whether the properties have received substantial rehabilitation within the past 10 years and are eligible for an adjusted score for the Physical Condition Indicator.

(5) *Maintenance of supporting documentation.* PHAs shall maintain supporting documentation to show how they arrived at the determination that the property's score is subject to adjustment under this section.

(i) If the basis was neighborhood environments, the PHA shall have on file the appropriate maps showing the census block groups surrounding the development(s) in question with supporting census data showing the level of poverty. Properties that fall into this category but which have already been removed from consideration for other reasons (permitted exemptions and modifications and/or exclusions) shall not be counted in this calculation.

(ii) For the Physical Condition Indicator, a PHA would have to maintain documentation showing the age and condition of the properties and the record of capital improvements, evidencing that these particular properties have not received capital funds.

(iii) PHAs shall also document that in all cases, properties that were exempted for other reasons were not included in the calculation.

(c) *Database adjustment.* (1) *Adjustments for factors not reflected or inappropriately reflected in physical condition score.* Under certain circumstances, HUD may determine it is appropriate to review the results of a PHA's physical inspection which are unusual or incorrect due to facts and circumstances affecting the PHA's property which are not reflected in the inspection or which are reflected inappropriately in the inspection.

(i) These circumstances are not those that may addressed by the technical review process described in § 902.68. The

circumstances addressed by this paragraph (c)(1) may include inconsistencies between local code requirements and the HUD physical inspection protocol; conditions which are permitted by local variance or license or which are preexisting physical features that do not conform to, or are inconsistent with, HUD's physical condition protocol; or the PHA has been scored for elements (*e.g.*, roads, sidewalks, mail boxes, resident-owned appliances, etc.) that it does not own and is not responsible for maintaining, and the PHA has notified the proper authorities regarding the deficient structure.

(ii) An adjustment due to these circumstances may be initiated by a PHA's notification to the applicable HUD HUB/Program Center and such notification shall include appropriate proof of the reasons for the unusual or incorrect result. A PHA may submit the request for this adjustment either prior to or after the physical inspection has been concluded. If the request is made after the conclusion of the physical inspection, the request must be made within 15 days of issuance of the physical condition score. Based on the recommendation of the applicable HUD HUB/Program Center following its review of the PHA's evidence or documentation, HUD may determine that a reinspection and/or re-scoring of the PHA's property is necessary. HUD shall define, by notice, the procedures to be followed to address circumstances described in paragraph (c) of this section. The notice will be applicable to both public housing and multifamily housing properties covered by 24 CFR part 5, subpart G.

(2) *Adjustments for adverse conditions beyond the PHA's control.* Under certain circumstances, HUD may determine that certain deficiencies that adversely and significantly affect the physical condition score of the PHA were caused by circumstances beyond the control of the PHA. The correction of these conditions, however, remains the responsibility of the PHA.

(i) The circumstances addressed by this paragraph (c)(2) may include, but are not limited to, damage caused by third parties (such as a private entity or public entity undertaking work near a public housing development that results in damage to the development) or natural disasters. (The circumstances addressed in paragraph (c)(2) of this section are not those addressed by the technical review process in § 902.68.)

(ii) To adjust a physical condition score based on circumstances addressed in paragraph (c)(2) of this section, the PHA must submit a request to the applicable HUD HUB/Program Center requesting a reinspection of the PHA's properties. The request must be submitted within 15 days of the issuance of the physical condition score to the PHA and must be accompanied by a certification that all deficiencies identified in the original report have been corrected. Based on the recommendation of the applicable HUD HUB/Program Center following its review of the PHA's evidence or documentation, HUD may determine that a reinspection and/or re-scoring of the PHA's property is necessary.

(3) *Adjustments for modernization work in progress.* HUD may determine that an occupied dwelling unit or other areas of a PHA development, subject to physical inspection under this subpart, which are undergoing modernization work in progress require an adjustment to the physical condition score.

(i) An occupied dwelling unit or other areas of a PHA development undergoing modernization are subject to physical inspection; the unit and other areas of the PHA development are not exempt from physical inspection. All elements of the unit or of the other areas of the PHA development that are subject to inspection and are not undergoing modernization at the time of the inspection (even if modernization is planned) will be subject to HUD's physical inspection protocol without adjustment. For those elements of the unit or of the development that are undergoing modernization, deficiencies will be noted in accordance with HUD's physical inspection protocol, but the PHA may request adjustment of the physical condition score as a result of modernization work in progress.

(ii) An adjustment due to modernization work in progress may be initiated by a PHA's notification to the applicable HUD HUB/Program Center and the notification shall include supporting documentation of the modernization

work underway at the time of the physical inspection. A PHA may submit the request for this adjustment either prior to or after the physical inspection has been concluded. If the request is made after the conclusion of the physical inspection, the request must be made within 15 days of issuance of the physical condition score. Based on the recommendation of the applicable HUD HUB/Program Center, HUD may determine that a reinspection and/or re-scoring of the PHA's property is necessary.

(d) *Overall PHA Physical Condition Indicator score.* The overall Physical Condition Indicator score for a PHA is the weighted average of the PHA's individual property physical inspection scores, where the weights are the number of units in each property divided by the total number of units in all properties of the PHA.

(e) *Thresholds.* (1) The physical condition score is reduced to a 30 point basis for the PHAS Physical Condition Indicator.

(2) In order to receive a passing score under the Physical Condition Indicator, the PHA must achieve a score of at least 18 points, or 60 percent of the available points under this indicator. If the PHA fails to receive a passing score on the Physical Condition Indicator, the PHA shall be categorized as a substandard physical agency.

[65 FR 1738, Jan. 11, 2000, as amended at 65 FR 36044, June 6, 2000]

§ 902.26 Physical Inspection Report.

(a) Following the physical inspection and computation of the score under this subpart, each PHA receives a Physical Inspection Report. The Physical Inspection Report allows the PHA to see the magnitude of the points lost by inspectable area, and the impact on the score of the health and safety (H&S) deficiencies.

(1) If exigent health and safety items are identified in the report, the PHA will have the opportunity to correct all exigent health and safety deficiencies noted on the report and request a reinspection.

(2) The correction of exigent health and safety deficiencies and the request for reinspection must be made within 15 days of the PHA's receipt of the Physical Inspection Report. The request for reinspection must be accompanied by the PHA's identification of the exigent health and safety deficiencies that have been corrected, and the PHA's certification that all such deficiencies identified in the report have been corrected.

(3) If HUD determines that a reinspection is appropriate, REAC will arrange for a complete reinspection of the development(s) in question, not just the deficiencies previously identified. The reinspection will constitute the final physical inspection for the development, and REAC will issue a new inspection report (the final inspection report).

(4) If any of the previously identified exigent health and safety deficiencies that the PHA certified were corrected are found during the reinspection to be not corrected, the score in the final inspection report will reflect a point deduction of triple the value of the original deduction, up to the maximum possible points for the unit or area, and the PHA must reimburse HUD for the cost of the reinspection.

(5) If a request for reinspection is not made within 15 days, the physical inspection report issued to the PHA will be the final physical inspection report.

(b) The Physical Inspection Report includes the following items:

(1) Normalized weights as the ''possible points'' by area;

(2) The area scores, taking into account the points deducted for observed deficiencies;

(3) The H&S deductions for each of the five inspectable areas; a listing of all observed smoke detector deficiencies; and a projection of the total number of H&S problems that the inspector potentially would see in an inspection of all buildings and all units; and

(4) The overall property score.

§ 902.27 Physical condition portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Physical Condition Indicator.

Subpart C—PHAS Indicator #2: Financial Condition

§ 902.30 Financial condition assessment.

(a) *Objective.* The objective of the Financial Condition Indicator is to measure the financial condition of a PHA for the purpose of evaluating whether it has sufficient financial resources and is capable of managing those financial resources effectively to support the provision of housing that is decent, safe, sanitary and in good repair.

(b) *Financial reporting standards.* A PHA's financial condition will be assessed under this indicator by measuring the PHA's entity-wide performance in each of the components listed in § 902.35, on the basis of the annual financial report provided in accordance with § 902.33.

§ 902.33 Financial reporting requirements.

(a) *Annual financial report.* All PHAs must submit their unaudited and audited financial data to HUD on an annual basis. The financial information must be:

(1) Prepared in accordance with Generally Accepted Accounting Principles (GAAP) as further defined by HUD in supplementary guidance; and

(2) Submitted electronically in the format prescribed by HUD using the Financial Data Schedule (FDS).

(b) *Annual financial report filing dates.* The unaudited financial information to be submitted to HUD in accordance with paragraph (a) of this section, must be submitted to HUD annually, no later than two months after the end of the PHA's fiscal year end, with no penalty applying until the 16th day of the third month after the PHA's fiscal year end in accordance with Uniform Financial Reporting Standards (see 24 CFR part 5, subpart H). An automatic one month extension will be granted for PHAs with fiscal years ending September 30, 1999 through June 30, 2000.

(c) *Reporting compliance dates.* The requirement for compliance with the financial reporting requirements of this section begins with PHAs with fiscal years ending on and after September 30, 1999. Unaudited financial statements will be required two months after the PHA's fiscal year end, and audited financial statements will be required no later than 9 months after the PHA's fiscal year end, in accordance with the Single Audit Act and OMB Circular A–133 (see 24 CFR 84.26).

[65 FR 1738, Jan. 11, 2000, as amended at 68 FR 37671, June 24, 2003]

§ 902.35 Financial condition scoring and thresholds.

(a) *Scoring.* Under PHAS Indicator #2, REAC will calculate a score based on the values of financial condition components, as well as audit and internal control flags. Each financial condition component has several levels of performance, with different point values for each level. A PHA's score for a financial condition component depends upon both the level of the PHA's performance under a component, and the PHA's size, based on the number of public housing and section 8 units and other units the PHA operates.

(1) Under PHAS Indicator #2, REAC will calculate a score following the procedures described in the PHAS Notice on the Financial Condition Scoring Process (PHAS FASS Notice 3), which will be published in the FEDERAL REGISTER. HUD may revise this notice in the future, but HUD will publish for comment any significant proposed amendments to this notice. After comments have been considered, HUD will publish a notice adopting a final notice or amendment. The PHAS Notice on the Financial Condition Scoring Process that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

(2) PHAs with fiscal years ending on or before June 30, 2000, will receive an advisory score based on the PHA's entity-wide operations. PHAs with fiscal years ending March 31, 2000, and June 30, 2000, will also receive a score under this subpart C. These PHAs will receive a PHAS financial condition score on the basis of their public housing operating subsidies program. PHAs with fiscal years ending after June 30, 2000, will receive PHAS financial condition scores on the basis of their entity-wide operations.

(3) *High liquidity or reserves.* (i) Under the scoring process for the Financial Condition Indicator, no points will be deducted under the Current Ratio or Monthly Expenditure Fund Balance components for a PHA that has too high liquidity or reserves if the PHA has achieved at least 90 percent of the points available under the Physical Condition Indicator, and is not required to prepare a follow-up survey plan under the Resident Service and Satisfaction Indicator.

(ii) A PHA that has too high liquidity or reserves but does not meet the qualifications described in paragraph (a)(3)(i) of this section may appeal point deductions under the Current Ratio or Monthly Expenditure Fund Balance components based on mitigating circumstances if the PHA's physical condition score is at least 60 percent of the total available points under the Physical Condition Indicator.

(A) The appeal may be made without regard to change in designation.

(B) To adjust a financial condition score based on mitigating circumstances, the PHA must submit a request to the applicable HUD HUB/Program Center within 15 days of the issuance of the financial condition score to the PHA and must be accompanied by a description of the mitigating circumstances. Based on the recommendation of the applicable HUD HUB/Program Center following its review of the PHA's evidence or documentation, HUD may determine that a point adjustment for the financial condition score is acceptable.

(b) *Components of PHAS Indicator* #2. The components of PHAS Indicator #2 are:

(1) *Current Ratio* is current assets divided by current liabilities.

(2) *Number of Months Expendable Fund Balance* is expendable fund balance (Expendable Fund Balance) divided by monthly operating expenses. The Expendable Fund Balance is the portion of the fund balance representing expendable available financial resources, that is, the unreserved and undesignated fund balance.

(3) *Tenant Receivable Outstanding* is the average number of days tenant receivables are outstanding and it is calculated by dividing tenant accounts receivable by Daily Tenant Revenue (rental revenue/365).

(4) *Occupancy Loss* is one minus unit months leased divided by unit months available.

(5) *Expense Management/Utility Consumption* is the expense per unit for key expenses, including utility consumption, and other expenses such as maintenance and security.

(6) *Net Income or Loss divided by the Expendable Fund Balance* measures how the year's operations have affected the PHA's viability.

(c) *Thresholds.* In order to receive a passing score under the Financial Condition Indicator, the PHA must achieve a score of at least 18 points, or 60 percent of the available points under this indicator. If the PHA fails to receive a passing score on the Financial Condition Indicator, the PHA shall be categorized as a substandard financial agency.

[65 FR 1738, Jan. 11, 2000, as amended at 65 FR 36044, June 6, 2000]

§ 902.37 Financial condition portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Financial Condition Indicator.

Subpart D—PHAS Indicator #3: Management Operations

§ 902.40 Management operations assessment.

(a) *Objective.* The objective of the Management Operations Indicator is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations capabilities.

(b) *Management assessment.* PHAS Indicator #3 pertaining to Management Operations incorporates the majority of the statutory indicators of section 6(j) of the Act, as provided in § 902.43. (The remaining statutory indicators are addressed under the other PHAS Indicators.)

§ 902.43 Management operations performance standards.

(a) *Management operations sub-indicators.* The following sub-indicators listed

in this section will be used to assess a PHA's management operations. The components and grades for each sub-indicator are the same as those provided in Appendix 1 to the PHAS Notice on the Management Operations Scoring Process, except as may be otherwise noted in this subpart.

(1) *Management sub-indicator #1—Vacant Unit Turnaround Time.* This sub-indicator measures the PHA's efforts to reduce unit turnaround time and assesses the adequacy of the PHA's system to track unit down time, make ready time and lease up time.

(2) *Management sub-indicator #2—Capital Fund.* This management sub-indicator examines the amount and percentage of funds provided to the PHA from the Capital Fund under section 9(d) of the Act, which remain unexpended by the PHA after three years, the timeliness of fund obligation, the adequacy of contract administration, the quality of the physical work, and the adequacy of budget controls. For funding under the HOPE VI Program, only components #3, #4, and #5 of this sub-indicator are applicable. This management sub-indicator is automatically excluded if the PHA does not have section 9(d) capital funding.

(3) *Management sub-indicator #3—Work Orders.* This management sub-indicator examines the time it takes to complete or abate emergency work orders, the average number of days nonemergency work orders were active, and any progress a PHA has made during the preceding three years to reduce the period of time nonemergency maintenance work orders were active. Implicit in this management sub-indicator is the adequacy of the PHA's work order system in terms of how a PHA accounts for and controls its work orders, and its timeliness in preparing/issuing work orders.

(4) *Management sub-indicator #4—PHA Annual Inspection of Units and Systems.* This management sub-indicator examines the percentage of units and systems that a PHA inspects on an annual basis in order to determine short-term maintenance needs and long-term Capital Fund needs. This management sub-indicator requires a PHA's inspection to utilize the HUD uniform physical condition standards set forth in subpart B of this part. All occupied units are required to be inspected.

(5) *Management sub-indicator #5—Security.* (i) This management sub-indicator evaluates the PHA's performance in tracking crime related problems in their developments; reporting incidence of crime to local law enforcement agencies; the adoption and implementation, consistent with section 6(j)(1)(I) (42 U.S.C. 1437d(j)(1)(I)), of applicant screening and resident eviction policies and procedures, and other anticrime strategies; coordination with local government officials and residents in the development on implementation of such strategies; and as applicable, PHA performance under any HUD drug prevention/crime reduction grants.

(ii) Paragraph (a) of this section provides that the components and grades for each sub-indicator are the same as those for the corresponding indicator provided in Appendix 1 to the PHAS Notice on the Management Operations Scoring Process, except as may be otherwise noted. For Component #1, Tracking and Reporting Crime Related Problems, the following will be used to describe a Grade of A: The PHA Board, by resolution, has adopted policies and the PHA has implemented procedures and can document that it:

(A) Tracks crime and crime-related problems in at least 90 percent of its developments;

(B) Has a cooperative system for tracking and reporting incidents of crime to local police authorities to improve law enforcement and crime prevention; and

(C) Coordinates with local government officials and its residents on the implementation of anticrime strategies.

(6) *Management sub-indicator #6—Economic Self-Sufficiency.* The economic self-sufficiency sub-indicator measures the PHA's efforts to coordinate, promote or provide effective programs and activities to promote the economic self-sufficiency of residents. For this sub-indicator, PHAs will be assessed for all the programs that the PHA has HUD funding to implement. Also, PHAs will receive credit for implementation of programs through partnerships with

non-PHA providers, even if the programs are not funded by HUD or the PHA.

(b) *Reporting on performance under the Management Operations Indicator.* (1) A PHA is required to submit electronically a certification of its performance under each of the management operations sub-indicators in accordance with § 902.60(d).

(2) If circumstances preclude a PHA from reporting electronically, HUD will consider granting short-term approval to allow a PHA to submit its management operations certification manually. A PHA that seeks approval to submit its certification manually must ensure that REAC receives a request for manual submission in writing two months prior to the submission due date of its Management Operations certification. The written request must include the reasons why the PHA cannot submit its certification electronically. REAC will respond to such a request and will manually forward its determination in writing to the PHA.

[65 FR 36044, June 6, 2000]

§ 902.45 Management operations scoring and thresholds.

(a) *Scoring.* The Management Operations Indicator score provides an assessment of each PHA's management effectiveness. Under PHAS Indicator #3, REAC will calculate a score of the overall management operations of a PHA that reflects weights based on the relative importance of the individual management sub-indicators. Under PHAS Indicator #3, REAC will calculate a score following the procedures described in the PHAS Notice on the Management Operations Scoring Process (PHAS MASS Notice 3), which will be published in the FEDERAL REGISTER. HUD may revise this notice in the future, but HUD will publish for comment any significant proposed amendments to this notice. After comments have been considered, HUD will publish a notice adopting a final notice or amendment. The PHAS Notice on the Management Operations Scoring Process that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

(b) *Thresholds.* (1) In order to receive a passing score under the Management Operations Indicator, the PHA must achieve a score of at least 18 points or 60 percent of the available points under this PHAS Indicator #3. If the PHA fails to receive a passing score on the Management Operations Indicator, the PHA shall be categorized as a substandard management agency.

(2) A PHA that receives less than 60 percent of the maximum calculation for the Capital Fund subindicator under Management Operations Indicator, shall be subject to the sanctions provided in section 6(j)(4) of the Act (see § 902.67(c)(2)(ii).)

[65 FR 1738, Jan. 11, 2000, as amended at 65 FR 36045, June 6, 2000]

§ 902.47 Management operations portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points based on the Management Operations Indicator.

Subpart E—PHAS Indicator #4: Resident Service and Satisfaction

§ 902.50 Resident service and satisfaction assessment.

(a) *Objective.* The objective of the Resident Service and Satisfaction Indicator is to measure the level of resident satisfaction with living conditions at the PHA.

(b) *Method of assessment, generally.* The assessment required under PHAS Indicator #4 will be performed through the use of a resident service and satisfaction survey. The survey process will be managed by the PHA in accordance with a methodology prescribed by HUD. The PHA will be responsible for completing implementation plan activities and developing a follow-up plan, if applicable, to address issues resulting from the survey, subject to independent audit.

(c) *PHA certification of completion of resident survey process.* (1) At the completion of the resident survey process as described in this subpart, a PHA will be audited as part of the Independent

Audit to ensure that the resident survey process has been managed as directed by HUD. PHAs are required to submit and certify their implementation plans electronically via the internet prior to the fiscal year end in accordance with § 902.60(d). Follow-up plans, if applicable, must be made available for review and inspection at the principal office of the PHA during normal business hours as a supporting document to the PHA's Annual Plan in accordance with § 903.23(d) of this title. The PHA must certify electronically that it will develop a follow-up plan, if applicable.

(2) If circumstances preclude the PHA from reporting electronically, HUD will consider granting short-term approval to allow a PHA to submit its resident service and satisfaction certification manually. A PHA that seeks approval to submit the certification manually must ensure that REAC receives the PHA's written request for manual submission two months before the submission due date of its resident service and satisfaction certification. The written request must include the reasons why the PHA cannot submit the certification electronically. REAC will respond to the PHA's request and will manually forward its determination in writing to the PHA.

§ 902.51 Updating of public housing unit address information.

(a) *Electronic updating.* The survey process for the Resident Service and Satisfaction Indicator is dependent upon electronic updating, submission and certification of resident address and unit information by PHAs.

(b) *Unit address update and verification.* The survey process for PHAS Indicator #4 begins with ensuring accurate information about the public housing unit addresses.

(1) PHAs will be required to electronically update unit address information initially obtained by REAC from the recently revised form HUD–50058, Family Report. REAC will supply a list of current units (listed by development) to PHAs via the internet. PHAs will be asked to make additions, deletions and corrections to their unit address list.

(2) After updating the list, PHAs must verify that the list of unit addresses under their jurisdiction is complete. Any incorrect or obsolete address information will have a detrimental impact on the survey results. A statistically valid number of residents cannot be selected to participate in the survey if the unit addresses are incorrect or obsolete. If a PHA does not verify the address information within two months of submission of the list of current units to the PHA by REAC, and the address information is not valid, REAC will not be able to conduct the survey at that PHA. Under those conditions, the PHA will not receive any points for the PHAS Resident Service and Satisfaction Indicator.

(c) *Electronic updating of the address list.* (1) The preferred method for updating a unit address list is electronic updating via the internet.

(2) If circumstances preclude a PHA from updating and submitting its unit address list electronically, HUD will consider granting short-term approval to allow a PHA to submit the updated unit address list information manually. A PHA that seeks approval to update its unit address list manually must ensure that REAC receives the PHA's written request for manual submission one month before the submission due date. The written request must include the reasons why the PHA cannot update the list electronically. REAC will respond to the PHA's request upon receipt of the request.

§ 902.52 Distribution of survey to residents.

(a) *Sampling.* A statistically valid number of units will be chosen to receive the Resident Service and Satisfaction Survey. These units will be randomly selected based on the total number of occupied and vacant units of the PHA. The Resident Service and Satisfaction assessment takes into account the different properties managed by a PHA by organizing the unit sampling based on the unit representation of each development in relation to the size of the entire PHA.

(b) *Survey distribution by third party organization.* The Resident Service and Satisfaction survey will be distributed to the randomly selected sample of

units of each PHA by a third party organization designated by HUD. The third party organization will also be responsible for:

(1) Collecting, scanning and aggregating results of the survey;

(2) Transmitting the survey results to HUD for analysis and scoring; and

(3) Keeping individual responses to the survey confidential.

§ 902.53 Resident service and satisfaction scoring and thresholds.

(a) *Scoring.* (1) Under the PHAS Indicator #4, REAC will calculate a score based upon two components that receive points and a third component that is a threshold requirement.

(i) One component will be the point score of the survey results. The survey content will focus on resident evaluation of the overall living conditions, to include basic constructs such as:

(A) Maintenance and repair (*i.e.,* work order response);

(B) Communications (*i.e.,* perceived effectiveness);

(C) Safety (*i.e.,* perception of personal security);

(D) Services; and

(E) Neighborhood appearance.

(ii) The second component will be a point score based on the level of implementation and follow-up or corrective actions based on the results of the survey.

(iii) The final component, which is not scored for points, but which is a threshold requirement, is verification that the survey process was managed in a manner consistent with guidance provided by HUD.

(2) Under PHAS Indicator #4, REAC will calculate a score following the procedures described in the PHAS Notice on the Resident Service and Satisfaction Survey Scoring Process (PHAS RASS Notice 3), which will be published in the FEDERAL REGISTER. HUD may revise this notice in the future, but HUD will publish for comment any significant proposed amendments to this notice. After comments have been considered, HUD will publish a notice adopting a final notice or amendment. The PHAS Notice on the Resident Service and Satisfaction Survey Process that is currently in effect can be found at the REAC Internet site at http://www.hud.gov/reac or obtained from REAC's Technical Assistance Center at 888–245–4860 (this is a toll free number).

(b) *Thresholds.* A PHA will not receive any points under PHAS Indicator #4 if the survey process is not managed as directed by HUD, the survey results are determined to be altered, or the public housing unit addresses are not updated as referenced in § 902.51 of this document. A PHA will receive a passing score on the Resident Service and Satisfaction Indicator if the PHA receives at least 6 points, or 60 percent of the available points under this PHAS Indicator #4.

§ 902.55 Resident service and satisfaction portion of total PHAS points.

Of the total 100 points available for a PHAS score, a PHA may receive up to 10 points based on the Resident Service and Satisfaction Indicator.

Subpart F—PHAS Scoring

§ 902.60 Data collection.

(a) *Fiscal Year reporting period—limitation on changes after PHAS effectiveness.* An assessed fiscal year for purposes of the PHAS corresponds to a PHA's fiscal year. To allow for a period of consistent assessments to refine and make necessary adjustments to the PHAS, a PHA is not permitted to change its fiscal year for the first three full fiscal years following October 1, 1998, unless such change is approved by HUD (see § 902.1(e)).

(b) *Physical condition information.* Information necessary to conduct the physical condition assessment under subpart B of this part will be obtained from HUD inspectors during the fiscal year being scored through electronic transmission of the data.

(c) *Financial condition information.* Year-end financial information to conduct the assessment under subpart C, Financial Condition, of this part will be submitted by a PHA through electronic transmission of the data to HUD not later than two months after the end of the PHA's fiscal year. An audited report of the year-end financial information is due not later than 9 months after the end of the PHA's fiscal year.

(d) *Management operations and resident service and satisfaction information.* A PHA shall provide certification to HUD as to data required under subpart D, Management Operations, of this part and subpart E, Resident Service and Satisfaction, of this part not later than two months after the end of the PHA's fiscal year that is being assessed and scored, with no penalty applying, however, until the 16th day of the third month after the PHA fiscal year end. An automatic one month extension will be granted for PHAs with fiscal years ending September 30, 1999 through June 30, 2000.

(1) The Management Operations certification shall be approved by PHA Board resolution, and signed and attested to by the Executive Director.

(2) PHAs shall maintain documentation for three years verifying all certified indicators for HUD on-site review.

(e) *Failure to submit data by due date.* (1) If a PHA without a finding of good cause by HUD does not submit its certifications or year-end financial information, required by this part, or submits its certifications or year-end financial information more than 15 days past the due date, appropriate sanctions may be imposed, including a reduction of 1 point in the total PHAS score for each 15-day period past the due date.

(2) If any certification or year-end financial information, with the exception of the PHA's audited financial statement, is not received within three months after the due date, the PHA will receive a presumptive rating of failure for each PHAS Indicator for which the certification or year-end financial information is not received. The PHA's audited financial statement must be received no later than 9 months after the PHA's fiscal year-end, in accordance with OMB Circular A–133 (see § 902.33(c)). If the audited financial statement is not received by that date, the PHA will receive a presumptive rating of failure for the PHAS Financial Indicator. If the PHA receives a presumptive rating failure for any PHAS Indicator due to failure to submit a certification or year-end financial information by the due date, including any extension of the due date, as provided in this paragraph (except for the audited financial statement for which the due date is established by OMB Circular A–133), the PHA shall be designated as troubled or identified as troubled with respect to the program for assistance from the Capital Fund under section 9(d) of the Act.

(f) *Verification of information submitted.* (1) A PHA's certifications, year-end financial information and any supporting documentation are subject to verification by HUD at any time, including review by an independent auditor as authorized by section 6(j)(6) of the Act (42 U.S.C. 1437(d)(j)(6)). Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories, the loss of high performer designation, a lower score under individual PHAS indicators and a lower overall PHAS score.

(2) A PHA that cannot provide justifying documentation to REAC, or to the PHA's independent auditor for the assessment under any indicator(s), sub-indicator(s) and/or component(s) shall receive a score of 0 for the relevant indicator(s), sub-indicator(s) and/or component(s), and its overall PHAS score shall be lowered.

(g) *Management operations assumed by an RMC (including DF-RMC).* For those developments of a PHA where management operations have been assumed by an RMC, the PHA's certification shall identify the development and the management functions assumed by the RMC.

(1) For an RMC, that is not a DF-RMC, the PHA shall obtain a certified questionnaire from the RMC as to the management functions undertaken by the RMC. Following verification of the RMC's certification, the PHA shall submit the RMC's certified questionnaire along with its own. The RMC's certification shall be approved by its Executive Director or Chief Executive Officer or responsible party.

(2) For a DF-RMC, the DF-RMC must submit directly to HUD its certified statement concerning the management functions that it has undertaken. The DF-RMC's certification shall be approved by its Executive Director or

Chief Executive Officer or responsible party.

[65 FR 1738, Jan. 11, 2000, as amended at 65 FR 36045, June 6, 2000; 68 FR 37671, June 24, 2003]

§ 902.63 PHAS scoring.

(a) *Computing the PHAS score.* Each of the four PHAS indicators in this part will be scored individually, and then will be used to determine an overall score for the PHA. Components within each of the four PHAS indicators will be scored individually, and the scores for the components will be used to determine a single score for each of the PHAS indicators.

(b) *Adjustments to the PHAS score.* (1) Adjustments to the score may be made after a PHA's audit report for the year being assessed is transmitted to HUD. If significant differences (as defined in GAAP guidance materials provided to PHAs) are noted between unaudited and audited results, a PHA's PHAS score will be adjusted (*e.g.*, reduction in points) in accordance with the audited results.

(2) A PHA's PHAS score under individual indicators, sub-indicators or components, or its overall PHAS score, may be changed by HUD in accordance with data included in the independent audit report, or obtained through such sources as HUD on-site review, investigations by HUD's Office of Fair Housing and Equal Opportunity, or reinspection by REAC, as applicable.

(c) *Issuance of score by HUD.* An overall PHAS score will be issued by REAC for each PHA after the later of one month after the submission due date for financial data and certifications, or one month after submission by the PHA of its financial data and certifications. The overall PHAS score becomes the PHA's final PHAS score after any adjustments requested by the PHA and determined necessary under the processes provided in §§ 902.25(c), 902.35(a)(3) and/or 902.68; any adjustments requested by the PHA and determined necessary under the appeal process provided in § 902.69; and/or any adjustments determined necessary as a result of the independent public accountant (IPA) audit, as provided in paragraph (b) of this section.

(d) *Review of audit.* For a PHA whose audit has been found deficient as a result of a quality control review of the IPA workpapers, a quality control review that is conducted by REAC as part of REAC's on-going quality assurance process, REAC may, at its discretion, select the audit firm that will perform the audit of the PHA and may serve as the audit committee for the audit in question. This review is important to determine the accuracy of the scoring under the Financial Condition Indicator.

(e) *Posting and publication of PHAS scores.* Each PHA (or RMC as the case may be) shall post a notice of its final PHAS score and status in appropriate conspicuous and accessible locations in its offices within two weeks of receipt of its final score and status. In addition, HUD will publish every PHA's score and status in the FEDERAL REGISTER and on HUD's internet site.

§ 902.67 Score and designation status.

A PHA will receive a status designation corresponding to its final PHAS score as follows:

(a) *High performer.* (1) A PHA that achieves a score of at least 60 percent of the points available under each of the four PHAS Indicators (addressed in subparts B through E of this part) and achieves an overall PHAS score of 90 percent or greater of the total available points under PHAS shall be designated a high performer.

(2) A PHA shall not be designated a high performer if it scores below the threshold established for any indicator.

(3) High performers will be afforded incentives that include relief from reporting and other requirements, as described in § 902.71.

(b) *Standard performer.* (1) A PHA that is not a high performer shall be designated a standard performer if:

(i) The PHA achieves a total PHAS score of not less than 60 percent of the total available points under PHAS; and

(ii) The PHA does not achieve less than 60 percent of the total points available under one of the following indicators, PHAS Indicators #1, #2, or #3

(2) All standard performers must correct reported deficiencies.

(3) A PHA that achieves a total PHAS score of less than 70 percent, but

not less that 60 percent, is required by the HUB/Program Center to submit an Improvement Plan to correct identified deficiencies.

(4) A PHA that achieves a total PHAS score of less than 70 percent but not less than 60 percent is at risk of being designated troubled.

(c) *Troubled performer.* A PHA that is designated as troubled may be:

(1) *Overall troubled.* A PHA that achieves an overall PHAS score of less than 60 percent or achieves less than 60 percent of the total points available under *more than one* of the following indicators, PHAS Indicators #1, #2, or #3, shall be designated as troubled (overall), and referred to the TARC as described in § 902.75.

(2) *Troubled in one area.* (i) A PHA that achieves less than 60 percent of the total points available under *only* one of the following indicators, PHAS Indicators #1, #2, or #3, shall be considered a substandard physical, substandard financial, or substandard management performer, and referred to the TARC as described in § 902.75.

(ii) In accordance with section 6(j)(2) of the Act, a PHA that receives less than 60 percent of the maximum calculation for the Capital Fund sub-indicator under PHAS Indicator #3 (Management Operations, subpart D of this part; see § 902.43(a)) will be subject to the sanctions, provided in section 6(j)(4), as appropriate.

(d) *Withholding designation.* (1) In *exceptional circumstances,* even though a PHA has satisfied all of the PHAS Indicators for high performer or standard performer designation, HUD may conduct any review as it may determine necessary, and may deny or rescind incentives or high performer designation or standard performer designation, in the case of a PHA that:

(i) Is operating under a special agreement with HUD;

(ii) Is involved in litigation that bears directly upon the physical, financial or management performance of a PHA;

(iii) Is operating under a court order;

(iv) Demonstrates substantial evidence of fraud or misconduct, including evidence that the PHA's certifications, submitted in accordance with this part, are not supported by the facts, as evidenced by such sources as a HUD review, routine reports, an Office of Inspector General investigation/audit, an independent auditor's audit or an investigation by any appropriate legal authority; or

(v) Demonstrates substantial noncompliance in one or more areas of a PHA's required compliance with applicable laws and regulations, including areas not assessed under the PHAS. Areas of substantial noncompliance include, but are not limited to, noncompliance with civil rights, nondiscrimination and fair housing laws and regulations, or the Annual Contributions Contract. Substantial noncompliance casts doubt on the capacity of a PHA to preserve and protect its public housing developments and operate them consistent with Federal laws and regulations.

(2) If high performer designation is denied or rescinded, the PHA shall be designated either a standard performer or troubled performer depending on the nature and seriousness of the matter or matters constituting the basis for HUD's action. If standard performer designation is denied or rescinded, the PHA shall be designated troubled.

(3) The denial or rescission of a designation of high performer or standard performer does not affect the PHA's numerical PHAS score.

(4) A PHA that disagrees with the basis for denial or rescission of the designation may make a written request for reinstatement of the designation to the Assistant Secretary for Public and Indian Housing which request shall include reasons for the reinstatement.

[65 FR 1738, Jan. 11, 2000, as amended at 65 FR 36045, June 6, 2000]

§ 902.68 Technical review of results of PHAS Indicators #1 or #4.

(a) *Request for technical reviews.* This section describes the process for requesting and granting technical reviews of physical inspection results and resident survey results.

(1) For both reviews, the burden of proof is on the PHA to show that an error occurred.

(2) For both reviews, a request for technical review must be submitted in writing to the Director of the Real Estate Assessment Center and must be

received by REAC no later than 15 days following the issuance of the applicable results to the PHA (either the physical inspection results or the resident survey results). The request must be accompanied by the PHA's reasonable evidence that an error occurred.

(b) *Technical review of physical inspection results.* (1) For each property inspected, REAC will provide the results of the physical inspection and a score for that property to the PHA. If the PHA believes that an objectively verifiable and material error (or errors) occurred in the inspection of an individual property, the PHA may request a technical review of the inspection results for that property.

(2) For a technical review of physical inspection results, the PHA's request must be accompanied by the PHA's evidence that an objectively verifiable and material error has occurred. The documentation submitted by the PHA may be photographic evidence, written material from an objective source, such as a local fire marshal or building code official, or other similar evidence. The evidence must be more than a disagreement with the inspector's observations, or the inspector's finding regarding the severity of the deficiency.

(3) A technical review of a property's physical inspection will not be conducted based on conditions that were corrected subsequent to the inspection, nor will REAC consider a request for a technical review that is based on a challenge to the inspector's findings as to the severity of the deficiency (*i.e.,* minor, major or severe).

(4) Upon receipt of a PHA's request for technical review of a property's inspection results, REAC will review the PHA's file and any objectively verifiable evidence produced by the PHA. If REAC's review determines that an objectively verifiable and material error (or errors) has been documented, then REAC may take one or a combination of the following actions:

(i) Undertake a new inspection;

(ii) Correct the physical inspection report;

(iii) Issue a corrected physical condition score;

(iv) Issue a corrected PHAS score.

(5) In determining whether a new inspection of the property is warranted and a new PHAS score must be issued, REAC will review the PHA's file and evidence submitted to determine whether the evidence supports that there may have been a significant contractor error in the inspection which results in a significant change from the property's original physical condition score and the PHAS designation assigned to the PHA (*i.e.,* high performer, standard performer, or troubled performer). If REAC determines that a new inspection is warranted, and the new inspection results in a significant change from the original physical condition score, and the PHA's PHAS score and PHAS designation, REAC shall issue a new PHAS score to the PHA.

(6) Material errors are the only grounds for technical review of physical inspection results. Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are:

(i) *Building data error.* A building data error occurs if the inspection includes the wrong building or a building that was not owned by the PHA, including common or site areas that were not a part of the property. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but is of great interest to HUD and will be corrected upon notice to REAC.

(ii) *Unit count error.* A unit count error occurs if the total number of public housing units considered in scoring is incorrect. Since scoring uses total public housing units, REAC will examine instances where the participant can provide evidence that the total units used is incorrect.

(iii) *Non-existent deficiency error.* A non-existent deficiency error occurs if the inspection cites a deficiency that does not exist.

(7) A PHA's subsequent correction of deficiencies identified as a result of a property's physical inspection cannot serve as the basis for an appeal of the PHA's physical condition score.

(c) *Technical review of resident survey results.* REAC will consider conducting a technical review of a PHA's resident

survey results in cases where the contracted third party organization can be shown by the PHA to be in error.

(1) The burden of proof rests with the PHA to provide objectively verifiable evidence that a technical error occurred. Examples include, but are not limited to, incorrect material being mailed to residents; or the PHA's units addresses were incorrect due to the third party organization's error, such as unit numbers being omitted from the addresses. A PHA that does not update its unit address list as described, above, will not be eligible for a technical review based on incorrect addresses.

(2) Upon receipt of a PHA's request for technical review of resident survey results, REAC will review the PHA's file and evidence submitted by the PHA. If REAC's review determines that an error has been documented, REAC may take one or a combination of the following actions:

(i) Undertake a new survey;

(ii) Correct the resident survey results report;

(iii) Issue a corrected resident services and satisfaction score;

(iv) Issue a corrected PHAS score.

§ 902.69 PHA right of petition and appeal.

(a) *Appeal of troubled designation and petition for removal troubled designation.* A PHA may:

(1) Appeal its troubled designation (including designation as troubled with respect to its performance under the Capital Fund subindicator as provided in § 902.67(c)(2)); and

(2) Petition for removal of troubled designation.

(b) *Appeal of PHAS score.* If a PHA believes that an objectively verifiable and material error (or errors) exists in any of the scores for its PHAS Indicators, which, if corrected, will result in a significant change in the PHA's PHAS score and its designation (*i.e.*, as troubled, standard, or high performer), the PHA may appeal its PHAS score in accordance with the procedures of paragraphs (c), (d) and (e) of this section. A significant change in a PHAS score is a change that would cause the PHA's PHAS score to increase, resulting in a higher PHAS designation for the PHA (i.e., from troubled performer to standard performer, or from standard performer to high performer).

(c) *Appeal and petition procedures.* (1) To appeal troubled designation or a PHAS score, a PHA must submit a request in writing to the Director of the Real Estate Assessment Center that must be received by REAC no later than 30 days following the issuance of the overall PHAS score to the PHA. To petition removal of troubled designation, a PHA also must submit its request in writing to the Director of the Real Estate Assessment Center. The written request must be received by REAC no later than 30 days after HUD's decision to refuse to remove the PHA's troubled designation.

(2) An appeal of troubled designation or petition for removal of troubled designation must include the PHA's supporting documentation and reasons for the appeal. An appeal of a PHAS score must be accompanied by the PHA's reasonable evidence that an objectively verifiable and material error occurred. An appeal submitted to REAC without appropriate documentation will not be considered and will be returned to the PHA.

(d) *Consideration of appeal.* (1) *Consideration of appeal of PHAS score.* Upon receipt of an appeal of a PHAS score from a PHA, REAC will review the PHA's file and the evidence submitted by the PHA to support that an error occurred. If REAC determines that an objectively verifiable and material error has been documented by the PHA, REAC will convene a Board of Review, in accordance with the procedures of paragraphs (d) and (e) of this section, to evaluate the appeal and its merits for purposes of determining whether a reassessment of the PHA is warranted. For appeal of PHAS scores, the Board of Review may determine that REAC should undertake a new inspection of the property, and/or a reexamination of the financial information, management information, or resident information (the components of the PHAS score), depending upon which PHAS Indicator the PHA believes was scored erroneously and the type of evidence submitted by the PHA to support its position that an error occurred.

(2) *Consideration of appeal of troubled designation or refusal to remove troubled designation.* Upon receipt of an appeal of a troubled designation from a PHA, REAC will convene a Board of Review (the Board) to evaluate the appeal and its merits for the purpose of determining whether a reassessment of the PHA is warranted. Board membership will be comprised of a representative from REAC, from the Office of Public and Indian Housing, and from such other office or representative as the Secretary may designate (excluding, however, representation from the Troubled Agency Recovery Center). For purposes of reassessment, REAC will schedule a reinspection and/or acquire audit services, as determined by the Board, and a new score will be issued, if appropriate. Decisions by the Board will be reported to the PHA by the Assistant Secretary for Public and Indian Housing.

(e) *Final appeal decisions.* HUD will make final decisions of appeals, made under this section, within 30 days of receipt of an appeal, and may extend this period for an additional 30 days if further inquiry is necessary. Failure by a PHA to submit supporting documentation with its request for appeal, or within any additional period granted by HUD is grounds for denial of an appeal. Final appeal decisions will be reported to the PHA by the Assistant Secretary for Public and Indian Housing.

[65 FR 36045, June 6, 2000]

Subpart G—PHAS Incentives and Remedies

§ 902.71 Incentives for high performers.

(a) *Incentives for high performer PHAs.* A PHA that is designated a high performer will be eligible for the following incentives, and such other incentives that HUD may determine appropriate and permissible under program statutes or regulations:

(1) *Relief from specific HUD requirements.* (i) A PHA that is designated high performer will be relieved of specific HUD requirements (for example, fewer reviews and less monitoring), effective upon notification of high performer designation.

(ii) The development or developments of a PHA that receives a physical condition score of 90 percent or greater under PHAS Indicator #1 shall be subject to a physical inspection every other year rather than annually. (All developments of the high performer PHA are subject to inspection every other year, not only those inspected for which the physical condition score of 90 percent or greater was achieved.)

(2) *Public recognition.* High performer PHAs and RMCs that receive a score of at least 60 percent of the points available under each of the four PHAS Indicators and achieve an overall PHAS score of 90, will receive a Certificate of Commendation from HUD as well as special public recognition, as provided by the HUB/Program Center.

(3) *Bonus points in funding competitions.* A high performer PHA will be eligible for bonus points in HUD's funding competitions, where such bonus points are not restricted by statute or regulation governing the funding program. Where permissible by statute or regulation, eligibility for high performers to receive bonus points in HUD's funding competitions, will be stated in HUD's notices of funding availability or other funding documents.

(b) *Compliance with applicable Federal laws and regulations.* Relief from any standard procedural requirement that may be provided under this section does not mean that a PHA is relieved from compliance with the provisions of Federal law and regulations or other handbook requirements. For example, although a high performer or standard performer may be relieved of requirements for prior HUD approval for certain types of contracts for services, the PHA must still comply with all other Federal and State requirements that remain in effect, such as those for competitive bidding or competitive negotiation (see 24 CFR 85.36).

(c) *Audits and reviews not relieved by designation.* A PHA designated as a high performer or standard performer remains subject to:

(1) Regular independent auditor (IA) audits.

(2) Office of Inspector General (OIG) audits or investigations will continue

to be conducted as circumstances may warrant.

§ 902.73 Referral to an Area HUB/Program Center.

(a) Standard performers will be referred to the HUB/Program Center for appropriate action.

(1) A standard performer that receives a total score of less than 70 percent but not less than 60 percent shall be required to submit an Improvement Plan to eliminate deficiencies in the PHA's performance.

(2) A standard performer that receives a score of not less than 70 percent may be required, at the discretion of the appropriate area HUB/Program Center, to submit an Improvement Plan to address specific deficiencies.

(b) *Submission of an Improvement Plan.* (1) Within 30 days after the final PHAS score is issued, a standard performer with a score of less than 70 percent is required to submit an Improvement Plan to the HUB/Program Center in accordance with paragraphs (d) and (e) of this section.

(2) An RMC, unless a DF-RMC, that is required to submit an Improvement Plan must develop the plan in consultation with its PHA and submit the plan to the HUB/Program Center through its PHA. A DF-RMC that is required to submit an Improvement Plan, also must develop its plan in consultation with its PHA, but must submit its plan directly to the HUB/Program Center.

(3) On a risk management basis, the HUB/Program Center may require a standard performer with a score of not less than 70 percent to submit within 30 days after receipt of its final PHAS score an Improvement Plan, which includes the information stated in paragraph (d) of this section.

(c) *Correction of deficiencies.* (1) *Time period for correction.* After a PHA's (or DF-RMC's) receipt of its PHAS score and designation as a standard performer or, in the case of an RMC, notification of its score from a PHA, a PHA or RMC shall correct any deficiency indicated in its assessment within 90 days, or within such period as provided in the HUD approved Improvement Plan if an Improvement Plan is required.

(2) *Notification and report to HUB/Program Center.* A PHA shall notify the HUB/Program Center of its action to correct a deficiency. A PHA shall also forward to the HUB/Program Center an RMC's report of its action to correct a deficiency. A DF-RMC shall forward directly to the HUB/Program Center its report of its action to correct a deficiency.

(d) *Improvement Plan.* An Improvement Plan shall:

(1) Identify baseline data, which should be raw data but may be the PHA's score for each individual PHAS indicator, sub-indicator and/or component that was identified as a deficiency;

(2) Identify any other performance and/or compliance deficiencies that were identified as a result of an on-site review of the PHA's operations;

(3) Describe the procedures that will be followed to correct each deficiency;

(4) Provide a timetable for the correction of each deficiency; and

(5) Provide for or facilitate technical assistance to the PHA.

(e) *Determination of acceptability of Improvement Plan* (1) The HUB/Program Center will approve or deny a PHA's Improvement Plan (or RMC's Improvement Plan submitted to the HUB/Program Center through the RMC's PHA, or the DF-RMC's Improvement Plan submitted directly to the HUB/Program Center), and notify the PHA of its decision. A PHA that submits an RMC's Improvement Plan must notify the RMC in writing, immediately upon receipt of the HUB/Program Center notification, of the HUB/Program Center approval or denial of the RMC's Improvement Plan.

(2) An Improvement Plan that is not approved will be returned to the PHA with recommendations from the HUB/Program Center for revising the Improvement Plan to obtain approval.

(f) *Submission of revised Improvement Plan.* A revised Improvement Plan shall be resubmitted by the PHA within 30 calendar days of its receipt of the HUB/Program Center recommendations.

(g) *Failure to submit acceptable Improvement Plan or correct deficiencies.* (1) If a PHA fails to submit an acceptable

Improvement Plan, or to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, the HUB/Program Center will notify the PHA of its noncompliance.

(2) The PHA (or DF-RMC or the RMC through the PHA) will provide the HUB/Program Center its reasons for lack of progress in submitting or carrying out the Improvement Plan within 30 calendar days of its receipt of the noncompliance notification. HUD will advise the PHA as to the acceptability of its reasons for lack of progress.

(3) If HUD finds the PHA's reasons for lack of progress unacceptable, HUD will notify the PHA that it will be referred to the area Troubled Agency Recovery Center (TARC) for remedial actions or such actions as the TARC may determine appropriate in accordance with the provisions of the ACC, this part and other HUD regulations, including the remedies available for substantial default.

(4) In the case of a PHA's failure to correct deficiencies within the time specified in an Improvement Plan or such extensions as may be granted by HUD, if the TARC determines that it is appropriate to refer the PHA to the Departmental Enforcement Center (DEC), it will only do so after the PHA has had one year since the issuance of the PHAS score (or, in the case of an RMC, that is not a DF-RMC, notification of its score from a PHA) to correct its deficiencies.

§ 902.75 Referral to a Troubled Agency Recovery Center (TARC).

(a) *General.* Upon a PHA's designation of troubled (including troubled in one area), in accordance with the requirements of section 6(j)(2)(B) of the Act and in accordance with this part (or part 901, of this chapter if applicable), REAC shall refer each troubled PHA to the PHA's area TARC for remedial action. Remedial action by the TARC may include referral to the HUB/Program Center for oversight and monitoring. The actions to be taken by HUD and the PHA will include actions statutorily required, and such other actions as may be determined appropriate by HUD.

(b) *Memorandum of Agreement (MOA).* Within 30 days of notification of a PHA's designation as a troubled performer (including substandard categorization), HUD will initiate activities to develop a MOA. The final MOA is a binding contractual agreement between HUD and a PHA. The scope of the MOA may vary depending upon the extent of the problems present in the PHA, but shall include:

(1) Baseline data, which should be raw data but may be the PHA's score in each of the PHAS indicators, sub-indicators or components identified as a deficiency;

(2) Performance targets for such periods specified by HUD (*e.g.*, annual, semi-annual, quarterly, monthly), which may be the attainment of a higher score within an indicator, sub-indicator or component that is a problem, or the description of a goal to be achieved;

(3) Strategies to be used by the PHA in achieving the performance targets within the time period of the MOA;

(4) Technical assistance to the PHA provided or facilitated by HUD, for example, the training of PHA employees in specific management areas or assistance in the resolution of outstanding HUD monitoring findings;

(5) The PHA's commitment to take all actions within its control to achieve the targets;

(6) Incentives for meeting such targets, such as the removal of troubled designation or troubled with respect to the program for assistance from the Capital Fund under section 9(d) and Departmental recognition for the most improved PHAs;

(7) The consequences of failing to meet the targets include but are not limited to, such sanctions as the imposition of budget and management controls by HUD, declaration of substantial default and subsequent actions, including referral to the DEC for judicial appointment of a receiver, limited denial of participation, suspension, debarment, or other actions deemed appropriate by the DEC; and

(8) A description of the involvement of local public and private entities, including PHA resident leaders, in carrying out the agreement and rectifying the PHA's problems. A PHA shall have

primary responsibility for obtaining active local public and private entity participation, including the involvement of public housing resident leaders, in assisting PHA improvement efforts. Local public and private entity participation should be premised upon the participant's knowledge of the PHA, ability to contribute technical expertise with regard to the PHA's specific problem areas and authority to make preliminary/tentative commitments of support, financial or otherwise.

(c) *PHA review of MOA.* The PHA will have 10 days to review the MOA. During this 10-day period, the PHA shall resolve any claimed discrepancies in the MOA with HUD, and discuss any recommended changes and target dates for improvement to be incorporated in the final MOA. Unless the time period is extended by HUD, the MOA is to be executed 15 days following issuance of the preliminary MOA.

(d) *Maximum recovery period.* (1) *Expiration of one-year recovery period.* Upon the expiration of the one-year period beginning on the date on which the PHA receives initial notice of troubled designation (including notice of substandard status) or October 21, 1998, whichever is later, the PHA shall improve its performance, as measured by the PHAS Indicators, by at least 50 percent of the difference between the most recent performance measurement and the measurement necessary to remove the PHA's designation as troubled or substandard status.

(2) *Expiration of two-year recovery period.* Upon the expiration of the two-year period beginning on the later of the date on which the PHA receives initial notice of troubled designation (including notice of substandard status) or October 21, 1998, the PHA shall improve its performance and achieve an overall PHAS score of at least 60 percent, and achieve a score of at least 60 percent of the total points available under each of PHAS Indicators #1, #2 and #3.

(e) *Parties to the MOA.* An MOA shall be executed by:

(1) The PHA Board Chairperson (supported by a Board resolution), or a receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME acting in lieu of the PHA Board;

(2) The PHA Executive Director, or a designated receiver (pursuant to a court ordered receivership agreement, if applicable) or other AME-designated Chief Executive Officer;

(3) The Director of the area TARC; and

(4) The appointing authorities of the Board of Commissioners, unless exempted by the TARC.

(f) *Involvement of resident leadership in the MOA.* HUD encourages the inclusion of the resident leadership in the execution of the MOA.

(g) *Failure to execute MOA or make substantial improvement under MOA.* (1) If a troubled PHA fails or refuses to execute a MOA within the period provided in paragraph (b) of this section, or a troubled PHA operating under an executed MOA does not show a substantial improvement, as provided in paragraph (d) of this section, toward a passing PHAS score following the issuance of the failing PHAS score by REAC, the TARC shall refer the PHA to the DEC in accordance with § 902.77, and the DEC shall take the actions required by § 902.77(a)(2).

(2) For purposes of this paragraph (g), *substantial improvement* is defined as the improvement required by paragraphs (d)(1) and (d)(2) of this section. The maximum period of time for remaining in troubled status before being referred to the DEC is two years. Therefore, the PHA must make substantial improvement in each year of this two year period.

(3) The following example illustrates the provisions of paragraph (g)(1) of this section:

Example: A PHA receives a score of 50 percent; 60 percent is a passing score. The PHA is referred to the TARC. Within one year after the score is issued to the PHA, the PHA must achieve a 55 (50% of the points necessary to achieve a passing score of 60 points) to continue recovery efforts in the TARC. In the second year, the PHA must achieve a minimum score of 60 points (a passing score). If in the first year, the PHA fails to achieve the five-point increase,the PHA will be referred to the DEC. If in the first year, the PHA achieves the five-point increase but fails to achieve a passing score in the second year, the PHA will be referred to the DEC. The maximum period of time for

remaining in troubled status before being referred to the DEC is two years.

(h) *Audit review.* For a PHA designated as troubled, REAC will perform an audit review and may, at its discretion, select the audit firm that will perform the audit of the PHA and REAC may, at its discretion, serve as the audit committee for the audit in question.

(i) *Continuation of services to residents.* To the extent feasible, while a PHA is under a referral to a TARC, all services to residents will continue uninterrupted.

§ 902.77 Referral to the Departmental Enforcement Center (DEC).

(a) *Referral of Troubled PHA to the DEC for failing to execute or meet MOA requirements.* (1) Failure of a troubled PHA to execute or meet the requirements of a MOA in accordance with § 902.75 constitutes a substantial default under § 902.79 and may result in referral of the PHA to the DEC. The TARC will recommend to the Assistant Secretary for Public and Indian Housing that a troubled performer PHA be declared in substantial default. In accordance with §§ 902.79, the Assistant Secretary shall notify the PHA of the default and allow the PHA an opportunity to cure the default. A PHA shall be referred to the DEC if the PHA fails to cure the default within the a period not to exceed 30 days unless the Assistant Secretary for Public and Indian Housing determines that a longer period is appropriate.

(2) *Actions of the DEC.* The DEC shall initiate:

(i) The judicial appointment of a receiver, or

(ii) An administrative receivership at HUD's option but only:

(A) With respect to PHAs with fewer than 1250 units, or

(B) While HUD's petition for judicial receivership is pending; and

(iii) Upon the recommendation of the Assistant Secretary for Public and Indian Housing, the interventions provided in § 902.83, and may initiate such other sanctions available to HUD, including, limited denial of participation, suspension, debarment, and referral to the appropriate Federal government agencies or offices for the imposition of civil or criminal sanctions.

(b) *Referral of PHAs in Substantial Default to the DEC.* A PHA that is not designated as troubled but that has been found to be in substantial default under the provisions of § 902.79 shall also be referred to the DEC. The Assistant Secretary for Public and Indian Housing makes the determination that a PHA is in substantial default. In accordance with § 902.79, the Assistant Secretary shall notify the PHA of the default and allow the PHA an opportunity to cure the default. If the PHA fails to cure the default within the specified period time, the PHA shall be referred to the DEC. The DEC shall initiate the judicial appointment of a receiver or the interventions provided in § 902.83 as recommended by the Assistant Secretary for Public and Indian Housing and may initiate such other sanctions available to HUD, including, limited denial of participation, suspension, debarment, and referral to the appropriate Federal government agencies or offices for the imposition of civil or criminal sanctions.

(c) *Receivership/Possession of PHA by HUD.* (1) If a judicial receiver is appointed, the receiver, in addition to the powers provided by the court, shall have available the powers provided by section 6(j)(3)(C) of the Act (42 U.S.C. 1437d(j)(3)(C)).

(2) If HUD assumes responsibility for all or part of the PHA, the Secretary of HUD shall have available the powers provided by section 6(j)(3)(D) of the Act (42 U.S.C. 1437d(j)(3)(D)).

(3) If an administrative receiver is appointed, the Secretary may delegate to the administrative receiver any of the powers provided to the Secretary as described in paragraph (e)(2) of this section, in accordance with section 6(j)(3)(D).

(4) The appointments of receivers, the actions of receivers, and HUD's responsibilities toward the receivers are governed by the provisions of section 6(j)(3).

(d) To the extent feasible, while a PHA is under a referral to the DEC, all services to residents will continue uninterrupted.

[65 FR 1738, Jan. 11, 2000, as amended at 65 FR 36046, June 6, 2000]

§ 902.79 Substantial default.

(a) *Events or conditions that constitute substantial default.* The following events or conditions shall constitute substantial default.

(1) HUD may determine that events have occurred or that conditions exist that constitute a substantial default if a PHA is determined to be in violation of Federal statutes, including but not limited to, the Act, or in violation of regulations implementing such statutory requirements, whether or not such violations would constitute a substantial breach or default under provisions of the relevant ACC.

(2) HUD may determine that a PHA's failure to satisfy the terms of a memorandum of agreement entered into in accordance with § 902.75, or to make reasonable progress to execute or meet requirements included in a memorandum of agreement, are events or conditions that constitute a substantial default.

(3) HUD shall determine that a PHA that has been designated as troubled and does not show substantial improvement, as defined in § 902.75(g)(2), is in substantial default.

(4) HUD may declare a substantial breach or default under the ACC, in accordance with its terms and conditions.

(5) HUD may determine that the events or conditions constituting a substantial default are limited to a portion of a PHA's public housing operations, designated either by program, by operational area, or by development(s).

(b) *Notification of substantial default and response.* If information from an annual assessment or audit, or any other credible source (including but not limited to the Office of Fair Housing Enforcement, the Office of the Inspector General, a judicial referral or a referral from a mayor or other official) indicates that there may exist events or conditions constituting a substantial breach or default, HUD shall advise a PHA of such information. HUD is authorized to protect the confidentiality of the source(s) of such information in appropriate cases. Before taking further action, except in cases of apparent fraud or criminality, and/or in cases where emergency conditions exist posing an imminent threat to the life, health, or safety of residents, HUD shall afford the PHA a timely opportunity to initiate corrective action, including the remedies and procedures available to PHAs designated as troubled PHAs, or to demonstrate that the information is incorrect.

(1) *Form of notification.* Upon a determination or finding that events have occurred or that conditions exist that constitute a substantial default, the Assistant Secretary shall provide written notification of such determination or finding to the affected PHA. Written notification shall be transmitted to the Executive Director, the Chairperson of the Board, and the appointing authority(ies) of the Board, and shall include, but is not limited to:

(i) Identification of the specific covenants, conditions, and/or agreements under which the PHA is determined to be in noncompliance;

(ii) Identification of the specific events, occurrences, or conditions that constitute the determined noncompliance;

(iii) Citation of the communications and opportunities to effect remedies afforded pursuant to paragraph (a) of this section;

(iv) Notification to the PHA of a specific time period, to be not less than 10 calendar days, except in cases of apparent fraud or other criminal behavior, and/or under emergency conditions as described in paragraph (b)(4) of this section, nor more than 30 calendar days, during which the PHA shall be required to demonstrate that the determination or finding is not substantively accurate; and

(v) Notification to the PHA that, absent a satisfactory response in accordance with paragraph (b) of this section, HUD will refer the PHA to the Enforcement Center, using any or all of the interventions specified in § 902.83, and determined to be appropriate to remedy the noncompliance, citing § 902.83, and any additional authority for such action.

(2) *Receipt of notification.* Upon receipt of the notification described in paragraph (b)(1) of this section, the PHA must demonstrate, within the time period permitted in the notification, factual error in HUD's description of events, occurrences, or conditions,

or show that the events, occurrences, or conditions do not constitute noncompliance with the statute, regulation, or covenants or conditions to which the PHA is cited in the notification.

(3) *Waiver of notification.* A PHA may waive, in writing, receipt of explicit notice from HUD as to a finding of substantial default, and voluntarily consent to a determination of substantial default. The PHA must concur on the existence of substantial default conditions which can be remedied by technical assistance, and the PHA shall provide HUD with written assurances that all deficiencies will be addressed by the PHA. HUD will then immediately proceed with interventions as provided in § 902.83.

(4) *Emergency situations.* In any situation determined to be an emergency, or in any case where the events or conditions precipitating the intervention are determined to be the result of criminal or fraudulent activity, the Secretary or the Secretary's designee is authorized to intercede to protect the residents' and HUD's interests by causing the proposed interventions to be implemented without further appeals or delays.

[65 FR 1738, Jan. 11, 2000, as amended at 65 FR 36046, June 6, 2000]

§ 902.83 Interventions.

(a) Interventions under this part (including an assumption of operating responsibilities) may be limited to one or more of a PHA's specific operational areas (*e.g.*, maintenance, modernization, occupancy, or financial management) or to a single development or a group of developments. Under this limited intervention procedure, HUD could select, or participate in the selection of, an AME to assume management responsibility for a specific development, a group of developments in a geographical area, or a specific operational area, while permitting the PHA to retain responsibility for all programs, operational areas, and developments not so designated.

(b) Upon determining that a substantial default exists under this part, HUD may initiate any interventions deemed necessary to maintain decent, safe, and sanitary dwellings for residents. Such intervention may include:

(1) Providing technical assistance for existing PHA management staff;

(2) Selecting or participating in the selection of an AME to provide technical assistance or other services up to and including contract management of all or any part of the public housing developments administered by a PHA;

(3) Assuming possession and operational responsibility for all or any part of the public housing administered by a PHA;

(4) Entering into agreements, arrangements, and/or contracts for or on behalf of a PHA, or acting as the PHA, and expending or authorizing the expenditure of PHA funds, irrespective of the source of such funds, to remedy the events or conditions constituting the substantial default;

(5) The provision of intervention and assistance necessary to remedy emergency conditions;

(6) After the solicitation of competitive proposals, select an administrative receiver to manage and operate all or part of the PHA's housing; and

(7) Petition for the appointment of a receiver to any District Court of the United States or any court of the State in which real property of the PHA is located.

(c) The receiver is to conduct the affairs of the PHA in a manner consistent with statutory, regulatory, and contractual obligations of the PHA and in accordance with such additional terms and conditions that the court may provide and with section 6(j)(3)(C) of the Act.

(d) The appointment of a receiver pursuant to this section may be terminated upon the petition of any party, when the court determines that all defaults have been cured or the public housing agency is capable again of discharging its duties.

(e) HUD may take the actions described in this part sequentially or simultaneously in any combination.

§ 902.85 Resident petitions for remedial action.

The total number of residents that petition HUD to take remedial action pursuant to sections 6(j)(3)(A) (i) through (iv) of the Act must equal at

least 20 percent of the residents, or the petition must be from an organization or organizations of residents whose membership must equal at least 20 percent of the PHA's residents.

PART 903—PUBLIC HOUSING AGENCY PLANS

Sec.

Subpart A—Deconcentration of Poverty and Fair Housing in Program Admissions

903.1 What is the purpose of this subpart?
903.2 With respect to admissions, what must a PHA do to deconcentrate poverty in its developments and comply with fair housing requirements?

Subpart B—PHA Plans

903.3 What is the purpose of this subpart?
903.4 What are the public housing agency plans?
903.5 When must a PHA submit the plans to HUD?
903.6 What information must a PHA provide in the 5-Year Plan?
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903.9 May HUD request additional information in the Annual Plan of a troubled PHA?
903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?
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903.19 When is the 5-Year Plan or Annual Plan ready for submission to HUD?
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903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?
903.25 How does HUD ensure PHA compliance with its plans?

AUTHORITY: 42 U.S.C. 1437c; 42 U.S.C. 3535(d).

SOURCE: 65 FR 81222, Dec. 22, 2000, unless otherwise noted.

Subpart A—Deconcentration of Poverty and Fair Housing in Program Admissions

§ 903.1 What is the purpose of this subpart?

The purpose of this subpart is to specify the process which a Public Housing Agency, as part of its annual planning process and development of an admissions policy, must follow in order to develop and apply a policy that provides for deconcentration of poverty and income mixing in certain public housing developments and to affirmatively further fair housing in admissions.

References to the ''1937 Act'' in this part refer to the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*)

§ 903.2 With respect to admissions, what must a PHA do to deconcentrate poverty in its developments and comply with fair housing requirements?

(a) *General.* The PHA's admission policy includes the PHA's policy designed to promote deconcentration of poverty and income mixing in accordance with section 16(a)(3)(B) of the 1937 Act (42 U.S.C. 1437n), which is submitted to HUD as part of the PHA Annual Plan process. Deconcentration of poverty and income mixing is promoted by a policy that provides for bringing higher income tenants into lower income developments and lower income tenants into higher income developments.

(1) The provisions of this section apply to applicants to and residents seeking voluntary transfers within covered public housing developments (''covered developments'' as specified in paragraph (b) of this section).

(2) The statutory requirement to design a policy to provide for deconcentration and income mixing is not to be construed to impose or require any specific income or racial quotas for any development or developments.

(b) *Applicability of deconcentration of poverty and income mixing requirements.*

(1) *Developments subject to deconcentration of poverty and income mixing requirements.* The deconcentration requirements of this subpart apply to general occupancy,

family public housing developments, excluding those developments listed in paragraph (b)(2) of this section. Developments to which this subpart is applicable are referred to as ''covered developments''.

(2) *Developments not subject to deconcentration of poverty and income mixing requirements.* This subpart does not apply to the following public housing developments:

(i) Public housing developments operated by a PHA with fewer than 100 public housing units;

(ii) Public housing developments operated by a PHA which house only elderly persons or persons with disabilities, or both;

(iii) Public housing developments operated by a PHA which consist of only one general occupancy, family public housing development;

(iv) Public housing developments approved for demolition or for conversion to tenant-based assistance; and

(v) Public housing developments which include public housing units operated in accordance with a HUD-approved mixed-finance plan using HOPE VI or public housing funds awarded before the effective date of this rule, provided that the PHA certifies (and includes reasons for the certification) as part of its PHA Plan (which may be accomplished either in the annual Plan submission or as a significant amendment to its PHA Plan) that exemption from the regulation is necessary to honor an existing contractual agreement or be consistent with a mixed finance plan, including provisions regarding the incomes of public housing residents to be admitted to that development, which has been developed in consultation with residents with rights to live at the affected development and other interested persons.

(c) *Deconcentration of poverty and income mixing.*

(1) *Steps for implementation.* To implement the statutory requirement to deconcentrate poverty and provide for income mixing in covered public housing developments, a PHA must comply with the following steps:

(i) *Step 1.* A PHA shall determine the average income of all families residing in all the PHA's covered developments. A PHA may use median income, instead of average income, provided that the PHA includes a written explanation in its PHA Annual Plan justifying use of median income in the PHA's Annual Plan.

(ii) *Step 2.* A PHA shall determine the average income of all families residing in each covered development. In determining average income for each development, a PHA has the option of adjusting its income analysis for unit size in accordance with procedures prescribed by HUD.

(iii) *Step 3.* A PHA shall determine whether each of its covered developments falls above, within or below the Established Income Range. The Established Income Range is from 85 to 115 percent (inclusive) of the average family income (the PHA-wide average income for covered developments as defined in Step 1), except that the upper limit shall never be less than the income at which a family would be defined as an extremely low income family under 24 CFR 5.603(b).

(iv) *Step 4.* A PHA with covered developments having average incomes outside the Established Income Range may explain or justify the income profile for these developments as being consistent with and furthering two sets of goals: the goals of deconcentration of poverty and income mixing as specified by the statute (bringing higher income tenants into lower income developments and vice versa); and the local goals and strategies contained in the PHA Annual Plan. Elements of explanations or justifications that may satisfy these requirements may include, but shall not be limited to the following:

(A) The covered development or developments are subject to consent decrees or other resident selection and admission plans mandated by court action;

(B) The covered development or developments are part of PHA's programs, strategies or activities specifically authorized by statute, such as mixed-income or mixed-finance developments, homeownership programs, self-sufficiency strategies, or other strategies designed to deconcentrate poverty, promote income mixing in public housing, increase the incomes of public housing residents, or the income

mix is otherwise subject to individual review and approval by HUD;

(C) The covered development's or developments' size, location, and/or configuration promote income deconcentration, such as scattered site or small developments;

(D) The income characteristics of the covered development or developments are sufficiently explained by other circumstances.

(v) *Step 5.* Where the income profile for a covered development is not explained or justified in the PHA Annual Plan submission, the PHA shall include in its admission policy its specific policy to provide for deconcentration of poverty and income mixing in applicable covered developments. Depending on local circumstances, a PHA's deconcentration policy (which may be undertaken in conjunction with other efforts such as efforts to increase self-sufficiency or current residents) may include but is not limited to providing for one or more of the following actions:

(A) Providing incentives designed to encourage families with incomes below the Established Income Range to accept units in developments with incomes above the Established Income Range, or vice versa, including rent incentives, affirmative marketing plans, or added amenities;

(B) Targeting investment and capital improvements toward developments with an average income below the Established Income Range to encourage applicant families whose income is above the Established Income Range to accept units in those developments;

(C) Establishing a preference for admission of working families in developments below the Established Income Range;

(D) Skipping a family on the waiting list to reach another family in an effort to further the goals of the PHA's deconcentration policy;

(E) Providing such other strategies as permitted by statute and determined by the PHA in consultation with the residents and the community, through the PHA Annual Plan process, to be responsive to the local context and the PHA's strategic objectives.

(2) *Determination of compliance with deconcentration requirement.* HUD shall consider a PHA to be in compliance with this subpart if:

(i) The PHA's income analysis shows that the PHA has no general occupancy family developments to which the deconcentration requirements apply; that is, the average incomes of all covered developments are within the Established Income Range;

(ii) The PHA has covered developments with average incomes above or below the Established Income Range and the PHA provides a sufficient explanation in its Annual Plan that supports that the income mix of such development or developments is consistent with and furthers the goal of deconcentration of poverty and income mixing and also the locally determined goals of the PHA's Annual and Five Year Plans, and the PHA therefore need not take further action to deconcentrate poverty and mix incomes; or

(iii) The PHA's deconcentration policy provides specific strategies the PHA will take that can be expected to promote deconcentration of poverty and income mixing in developments with average incomes outside of the Established Income Range.

(3) *Right of return.* If a PHA has provided that a family that resided in a covered public housing development has a right to admission to a public housing unit in that development after revitalization, the requirements of paragraph (c) of this section do not preclude fulfilling that commitment or a PHA's commitment to return a family to another development after revitalization.

(4) *Family's discretion to refuse a unit.* A family has the sole discretion whether to accept an offer of a unit made under a PHA's deconcentration policy. The PHA may not take any adverse action toward any eligible family for choosing not to accept an offer of a unit under the PHA's deconcentration policy. In accordance with the PHA's established policies, the PHA may uniformly limit the number of offers received by applicants.

(5) *Relationship to income targeting requirement.* Nothing in this section relieves a PHA of the obligation to meet the requirement to admit annually at least 40 percent families whose incomes

are below 30 percent of area median income as provided by section 16(a)(2) of the 1937 Act, 42 U.S.C. 1437n(a)(2).

(d) *Fair housing requirements.* All admission and occupancy policies for public housing and Section 8 tenant-based housing programs must comply with Fair Housing Act requirements and with regulations to affirmatively further fair housing. The PHA may not impose any specific income or racial quotas for any development or developments.

(1) *Nondiscrimination.* A PHA must carry out its PHA Plan in conformity with the nondiscrimination requirements in Federal civil rights laws, including title VI of the Civil Rights Act of 1964 and the Fair Housing Act. A PHA cannot assign persons to a particular section of a community or to a development or building based on race, color, religion, sex, disability, familial status or national origin for purposes of segregating populations (§ 1.4(b)(1)(ii) of this title).

(2) *Affirmatively Furthering Fair Housing.* PHA policies that govern eligibility, selection and admissions under its PHA Plan should be designed to reduce racial and national origin concentrations. Any affirmative steps or incentives a PHA plans to take must be stated in the admission policy.

(i) HUD regulations provide that PHAs should take affirmative steps to overcome the effects of conditions which resulted in limiting participation of persons because of their race, national origin or other prohibited basis (§ 1.4(b)(1)(iii) and (6)(ii) of this title).

(ii) Such affirmative steps may include but are not limited to, appropriate affirmative marketing efforts; additional applicant consultation and information; and provision of additional supportive services and amenities to a development.

(3) *Validity of certification.* (i) HUD will take action to challenge the PHA's certification under § 903.7(o) where it appears that a PHA Plan or its implementation:

(A) Does not reduce racial and national origin concentration in developments or buildings and is perpetuating segregated housing; or

(B) Is creating new segregation in housing.

(ii) If HUD challenges the validity of a PHA's certification, the PHA must establish that it is providing a full range of housing opportunities to applicants and tenants or that it is implementing actions described in paragraph (d)(2)(ii) of this section.

(e) *Relationship between poverty deconcentration and fair housing.* The requirements for poverty deconcentration in paragraph (c) of this section and for fair housing in paragraph (d) of this section arise under separate statutory authorities and are independent.

[65 FR 81222, Dec. 22, 2000, as amended at 67 FR 51033, Aug. 6, 2002]

Subpart B—PHA Plans

§ 903.3 What is the purpose of this subpart?

(a) This subpart specifies the requirements for PHA plans, required by section 5A of the United States Housing Act of 1937 (42 U.S.C. 1437c–1).

(b) The purpose of the plans is to provide a framework for:

(1) Local accountability; and

(2) An easily identifiable source by which public housing residents, participants in the tenant-based assistance program, and other members of the public may locate basic PHA policies, rules and requirements concerning the PHA's operations, programs and services.

§ 903.4 What are the public housing agency plans?

(a) *Types of plans.* There are two public housing agency plans. They are:

(1) The 5-Year Plan (the 5-Year Plan) that a public housing agency (PHA) must submit to HUD once every five PHA fiscal years. The 5-Year Plan covers the five PHA fiscal years immediately following the date on which the 5-Year Plan is due to HUD; and

(2) The Annual Plan (Annual Plan) that the PHA must submit to HUD for each fiscal year immediately following the date on which the Annual Plan is due to HUD and for which the PHA receives:

(i) Section 8 tenant-based assistance (under section 8(o) of the U.S. Housing

Act of 1937, 42 U.S.C. 1437f(o)) (tenant-based assistance); or

(ii) Amounts from the public housing operating fund or capital fund (under section 9 of the U.S. Housing Act of 1937 (42 U.S.C. 1437g) (public housing)).

(b) *Format.* HUD may prescribe the format of submission (including electronic format submission) of the plans. HUD also may prescribe the format of attachments to the plans and documents related to the plan that the PHA does not submit but may be required to make available locally. PHAs will receive appropriate notice of any prescribed format.

(c) *Applicability.* The requirements of this subpart only apply to a PHA that receives the type of assistance described in paragraph (a) of this section.

(d) *Authority for waivers.* In addition to the waiver authority provided in § 5.110 of this title, the Secretary may, subject to statutory limitations, waive any provision of this title on a program-wide basis, and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)) where the Secretary determines that such waiver is necessary for the effective implementation of this part.

§ 903.5 When must a PHA submit the plans to HUD?

(a) *5-Year Plan.* (1) The first PHA fiscal year that is covered by the requirements of this part as amended on December 22, 2000, is the PHA fiscal year that begins October 2001. This 5-Year Plan submitted by a PHA must be submitted for the 5-year period beginning October 1, 2001.

(2) For all PHAs, the first 5-Year Plans are due 75 days before the commencement of their fiscal year.

(3) For all PHAs, after submission of their first 5-Year Plan, all subsequent 5-Year Plans must be submitted once every 5 PHA fiscal years, no later than 75 days before the commencement of the PHA's fiscal year. However, HUD may require that half of all PHAs with less than 250 public housing units submit their 5-Year Plan one fiscal year in advance (in the fourth PHA fiscal year rather than the fifth PHA fiscal year).

(4) PHAs may choose to update their 5-Year Plans every year as good management practice and must update their 5-Year Plans that were submitted for PHA fiscal years beginning before October 1, 2001, to comply with the requirements of this part as amended on December 22, 2000, at the time they submit their next Annual Plan for fiscal years beginning on or after October 1, 2001. PHAs must explain any substantial deviation from their 5-Year Plans in their Annual Plans. (Substantial deviation is determined by the PHA in accordance with criteria provided by the PHA in its Annual Plan in accordance with § 903.7(r).)

(b) *The Annual Plan.* (1) The first PHA fiscal year that is covered by the requirements of this part as amended on December 22, 2000 is the PHA fiscal year that begins October 1, 2001.

(2) For all PHAs, the first Annual Plans are due 75 days before the commencement of their fiscal year.

(3) For all PHAs, after submission of the first Annual Plan, all subsequent Annual Plans will be due no later than 75 days before the commencement of their fiscal year.

[64 FR 56862, Oct. 21, 1999, as amended at 66 FR 8898, Mar. 7, 2001; 68 FR 37671, June 24, 2003]

§ 903.6 What information must a PHA provide in the 5-Year Plan?

(a) A PHA must include in its 5-Year Plan a statement of:

(1) The PHA's mission for serving the needs of low-income, very low-income and extremely low-income families in the PHA's jurisdiction; and

(2) The PHA's goals and objectives that enable the PHA to serve the needs of the families identified in the PHA's Annual Plan. For HUD, the PHA and the public to better measure the success of the PHA in meeting its goals and objectives, the PHA must adopt quantifiable goals and objectives for serving those needs wherever possible.

(b) After submitting its first 5-Year Plan, a PHA in its succeeding 5-Year Plans, must address:

(1) The PHA's mission, goals and objectives for the next 5 years; and

(2) The progress the PHA has made in meeting the goals and objectives described in the PHA's previous 5-Year Plan.

§ 903.7 What information must a PHA provide in the Annual Plan?

With the exception of the first Annual Plan submitted by a PHA, the Annual Plan must include the information provided in this section. HUD will advise PHAs by separate notice, sufficiently in advance of the first Annual Plan due date, of the information, described in this section that must be part of the first Annual Plan submission, and any additional instructions or directions that may be necessary to prepare and submit the first Annual Plan. The information described in this section applies to both public housing and tenant-based assistance, except where specifically stated otherwise. The information that the PHA must submit for HUD approval under the Annual Plan includes the discretionary policies of the various plan components or elements (for example, rent policies) and not the statutory or regulatory requirements that govern these plan components and that provide no discretion on the part of the PHA in implementation of the requirements. The PHA's Annual Plan must be consistent with the goals and objectives of the PHA's 5-Year Plan.

(a) *A statement of housing needs.* (1) This statement must address the housing needs of the low-income and very low-income families who reside in the jurisdiction served by the PHA, and other families who are on the public housing and Section 8 tenant-based assistance waiting lists, including:

(i) Families with incomes below 30 percent of area median (extremely low-income families);

(ii) Elderly families and families with disabilities;

(iii) Households of various races and ethnic groups residing in the jurisdiction or on the waiting list.

(2) A PHA must make reasonable efforts to identify the housing needs of each of the groups listed in paragraph (a)(1) of this section based on information provided by the applicable Consolidated Plan, information provided by HUD, and other generally available data.

(i) The identification of housing needs must address issues of affordability, supply, quality, accessibility, size of units and location.

(ii) The statement of housing needs also must describe the ways in which the PHA intends, to the maximum extent practicable, to address those needs, and the PHA's reasons for choosing its strategy.

(b) *A statement of the PHA's deconcentration and other policies that govern eligibility, selection, and admissions.* This statement must describe the PHA's policies that govern resident or tenant eligibility, selection and admission. This statement also must describe any PHA admission preferences, and any occupancy policies that pertain to public housing units and housing units assisted under section 8(o) of the 1937 Act, as well as any unit assignment policies for public housing. This statement must include the following information:

(1) *Deconcentration Policy.* The PHA's deconcentration policy applicable to public housing, as described in § 903.2(a).

(2) *Waiting List Procedures.* The PHA's procedures for maintaining waiting lists for admission to the PHA's public housing developments. The statement must address any site-based waiting lists, as authorized by section 6(s) of the 1937 Act (42 U.S.C. 1437d(s)), for public housing. Section 6(s) of the 1937 Act permits PHAs to establish a system of site-based waiting lists for public housing that is consistent with all applicable civil rights and fair housing laws and regulations. Notwithstanding any other regulations, a PHA may adopt site-based waiting lists where:

(i) The PHA regularly submits required occupancy data to HUD's Multifamily Tenant Characteristics Systems (MTCS) in an accurate, complete and timely manner;

(ii) The system of site-based waiting lists provides for full disclosure to each applicant of any option available to the applicant in the selection of the development in which to reside, including basic information about available sites (location, occupancy, number and size of accessible units, amenities such as

day care, security, transportation and training programs) and an estimate of the period of time the applicant would likely have to wait to be admitted to units of different sizes and types (e.g., regular or accessible) at each site;

(iii) Adoption of site-based waiting lists would not violate any court order or settlement agreement, or be inconsistent with a pending complaint brought by HUD;

(iv) The PHA includes reasonable measures to assure that adoption of site-based waiting lists is consistent with affirmatively furthering fair housing, such as reasonable marketing activities to attract applicants regardless of race or ethnicity;

(v) The PHA provides for review of its site-based waiting list policy to determine if the policy is consistent with civil rights laws and certifications through the following steps:

(A) As part of the submission of the Annual Plan, the PHA shall assess changes in racial, ethnic or disability-related tenant composition at each PHA site that may have occurred during the implementation of the site-based waiting list, based upon MTCS occupancy data that has been confirmed to be complete and accurate by an independent audit (which may be the annual independent audit) or is otherwise satisfactory to HUD;

(B) At least every three years the PHA uses independent testers or other means satisfactory to HUD, to assure that the site-based waiting list is not being implemented in a discriminatory manner, and that no patterns or practices of discrimination exist, and providing the results to HUD;

(C) Taking any steps necessary to remedy the problems surfaced during the review; and

(D) Taking the steps necessary to affirmatively further fair housing.

(3) *Other admissions policies.* The PHA's admission policies that include any other PHA policies that govern eligibility, selection and admissions for the public housing (see part 960 of this title) and tenant-based assistance programs (see part 982, subpart E of this title). (The information requested on site-based waiting lists and deconcentration is applicable only to public housing.)

(c) *A statement of financial resources.* This statement must address the financial resources that are available to the PHA for the support of Federal public housing and tenant-based assistance programs administered by the PHA during the plan year. The statement must include a listing, by general categories, of the PHA's anticipated resources, such as PHA operating, capital and other anticipated Federal resources available to the PHA, as well as tenant rents and other income available to support public housing or tenant-based assistance. The statement also should include the non-Federal sources of funds supporting each Federal program, and state the planned uses for the resources.

(d) *A statement of the PHA's rent determination policies.* This statement must describe the PHA's basic discretionary policies that govern rents charged for public housing units, applicable flat rents, and the rental contributions of families receiving tenant-based assistance. For tenant-based assistance, this statement also shall cover any discretionary minimum tenant rents and payment standard policies.

(e) *A statement of the PHA's operation and management.* (1) This statement must list the PHA's rules, standards, and policies that govern maintenance and management of housing owned, assisted, or operated by the PHA.

(2) The policies listed in this statement must include a description of any measures necessary for the prevention or eradication of pest infestation. Pest infestation includes cockroach infestation.

(3) This statement must include a description of PHA management organization, and a listing of the programs administered by the PHA.

(4) The information requested on a PHA's rules, standards and policies regarding management and maintenance of housing applies only to public housing. The information requested on PHA program management and listing of administered programs applies to public housing and tenant-based assistance.

(f) *A statement of the PHA grievance procedures.* This statement describes the grievance and informal hearing and review procedures that the PHA makes

available to its residents and applicants. These procedures include public housing grievance procedures and tenant-based assistance informal review procedures for applicants and hearing procedures for participants.

(g) *A statement of capital improvements needed.* With respect to public housing only, this statement describes the capital improvements necessary to ensure long-term physical and social viability of the PHA's public housing developments, including the capital improvements to be undertaken in the year in question and their estimated costs, and any other information required for participation in the Capital Fund. PHAs also are required to include 5-Year Plans covering large capital items.

(h) *A statement of any demolition and/or disposition.* (1) *Plan for Demolition/Disposition.* With respect to public housing only, a description of any public housing development, or portion of a public housing development, owned by the PHA for which the PHA has applied or will apply for demolition and/or disposition approval under section 18 of the 1937 Act (42 U.S.C. 1437p), and the timetable for demolition and/or disposition. The application and approval process for demolition and/or disposition is a separate process. Approval of the PHA Plan does not constitute approval of these activities.

(2) *Interim Plan for Demolition/Disposition.* (i) Before submission of the first Annual Plan, a PHA may submit an interim PHA Annual Plan solely for demolition/disposition. The interim plan must provide:

(A) The required description of the action to be taken;

(B) A certification of consistency with the Consolidated Plan;

(C) A description of how the plan is consistent with the Consolidated Plan;

(D) A relocation plan that includes the availability of units in the area and adequate funding; and

(E) Confirmation that a public hearing was held on the proposed action and that the resident advisory board was consulted.

(ii) Interim plans for demolition/disposition are subject to PHA Plan procedural requirements in this part (see §§ 903.13, 903.15, 903.17, 903.19, 903.21, 903.23, 903.25), with the following exception. If a resident advisory board has not yet been formed, the PHA may seek a waiver of the requirement to consult with the resident advisory board on the grounds that organizations that adequately represent residents for this purpose were consulted.

(iii) The actual application for demolition or disposition may be submitted at the same time as submission of the interim plan or at a later date.

(i) *A statement of the public housing developments designated as housing for elderly families or families with disabilities or elderly families and families with disabilities.*

(1) With respect to public housing only, this statement identifies any public housing developments owned, assisted, or operated by the PHA, or any portion of these developments, that:

(i) The PHA has designated for occupancy by:

(A) Only elderly families;

(B) Only families with disabilities; or

(C) Elderly families and families with disabilities; and

(ii) The PHA will apply for designation for occupancy by:

(A) Only elderly families;

(B) Only families with disabilities; or

(C) Elderly families and families with disabilities as provided by section 7 of the 1937 Act (42 U.S.C. 1437e).

(2) The designated housing application and approval process is a separate process. Approval of the PHA Plan does not constitute approval of these activities.

(j) *A statement of the conversion of public housing to tenant-based assistance.* (1) This statement describes:

(i) Any building or buildings that the PHA is required to convert to tenant-based assistance under section 33 of the 1937 Act (42 U.S.C. 1437z–5);

(ii) The status of any building or buildings that the PHA may be required to convert to tenant-based assistance under section 202 of the Fiscal Year 1996 HUD Appropriations Act (42 U.S.C. 14371 note); or

(iii) The PHA's plans to voluntarily convert under section 22 of the 1937 Act (42 U.S.C. 1437t).

(2) The statement also must include an analysis of the developments or

buildings required to be converted under section 33.

(3) For both voluntary and required conversions, the statement must include the amount of assistance received commencing in Federal Fiscal Year 1999 to be used for rental assistance or other housing assistance in connection with such conversion.

(4) The application and approval processes for required or voluntary conversions are separate approval processes. Approval of the PHA Plan does not constitute approval of these activities.

(5) The information required under this paragraph (j) of this section is applicable to public housing and only that tenant-based assistance which is to be included in the conversion plan.

(k) *A statement of homeownership programs administered by the PHA.*

(1) This statement describes:

(i) Any homeownership programs administered by the PHA under section 8(y) of the 1937 Act (42 U.S.C. 1437f(y));

(ii) Any homeownership programs administered by the PHA under an approved section 5(h) homeownership program (42 U.S.C. 1437c(h));

(iii) An approved HOPE I program (42 U.S.C. 1437aaa); or

(iv) Any homeownership programs for which the PHA has applied to administer or will apply to administer under section 5(h), the HOPE I program, or section 32 of the 1937 Act (42 U.S.C. 1437z–4).

(2) The application and approval process for homeownership under the programs described in paragraph (k) of this section, with the exception of the section 8(y) homeownership program, are separate processes. Approval of the PHA Plan does not constitute approval of these activities.

(l) *A statement of the PHA's community service and self-sufficiency programs.* (1) This statement describes:

(i) Any PHA programs relating to services and amenities coordinated, promoted or provided by the PHA for assisted families, including programs provided or offered as a result of the PHA's partnership with other entities;

(ii) Any PHA programs coordinated, promoted or provided by the PHA for the enhancement of the economic and social self-sufficiency of assisted families, including programs provided or offered as a result of the PHA's partnerships with other entities, and activities under section 3 of the Housing and Community Development Act of 1968 and under requirements for the Family Self-Sufficiency Program and others. The description of programs offered shall include the program's size (including required and actual size of the Family Self-Sufficiency program) and means of allocating assistance to households.

(iii) How the PHA will comply with the requirements of section 12(c) and (d) of the 1937 Act (42 U.S.C. 1437j(c) and (d)). These statutory provisions relate to community service by public housing residents and treatment of income changes in public housing and tenant-based assistance recipients resulting from welfare program requirements. PHAs must address any cooperation agreements, as described in section 12(d)(7) of the 1937 Act (42 U.S.C. 1437j(d)(7)), that the PHA has entered into or plans to enter into.

(2) The information required by paragraph (l) of this section is applicable to both public housing and tenant-based assistance, except that the information regarding the PHA's compliance with the community service requirement applies only to public housing.

(m) *A statement of the PHA's safety and crime prevention measures.*

(1) With respect to public housing only, this statement describes the PHA's plan for safety and crime prevention to ensure the safety of the public housing residents that it serves. The plan for safety and crime prevention must be established in consultation with the police officer or officers in command of the appropriate precinct or police departments. The plan also must provide, on a development-by-development or jurisdiction wide-basis, the measures necessary to ensure the safety of public housing residents.

(2) The statement regarding the PHA's safety and crime prevention plan must include the following information:

(i) A description of the need for measures to ensure the safety of public housing residents;

(ii) A description of any crime prevention activities conducted or to be conducted by the PHA; and

(iii) A description of the coordination between the PHA and the appropriate police precincts for carrying out crime prevention measures and activities.

(3) If the PHA expects to receive drug elimination program grant funds, the PHA must submit, in addition to the information required by paragraph (m)(1) of this section, the plan required by HUD's Public Housing Drug Elimination Program regulations (see part 761 of this title).

(4) If HUD determines at any time that the security needs of a public housing development are not being adequately addressed by the PHA's plan, or that the local police precinct is not assisting the PHA with compliance with its crime prevention measures as described in the Annual Plan, HUD may mediate between the PHA and the local precinct to resolve any issues of conflict.

(n) *A statement of the PHA's policies and rules regarding ownership of pets in public housing.* This statement describes the PHA's policies and requirements pertaining to the ownership of pets in public housing. The policies must be in accordance with section 31 of the 1937 Act (42 U.S.C. 1437a–3).

(o) *Civil rights certification.* (1) The PHA must certify that it will carry out its plan in conformity with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), the Fair Housing Act (42 U.S.C. 3601–19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*). The PHA also must certify that it will affirmatively further fair housing.

(2) The certification is applicable to both the 5-Year Plan and the Annual Plan.

(3) A PHA shall be considered in compliance with the certification requirement to affirmatively further fair housing if the PHA fulfills the requirements of § 903.2(b) and:

(i) Examines its programs or proposed programs;

(ii) Identifies any impediments to fair housing choice within those programs;

(iii) Addresses those impediments in a reasonable fashion in view of the resources available;

(iv) Works with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement; and

(v) Maintains records reflecting these analyses and actions.

(p) *Recent results of PHA's fiscal year audit.* This statement provides the results of the most recent fiscal year audit of the PHA conducted under section 5(h)(2) of the 1937 Act (42 U.S.C. 1437c(h)).

(q) *A statement of asset management.* To the extent not covered by other components of the PHA Annual Plan, this statement describes how the PHA will carry out its asset management functions with respect to the PHA's public housing inventory, including how the PHA will plan for long-term operating, capital investment, rehabilitation, modernization, disposition, and other needs for such inventory.

(r) *Additional information to be provided.* (1) For all Annual Plans following submission of the first Annual Plan, a PHA must include a brief statement of the PHA's progress in meeting the mission and goals described in the 5-Year Plan;

(2) A PHA must identify the basic criteria the PHA will use for determining:

(i) A substantial deviation from its 5-Year Plan; and

(ii) A significant amendment or modification to its 5-Year Plan and Annual Plan.

(3) A PHA must include such other information as HUD may request of PHAs, either on an individual or across-the-board basis. HUD will advise the PHA or PHAs of this additional information through advance notice.

§ 903.9 May HUD request additional information in the Annual Plan of a troubled PHA?

HUD may request that a PHA that is at risk of being designated as troubled or is designated as troubled in accordance with section 6(j)(2) of the 1937 Act (42 U.S.C. 1437d(j)(2)), the Public Housing Management Assessment Program (part 901 of this title) or the Public

Housing Assessment System (part 902 of this chapter) include its operating budget. The PHA also must include or reference any applicable memorandum of agreement with HUD or any plan to improve performance, and such other material as HUD may prescribe.

§ 903.11 Are certain PHAs eligible to submit a streamlined Annual Plan?

(a) Yes, the following PHAs may submit a streamlined Annual Plan, as described in paragraph (b) of this section:

(1) PHAs that are determined to be high performing PHAs as of the last annual or interim assessment of the PHA before the submission of the 5-Year or Annual Plan;

(2) PHAs with less than 250 public housing units (small PHAs) and that have not been designated as troubled in accordance with section 6(j)(2) of the 1937 Act; and

(3) PHAs that only administer tenant-based assistance and do not own or operate public housing.

(b) All streamlined plans must provide information on how the public may reasonably obtain additional information on the PHA policies contained in the standard Annual Plan, but excluded from their streamlined submissions.

(c) A streamlined plan must include the information provided in this paragraph (c). The Secretary may reduce the information requirements of streamlined Plans further, with adequate notice.

(1) For high performing PHAs, the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (g), (h), (k), (m), (n), (o), (p) and (r). The information required by § 903.7(m) must be included only to the extent this information is required for PHA's participation in the public housing drug elimination program and the PHA anticipates participating in this program in the upcoming year. The information required by § 903.7(k) must be included only to the extent that the PHA participates in homeownership programs under section 8(y).

(2) For small PHAs that are not designated as troubled (see § 902.67(c)) or that are not at risk of being designated as troubled (see § 902.67(b)(4) of this chapter) under section 6(j)(2) of the 1937 Act, the requirements for streamlined Annual Plans are described in § 903.12.

(3) For PHAs that administer only tenant-based assistance, the streamlined Annual Plan must include the information required by § 903.7(a), (b), (c), (d), (e), (f), (k), (l), (o), (p) and (r).

[65 FR 49484, Aug. 14, 2000, as amended at 65 FR 55161, Sept. 12, 2000; 68 FR 37671, June 24, 2003]

§ 903.12 What are the streamlined Annual Plan requirements for small PHAs?

(a) *General.* PHAs with less than 250 public housing units (small PHAs) and that have not been designated as troubled (see § 902.67(c) of this chapter) or that are not at risk of being designated as troubled (see § 902.67(b)(4)) under section 6(j) of the 1937 Act may submit streamlined Annual Plans in accordance with this section.

(b) *Streamlined Annual Plan requirements for fiscal years in which its 5-Year Plan is also due.* For the fiscal year in which its 5-Year Plan is also due, the streamlined Annual Plan of the small PHA shall consist of the information required by § 903.7(a), (b), (c), (d), (g), (h), (k), (o) and (r). If the PHA wishes to use the project-based voucher program, the streamlined Annual Plan of the small PHA must also include a statement of the projected number of project-based units and general locations and how project basing would be consistent with its PHA Plan. The information required by § 903.7(a) must be included only to the extent it pertains to the housing needs of families that are on the PHA's public housing and Section 8 tenant-based assistance waiting lists. The information required by § 903.7(k) must be included only to the extent that the PHA participates in homeownership programs under section 8(y) of the 1937 Act.

(c) *Streamlined Annual Plan requirements for all other fiscal years.* For all other fiscal years, the streamlined Annual Plan must include:

(1) The information required by § 903.7(g) and (o) and, if applicable, § 903.7(b)(2) with respect to site-based waiting lists and § 903.7(k)(1)(i) with respect to homeownership programs under section 8(y) of the 1937 Act;

(2) If the PHA wishes to use the project-based voucher program, a statement of the projected number of project-based units and general locations and how project basing would be consistent with its PHA Plan; and

(3) A certification from the PHA that lists the policies and programs covered by § 903.7(a), (b), (c), (d), (h), (k), and (r) that the PHA has revised since submission of its last Annual Plan and provides assurance by the PHA that:

(i) The Resident Advisory Board had an opportunity to review and comment on the changes to the policies and programs before implementation by the PHA;

(ii) The changes were duly approved by the PHA board of directors (or similar governing body); and

(iii) The revised policies and programs are available for review and inspection at the principal office of the PHA during normal business hours.

[68 FR 37671, June 24, 2003]

§ 903.13 What is a Resident Advisory Board and what is its role in development of the Annual Plan?

(a) A Resident Advisory Board refers to a board or boards, as provided in paragraph (b) of this section, whose membership consists of individuals who adequately reflect and represent the residents assisted by the PHA.

(1) The role of the Resident Advisory Board (or Resident Advisory Boards) is to assist and make recommendations regarding the development of the PHA plan, and any significant amendment or modification to the PHA plan.

(2) The PHA shall allocate reasonable resources to assure the effective functioning of Resident Advisory Boards. Reasonable resources for the Resident Advisory Boards must provide reasonable means for them to become informed on programs covered by the PHA Plan, to communicate in writing and by telephone with assisted families and hold meetings with those families, and to access information regarding covered programs on the internet, taking into account the size and resources of the PHA.

(b) Each PHA must establish one or more Resident Advisory Boards, as provided in paragraph (b) of this section.

(1) If a jurisdiction-wide resident council exists that complies with the tenant participation regulations in part 964 of this title, the PHA shall appoint the jurisdiction-wide resident council or the council's representatives as the Resident Advisory Board. If the PHA makes such appointment, the members of the jurisdiction-wide resident council or the council's representatives shall be added or another Resident Advisory Board formed to provide for reasonable representation of families receiving tenant-based assistance where such representation is required under paragraph (b)(2) of this section.

(2) If a jurisdiction-wide resident council does not exist but resident councils exist that comply with the tenant participation regulations, the PHA shall appoint such resident councils or their representatives to serve on one or more Resident Advisory Boards. If the PHA makes such appointment, the PHA may require that the resident councils choose a limited number of representatives.

(3) Where the PHA has a tenant-based assistance program of significant size (where tenant-based assistance is 20% or more of assisted households), the PHA shall assure that the Resident Advisory Board (or Boards) has reasonable representation of families receiving tenant-based assistance and that a reasonable process is undertaken to choose this representation.

(4) Where or to the extent that resident councils that comply with the tenant participation regulations do not exist, the PHA shall appoint Resident Advisory Boards or Board members as needed to adequately reflect and represent the interests of residents of such developments; provided that the PHA shall provide reasonable notice to such residents and urge that they form resident councils with the tenant participation regulations.

(c) The PHA must consider the recommendations of the Resident Advisory Board or Boards in preparing the final Annual Plan, and any significant amendment or modification to the Annual Plan, as provided in § 903.21 of this title.

(1) In submitting the final plan to HUD for approval, or any significant amendment or modification to the plan

to HUD for approval, the PHA must include a copy of the recommendations made by the Resident Advisory Board or Boards and a description of the manner in which the PHA addressed these recommendations.

(2) Notwithstanding the 75-day limitation on HUD review, in response to a written request from a Resident Advisory Board claiming that the PHA failed to provide adequate notice and opportunity for comment, HUD may make a finding of good cause during the required time period and require the PHA to remedy the failure before final approval of the plan.

§ 903.15 What is the relationship of the public housing agency plans to the Consolidated Plan?

(a) The PHA must ensure that the Annual Plan is consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located. The Consolidated Plan includes a certification that requires the preparation of an Analysis of Impediments to Fair Housing Choice.

(1) The PHA must submit a certification by the appropriate State or local officials that the Annual Plan is consistent with the Consolidated Plan and include a description of the manner in which the applicable plan contents are consistent with the Consolidated Plans.

(2) For State agencies that are PHAs, the applicable Consolidated Plan is the State Consolidated Plan.

(b) A PHA may request to change its fiscal year to better coordinate its planning with the planning done under the Consolidated Plan process, by the State or local officials, as applicable.

§ 903.17 What is the process for obtaining public comment on the plans?

(a) The PHA's board of directors or similar governing body must conduct a public hearing to discuss the PHA plan (either the 5–Year Plan and/or Annual Plan, as applicable) and invite public comment on the plan(s). The hearing must be conducted at a location that is convenient to the residents served by the PHA.

(b) Not later than 45 days before the public hearing is to take place, the PHA must:

(1) Make the proposed PHA plan(s), the required attachments and documents related to the plans, and all information relevant to the public hearing to be conducted, available for inspection by the public at the principal office of the PHA during normal business hours; and

(2) Publish a notice informing the public that the information is available for review and inspection, and that a public hearing will take place on the plan, and the date, time and location of the hearing.

(c) PHAs shall conduct reasonable outreach activities to encourage broad public participation in the PHA plans.

§ 903.19 When is the 5–Year Plan or Annual Plan ready for submission to HUD?

A PHA may adopt its 5–Year Plan or its Annual Plan and submit the plan to HUD for approval only after:

(a) The PHA has conducted the public hearing;

(b) The PHA has considered all public comments received on the plan;

(c) The PHA has made any changes to the plan, based on comments, after consultation with the Resident Advisory Board or other resident organization.

§ 903.21 May the PHA amend or modify a plan?

(a) A PHA, after submitting its 5–Year Plan or Annual Plan to HUD, may amend or modify any PHA policy, rule, regulation or other aspect of the plan. If the amendment or modification is a significant amendment or modification, as defined in § 903.7(r)(2), the PHA:

(1) May not adopt the amendment or modification until the PHA has duly called a meeting of its board of directors (or similar governing body) and the meeting, at which the amendment or modification is adopted, is open to the public; and

(2) May not implement the amendment or modification, until notification of the amendment or modification is provided to HUD and approved by HUD in accordance with HUD's plan review procedures, as provided in § 903.23.

(b) Each significant amendment or modification to a plan submitted to

HUD is subject to the requirements of §§ 903.13, 903.15, and 903.17.

§ 903.23 What is the process by which HUD reviews, approves, or disapproves an Annual Plan?

(a) *Review of the plan.* When the PHA submits its Annual Plan to HUD, including any significant amendment or modification to the plan, HUD reviews the plan to determine whether:

(1) The plan provides all the information that is required to be included in the plan;

(2) The plan is consistent with the information and data available to HUD;

(3) The plan is consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; and

(4) The plan is not prohibited or inconsistent with the 1937 Act or any other applicable Federal law.

(b) *Scope of HUD review.* HUD's review of the Annual Plan (and any significant amendments or modifications to the plan) will be limited to the information required by § 903.7(b), (g), (h), and (o), and any other element of the PHA's Annual Plan that is challenged.

(c) *Disapproval of the plan.* (1) HUD may disapprove a PHA plan, in its entirety or with respect to any part, or disapprove any significant amendment or modification to the plan, only if HUD determines that the plan, or one of its components or elements, or any significant amendment or modification to the plan:

(i) Does not provide all the information that is required to be included in the plan;

(ii) Is not consistent with the information and data available to HUD;

(iii) Is not consistent with any applicable Consolidated Plan for the jurisdiction in which the PHA is located; or

(iv) Is not consistent with applicable Federal laws and regulations.

(2) Not later than 75 days after the date on which the PHA submits its plan or significant amendment or modification to the plan, HUD will issue written notice to the PHA if the plan or a significant amendment or modification has been disapproved. The notice that HUD issues to the PHA must state with specificity the reasons for the disapproval. HUD may not state as a reason for disapproval the lack of time to review the plan.

(3) If HUD fails to issue the notice of disapproval on or before the 75th day after the date on which the PHA submits its plan or significant amendment or modification to the plan, HUD shall be considered to have determined that all elements or components of the plan required to be submitted and that were submitted, and to be reviewed by HUD were in compliance with applicable requirements and the plan has been approved.

(4) The provisions of paragraph (b)(3) of this section do not apply to troubled PHAs. The plan of a troubled PHA must be approved or disapproved by HUD through written notice.

(d) *Designation of due date as submission date for first plan submissions.* For purposes of the 75-day period described in paragraph (b) of this section, the first 5-year and Annual Plans submitted by a PHA will be considered to have been submitted no earlier than the due date as provided in § 903.5.

(e) *Public availability of the approved plan.* Once a PHA's plan has been approved, a PHA must make the approved plan and the required attachments and documents related to the plan, available for review and inspection, at the principal office of the PHA during normal business hours.

[65 FR 81222, Dec. 22, 2000, as amended at 68 FR 37671, June 24, 2003]

§ 903.25 How does HUD ensure PHA compliance with its plan?

A PHA must comply with the rules, standards and policies established in the plans. To ensure that a PHA is in compliance with all policies, rules, and standards adopted in the plan approved by HUD, HUD shall, as it deems appropriate, respond to any complaint concerning PHA noncompliance with its plan. If HUD should determine that a PHA is not in compliance with its plan, HUD will take whatever action it deems necessary and appropriate.

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

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AUTHORITY: 42 U.S.C. 1437–1437ee and 3535(d).

SOURCE: 39 FR 10966, Mar. 22, 1974, unless otherwise noted. Redesignated at 40 FR 15580, Apr. 7, 1975, and further redesignated at 49 FR 6714, Feb. 23, 1984.

Subpart A—Introduction to Low-Rent Housing Homeownership Opportunity Program [Reserved]

Subpart B—Turnkey III Program Description

§904.101 Introduction.

(a) *Purpose.* This subpart sets forth the essential elements of the HUD Homeownership Opportunities Program for Low-Income Families (Turnkey III).

(b) *Applicability.* This subpart is applicable to Turnkey III developments operated by LHA. For Turnkey III developments operated by an Indian Housing Authority, applicable provisions are found at 24 CFR part 905, subpart G.

(1) With respect to any development to be operated as Turnkey III, the Annual Contributions Contract (ACC) shall contain the ''Special Provisions for Turnkey III Homeownership Opportunity Project'' as set forth in Appendix I. A Turnkey III development may include only units which are to be operated as such under Homebuyers Ownership Opportunity Agreements. If for any reason it is determined that certain units should be operated as conventional rental units, such units must comprise or be made part of a conventional rental project.

(2) With respect to Turnkey III developments pursuant to an executed ACC where no Agreements with Homebuyers have been signed, the ACC shall be amended (i) to include the ''Special Provisions'' set forth in Appendix I, (ii)

to extend its term to 30 years, and (iii) to reduce its Maximum Contribution Percentage to a rate that will amortize the debt in 30 years at the minimum Loan Interest Rate specified in the ACC for the specific Turnkey III project involved. Further development and operation shall be in accordance with this subpart including use of the form of Homebuyers Ownership Opportunity Agreement set forth in Appendix II.

(3) With respect to developments where Agreements with homebuyers have been signed, the following steps shall be taken:

(i) The ACC shall be amended to include the Special Provisions'' set forth in Appendix I; further development and operation of the Project shall be in accordance with this subpart.

(ii) The LHA shall offer all qualified homebuyers in the development a new Homebuyers Ownership Opportunity Agreement as set forth in Appendix II with an amendment to section 16a to refer to ''the latest approved Development Cost Budget, or Actual Development Cost Certificate if issued,'' in lieu of ''the Development Cost Budget in effect upon award of the Main Construction Contract or execution of the Contract of Sale,'' and, if the ACC for the Project has a term of 25 years, an amendment to section 16(b) to refer to a term of 25 years, instead of 30, for the Purchase Price Schedule. Each Purchase Price Schedule shall commence with the first day of the month following the effective date of the initial Agreement. No other modification in the new Agreement may be made. In the event the homebuyer refuses to accept the new Agreement, no modifications may be made in the old Agreement and the matter shall be referred to HUD.

(4) With respect to Projects which were under ACC on the effective date of this subpart, the Total Development Cost Budget shall be revised, if financially feasible, to include the cost of the appraisals which are necessary for computation of the initial purchase prices pursuant to § 904.113. In the event this is not financially feasible, the matter shall be referred to HUD, which may, if necessary, authorize a different method for computation of such initial purchase prices on an equitable basis.

(5) With respect to all developments which were completed by the effective date of this subpart, the appraisals which are necessary for computation of the initial purchase prices pursuant to § 904.113 shall be made as of the date of completion of the development.

[39 FR 10966, Mar. 22, 1974. Redesignated at 40 FR 15580, Apr. 7, 1975, and 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 922, Jan. 9, 1991]

§ 904.102 Definitions.

(a) The term *common property* means the nondwelling structures and equipment, common areas, community facilities, and in some cases certain component parts of dwelling structures, which are contained in the development: *Provided, however,* That in the case of a development that is organized as a condominium or a planned unit development (PUD), the term *common property* shall have the meaning established by the condominium or PUD documents and the State law pursuant to which the condominium or PUD is organized, under the terms *common areas, common facilities, common elements, common estate,* or other similar terms.

(b) The term *development* means the entire undertaking including all real and personal property, funds and reserves, rights, interests and obligations, and activities related thereto.

(c) The term *EHPA* means the Earned Home Payments Account established and maintained pursuant to § 904.110.

(d) The term *homebuyer* means the member or members of a low-income family who have executed a Homebuyers Ownership Opportunity Agreement with the LHA.

(e) The term *homebuyers association* (HBA) means an organization as defined in § 904.106.

(f) The term *homeowner* means a homebuyer who has acquired title to his home.

(g) The term *homeowners association* means an association comprised of homeowners, including condominium associations, having responsibilities with respect to common property.

(h) The term *LHA* means the local housing authority which acquires or

develops a low-rent housing development with financial assistance from HUD, owns the homes until title is transferred to the homebuyers, and is responsible for the management of the homeownership opportunity program.

(i) The term *NRMR* means the Nonroutine Maintenance Reserve established and maintained pursuant to § 904.111.

(j) The term *Project* is used to refer to the development in relation to matters specifically related to the Annual Contributions Contract.

[39 FR 10966, Mar. 22, 1974, as amended at 61 FR 5214, Feb. 9, 1996]

§ 904.103 Development.

(a) *Financial framework.* The LHA shall finance development or acquisition by sale of its notes (bond financing shall not be used) in the amount of the Minimum Development Cost. Payment of the debt service on the notes is assured by the HUD commitment to provide annual contributions.

(b) *Maximum total development cost.* The maximum total development cost stated in the ACC is the maximum amount authorized for development of a project and shall not exceed the amount approved in accordance with § 941.406(a) of this chapter.

(c) *Contractual framework.* There are three basic contracts:

(1) An Annual Contributions Contract containing ''Special Provisions For Turnkey III Homeownership Opportunity Project,'' Form HUD–53010C (see Appendix I);

(2) A Homebuyers Ownership Opportunity Agreement (see Appendix II) which sets forth the respective rights and obligations of the low-income occupants and the LHA, including conditions for achieving homeownership; and

(3) A Recognition Agreement (see Appendix II of Subpart D of this part) between the LHA and the HBA under which the LHA agrees to recognize the HBA as the established representative of the homebuyers.

(d) *Community Participation Committee* (*CPC*). In the necessary development of citizens' participation in and understanding of the Turnkey III program, the LHA should consider formation and use of a CPC to assist the community and the LHA in the development and support of the Turnkey III program. The CPC shall be a voluntary group comprised of representatives of the low-income population primarily and may also include representatives of community service organizations.

[39 FR 10966, Mar. 22, 1974. Redesignated at 40 FR 15580, Apr. 7, 1975, and amended at 47 FR 39482, Sept. 8, 1982. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 53 FR 41598, Oct. 24, 1988]

§ 904.104 Eligibility and selection of homebuyers.

(a) *Announcement of availability of housing; fair housing marketing.* (1) The availability of housing under Turnkey III shall be announced to the community at large. Families on the waiting list for LHA conventional rental housing who wish to be considered for Turnkey III must apply specifically for that program (see paragraph (d) of this section).

(2) The LHA shall submit to HUD an Affirmative Fair Housing Marketing Plan and shall otherwise comply with the provisions of the Affirmative Fair Housing Marketing Regulations, 24 CFR part 200, subpart M, as if the LHA were an applicant for participation in an FHA housing program. This Plan shall be submitted with the development program, and no development program may be approved without prior approval of the Plan pursuant to HUD procedures under said Affirmative Fair Housing Marketing Regulations. If the development program has been approved, but the Annual Contributions Contract has not been executed, prior to the effective date of this subpart, an Affirmative Fair Housing Marketing Plan must be approved prior to execution of said contract.

(b) *Eligibility and standards for admission.* (1) Homebuyers shall be lower income families that are determined to be eligible for admission in accordance with the provisions of 24 CFR parts 5 and 913, which prescribe income definitions, income limits, and restrictions concerning citizenship or eligible immigration status. The HUD-approved standards for admission to low-rent housing, including the LHA's established priorities and preferences and the requirements for administration of

low-rent housing under Title VI of the Civil Rights Act of 1964 (Pub. L. 88–352, 78 Stat. 241, 42 U.S.C. 2000d), shall be applicable except that the procedures used for homebuyer selection under Turnkey III shall be those set forth in this section. In carrying out these procedures the aim shall be to provide for equal housing opportunity in such a way as to prevent segregation or other discrimination on the basis of race, creed, color or national origin in accordance with the Civil Rights Act of 1964 (Pub. L. 88–352, 78 Stat. 241, 42 U.S.C. 2000d) and 1968 (Pub. L. 90–284, 82 Stat. 73, 42 U.S.C. 3601).

(2) An LHA may establish income limits for Turnkey III which are different from those for its conventional rental program: *Provided* That those limits are in accord with all applicable statutory and administrative requirements and are approved by HUD.

(c) *Determination of eligibility and preparation of list.* The LHA, without participation of a recommending committee (see paragraph (e)(1) of this section), must determine the eligibility of each applicant family in respect to the income limits for the development (including the requirement that the applicant family disclose and verify Social Security Numbers, as provided by 24 CFR part 750, and sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 760), and must then assign each eligible applicant its appropriate place on a waiting list for the development, in sequence based upon the date of the application, suitable type or size of unit, qualification for a Federal preference in accordance with § 904.122, and factors affecting preference or priority established by the LHA's regulations. Notwithstanding the fact that the LHA may not be accepting additional applications because of the length of the waiting list, the LHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualifies for a Federal preference as provided in § 904.122(c)(2), unless the LHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to housing under Turnkey III, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference, and

(2) It is unlikely that, on the basis of the LHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission before other applicants on the waiting list.

(d) *List of applicants.* A separate list of applicants for Turnkey III shall be maintained, consisting of families who specifically apply and are eligible for admission to such housing.

(1) *Dating of applications.* All applications for Turnkey III shall be dated as received.

(2) *Effect on applicant status.* The filing of an application for Turnkey III by a family which is an applicant for LHA conventional rental housing or is an occupant of such housing shall in no way affect its status with regard to such rental housing. Such an applicant shall not lose his place on the rental housing waiting list until his application is accepted for Turnkey III and shall not receive any different treatment or consideration with respect to conventional rental housing because of having applied for Turnkey III.

(e) *Determination of potential for homeownership*—(1) *Recommending committee.* The LHA should consider use of a recommending committee to assist in the establishment of objective criteria for the determination of potential for homeownership and in the selection of homebuyers from the families determined to have such potential. If a recommending committee is used, it should be composed of representatives of the CPC (if any), the LHA and the HBA. The LHA shall submit to the committee prompt written justification of any rejection of a committee recommendation, stating grounds, the reasonableness of which shall be in accord with applicable LHA and HUD regulations. Each member of such a committee, at the time of appointment, shall be required to furnish the LHA with a signed statement that the member will (i) follow selection procedures

and policies that do not automatically deny admission to a particular class, that insure selection on a nondiscriminatory and nonsegregated basis, and that facilitate achievement of the anticipated results for occupancy stated in the approved Affirmative Fair Housing Marketing Plan, and (ii) maintain strict confidentiality by not divulging any information concerning applicants or the deliberations of the committee to any person except to the LHA as necessary for purposes of the official business of the committee.

(2) *Potential for homeownership.* In order to be considered for selection, a family must be determined to meet at least all of the following standards of potential for homeownership:

(i) Income sufficient to result in a required monthly payment which is not less than the sum of the amounts necessary to pay the EHPA, the NRMR, and the estimated average monthly cost of utilities attributable to the home;

(ii) Ability to meet all the obligations of a homebuyer under the Homebuyers Ownership Opportunity Agreement;

(iii) At least one member gainfully employed, or having an established source of continuing income.

(f) *Selection of homebuyers.* Homebuyers shall be selected from those families determined to have potential for homeownership. Such selection shall be made in sequence from the waiting list established in accordance with this section, provided that the following shall be assured:

(1) Selection procedures that do not automatically deny admission to a particular class; that ensure selection on a nondiscriminatory and nonsegregated basis; that give a Federal preference in accordance with § 904.122; and that facilitate achievement of the anticipated results for occupancy stated in the approved Affirmative Fair Housing Marketing Plan.

(2) Achievement of an average monthly payment for the Project, including consideration of the availability of the Special Family Subsidy, which is at least 10 percent more than the breakeven amount for the Project (see § 904.108). This standard shall be complied with both in the initial selection of homebuyers and in the subsequent filling of vacancies at all times during the life of the Project. If there is an applicant who has potential for homeownership but whose required monthly payment under the LHA's Rent Schedule would be less than the break-even amount for the suitable size and type of unit, such applicant may be selected as a homebuyer, provided that the incomes of all selected homebuyers shall result in the required average monthly payment of at least 10 percent more than the break-even amount for the Project. Such an average monthly payment for the Project may be achieved by selecting other low-income families who can afford to make required monthly payments substantially above the break-even amounts for their suitable sizes and types of units.

(g) *Notification to applicants.* (1) Once a sufficient number of applicants have been selected to assure that the provisions of paragraph (f)(2) of this section are met, the selected applicant shall be notified of the approximate date of occupancy insofar as such date can reasonably be determined.

(2) Applicants who are not selected for a specific Turnkey III development shall be notified in accordance with HUD-approved procedure. The notice shall state:

(i) The reason for the applicant's rejection (including a nonrecommendation by the recommending committee unless the applicant has previously been so notified by the committee);

(ii) That the applicant will be given an information hearing on such determination, regardless of the reason for the rejection, if the applicant makes a request for such a hearing within a reasonable time (to be specified in the notice) from the date of the notice; and

(iii) For denial of assistance for failure to establish citizenship or eligible immigration status, the applicant may request, in addition to the informal hearing, an appeal to the INS, in accordance with 24 CFR part 5.

(h) *Eligibility for continued occupancy.* (1) A homebuyer shall cease to be eligible for continued occupancy with the aid of HUD annual contributions when the LHA determines that the homebuyer's adjusted monthly income has

reached, and is likely to continue at, a level at which the current amount of the homebuyer's Total Tenant Payment, determined in accordance with part 913 of this chapter, equals or exceeds the monthly housing cost (see paragraph (h)(2) of this section). In such event, if the LHA determines, with HUD approval, that suitable financing is available, the LHA shall notify the homebuyer that he or she must either: (1) Purchase the home or (ii) move from the development. If, however, the LHA determines that, because of special circumstances, the family is unable to find decent, safe, and sanitary housing within the family's financial reach although making every reasonable effort to do so, the family may be permitted to remain for the duration of such a situation if it pays as rent an amount equal to Tenant Rent, as determined in accordance with part 913 of this chapter. Such a monthly payment shall also be payable by the family if it continues in occupancy without purchasing the home because suitable financing is not available.

(2) The term ''monthly housing cost,'' as used in this paragraph, means the sum of:

(i) The monthly debt service amount shown on the Purchase Price Schedule (except where the homebuyer can purchase the home by the method described in § 904.113(c)(1) of this part);

(ii) One-twelfth of the annual real property taxes which the homebuyer will be required to pay as a homeowner;

(iii) One-twelfth of the annual premium attributable to fire and extended coverage insurance carried by the LHA with respect to the home;

(iv) The current monthly per unit amount budgeted for routine maintenance (EHPA), and for routine maintenance-common property; and

(v) The current LHA and HUD approved monthly allowance for utilities paid for directly by the homebuyer plus the monthly cost of utilities supplied by the LHA.

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§ 904.105 Counseling of homebuyers.

The LHA shall provide counseling and training as provided in subpart C of this part, with funding as provided in § 904.206 of this part. Applicants for admission shall be advised of the nature of the counseling and training program available to them and the application for admission shall include a statement that the family agrees to participate and cooperate fully in all official pre-occupancy and post-occupancy training and counseling activities. Failure to participate as agreed may result in the family not being selected or retained as a homebuyer.

§ 904.106 Homebuyers Association (HBA).

An HBA is an incorporated organization composed of all the families who are entitled to occupancy pursuant to a Homebuyers Ownership Opportunity Agreement or who are homeowners. It is formed and organized for the purposes set forth in § 904.304 of this part. The HBA shall be funded as provided in § 904.305 of this part. In the absence of a duly organized HBA, the LHA shall be free to act without the HBA action required by this subpart.

§ 904.107 Responsibilities of homebuyer.

(a) *Repair, maintenance and use of home.* The homebuyer shall be responsible for the routine maintenance of the home to the satisfaction of the HBA and the LHA. This routine maintenance includes the work (labor and materials) of keeping the dwelling structure, grounds and equipment in good repair, condition and appearance so that they may be utilized continually at their designed capacities and at the satisfactory level of efficiency

for their intended purposes, and in conformity with the requirements of local housing code and applicable regulations and guidelines of HUD. It includes repairs (labor and materials) to the dwelling structure, plumbing fixtures, dwelling equipment (such as range and refrigerator), shades and screens, water heater, heating equipment and other component parts of the dwelling. It also includes all interior painting and the maintenance of grounds (lot) on which the dwelling is located. It does not include maintenance and replacements provided for by the NRMR described in §904.111.

(b) *Repair of damage.* In addition to the obligation for routine maintenance, the homebuyer shall be responsible for repair of any damage caused by him, members of his family, or visitors.

(c) *Care of home.* A homebuyer shall keep the home in a sanitary condition; cooperate with the LHA and the HBA in keeping and maintaining the common areas and property, including fixtures and equipment, in good condition and appearance; and follow all rules of the LHA and of the HBA concerning the use and care of the dwellings and the common areas and property.

(d) *Inspections.* A homebuyer shall agree to permit officials, employees, or agents of the LHA and of the HBA to inspect the home at reasonable hours and intervals in accordance with rules established by the LHA and the HBA.

(e) *Use of home.* A homebuyer shall not (1) sublet the home without the prior written approval of the LHA and HUD, (2) use or occupy the home for any unlawful purpose nor for any purpose deemed hazardous by insurance companies on account of fire or other risks, or (3) provide accommodations (unless approved by the HBA and the LHA) to boarders or lodgers. The homebuyer shall agree to use the home only as a place to live for the family (as identified in the initial application or by subsequent amendment with the approval of the LHA), for children thereafter born to or adopted by members of such family, and for aged or widowed parents of the homebuyer or spouse who may join the household.

(f) *Obligations with respect to other persons and property.* Neither the homebuyer nor any member of his family shall interfere with rights of other occupants of the development, or damage the common property or the property of others, or create physical hazards.

(g) *Structural changes.* A homebuyer shall not make any structural changes in or additions to the home unless the LHA has first determined in writing that such change would not (1) impair the value of the unit, the surrounding units, or the development as a whole, or (2) affect the use of the home for residential purposes, or (3) violate HUD requirements as to construction and design.

(h) *Statements of condition and repair.* When each homebuyer moves in, the LHA shall inspect the home and shall give the homebuyer a written statement, to be signed by the LHA and the homebuyer, of the condition of the home and the equipment in it. Should the homebuyer vacate the home, the LHA shall inspect it and give the homebuyer a written statement of the repairs and other work, if any, required to put the home in good condition for the next occupant (see §904.110(j)(1)). The homebuyer, his representative, and a representative of the HBA may join in any such inspections by the LHA.

(i) *Maintenance of common property.* The homebuyer may participate in nonroutine maintenance of his home and in maintenance of common property as discussed in §904.110(d) and §904.111(c).

(j) *Homebuyer's required monthly payment.* (1) The term ''required monthly payment'' as used herein means the monthly payment the homebuyer is required to pay the LHA on or before the first day of each month. The homebuyer's required monthly payment, which is based upon family income, shall be an amount equal to the Tenant Rent as determined in accordance with part 913 of this chapter. If the Utility Allowance, as defined in part 913 of this chapter, exceeds the Homebuyer's Total Tenant Payment, as determined in accordance with part 913, the LHA will pay a utility reimbursement equal to that excess to the Homebuyer, or as provided in §913.108 of this chapter.

(2) For purposes of determining eligibility of an applicant (see 24 CFR parts 5 and 913, as well as this part) and the

amount of Homebuyer payments under paragraph (j)(1) of this section, the LHA shall examine the family's income and composition and follow the procedures required by 24 CFR part 5 for determining citizenship or eligible immigration status before initial occupancy. Thereafter, for the purposes stated in this paragraph and to determine whether a Homebuyer is required to purchase the home under § 904.104(h)(1), the LHA shall reexamine the Homebuyer's income and composition regularly, at least once every 12 months, and shall undertake such further determination and verification of citizenship or eligible immigration status as required by 24 CFR part 5. The Homebuyer shall comply with the LHA's policy regarding required interim reporting of changes in the family's income and composition. If the LHA receives information from the family or other source concerning a change in the family income or other circumstances between regularly scheduled reexaminations, the LHA, upon consultation with the family and verification of the information (in accordance with 24 CFR parts 5 and 913 of this chapter) shall promptly make any adjustments determined to be appropriate in the Homebuyer payment amount or take appropriate action concerning the addition of a family member who is not a citizen with eligible immigration status. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment and Tenant Rent must be verified.

(3) The LHA shall not refuse to accept monthly payments because of any other charges (other than overdue monthly payments) owed by the homebuyer to the LHA; however, by accepting monthly payments under such circumstances the LHA shall not be deemed to have waived any of its rights and remedies with respect to such other charges.

(k) *Application of monthly payment.* The LHA shall apply the homebuyer's monthly payment as follows:

(1) To the credit of the homebuyer's EHPA (see § 904.110);

(2) To the credit of the homebuyer's NRMR (see § 904.111); and

(3) For payment of monthly operating expense including contribution to operating reserve (see § 904.109).

(l) *Assignment and survivorship.* Until such time as the homebuyer obtains title to the home, it shall be used only to house a family of low income. Therefore:

(1) A homebuyer shall not assign any right or interest in the home or under the Homebuyers Ownership Opportunity Agreement without the prior written approval of the LHA and HUD;

(2) In the event of death, mental incapacity or abandonment of the family by the homebuyer, the person designated as the successor in the Homebuyers Ownership Opportunity Agreement shall succeed to the rights and responsibilities under the Agreement if that person is an occupant of the home at the time of the event and is determined by the LHA to meet all of the standards of potential for homeownership as set forth in § 904.104(e)(2). Such person shall be designated by the homebuyer at the time the Homebuyers Ownership Opportunity Agreement is executed. This designation may be changed by the homebuyer at any time. If there is no such designation or the designee is no longer an occupant of the home or does not meet the standards of potential for homeownership, the LHA may consider as the homebuyer any family member who was an occupant at the time of the event and who meets the standards of potential for homeownership.

(3) If there is no qualified successor in accordance with paragraph (l) (2) of this section, the LHA shall terminate the Agreement and another family shall be selected except under the following circumstances: where a minor child or children of the homebuyer family are in occupancy, then in order to protect their continued occupancy and opportunity for acquisition of ownership of the home, the LHA may approve as occupants of the unit, an appropriate adult(s) who has been appointed legal guardian of the children with a duty to perform the obligations of the Homebuyers Ownership Opportunity Agreement in their interest and behalf.

(m) *Termination by LHA.* (1) In the event the homebuyer breaches the

Homebuyers Ownership Opportunity Agreement by failure to make the required monthly payment within ten days after its due date, by misrepresenting or withholding of information in applying for admission or in connection with any subsequent reexamination of income and family composition (including the failure to submit any required evidence of citizenship or eligible immigration status, as provided by 24 CFR part 5; the failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5; or the failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5), or by failure to comply with any of the other homebuyer obligations under the Agreement, the LHA may terminate the Agreement. No termination under this paragraph may occur less than 30 days after the LHA gives the homebuyer notice of its intention to do so, in accordance with paragraph (m)(3) of this section. For termination of assistance for failure to establish citizenship or eligible immigration status under 24 CFR part 5, the requirements of 24 CFR parts 5 and 966 shall apply.

(2) Notice of termination by the LHA shall be in writing. Such notice shall state

(i) The reason for termination,

(ii) That the homebuyer may respond to the LHA, in writing or in person, within a specified reasonable period of time regarding the reason for termination,

(iii) That in such response he may be represented or accompanied by a person of his choice, including a representative of the HBA,

(iv) That the LHA will consult the HBA concerning this termination, and

(v) That unless the LHA rescinds or modifies the notice, the termination shall be effective at the end of the 30-day notice period.

(n) *Termination by the homebuyer.* The homebuyer may terminate the Homebuyers Ownership Opportunity Agreement by giving the LHA 30 days notice in writing of this intention to terminate and vacate the home. In the event that the homebuyer vacates the home without notice to the LHA, the Agreement shall be terminated automatically and the LHA may dispose of, in any manner deemed suitable by it, any items of personal property left by the homebuyer in the home.

(o) *Transfer to rental unit.* (1) Inasmuch as the homebuyer was found eligible for admission to the Project on the basis of having the necessary elements of potential for homeownership, continuation of eligibility requires continuation of this potential, subject only to temporary unforeseen changes in circumstances. Accordingly, in the event it should develop that the homebuyer no longer meets one or more of these elements of homeownership potential, the LHA shall investigate the circumstances and provide such counseling and assistance as may be feasible in order to help the family overcome the deficiency as promptly as possible. After a reasonable time, not to exceed 30 days from the date of evaluation of the results of the investigation, the LHA shall make a re-evaluation as to whether the family has regained the potential for homeownership or is likely to do so within a further reasonable time, not to exceed 30 days from the date of the reevaluation. Further extension of time may be granted in exceptional cases, but in any event, a final determination shall be made no later than 90 days from the date of evaluation of the results of the initial investigation. The LHA shall invite the HBA to participate in all investigations and evaluations.

(2) If the final determination of the LHA, after considering the views of the HBA, is that the homebuyer should be transferred to a suitable dwelling unit in an LHA rental project, the LHA shall give the homebuyer written notice of the LHA determination of the loss of homeownership potential and of the offer of transfer to a rental unit. The notice shall state that the transfer shall occur as soon as a suitable rental unit is available for occupancy, but no earlier than 30 days from the date of the notice, provided that an eligible successor for the homebuyer unit has been selected by the LHA. The notice shall also state that if the homebuyer

should refuse to move under such circumstances, the family may be required to vacate the homebuyer unit, without further notice. The notice shall include a statement (i) that the homebuyer may respond to the LHA in writing or in person, within a specified reasonable time, regarding the reason for the determination and offer of transfer, (ii) that in such response he may be represented or accompanied by a person of his choice including a representative of the HBA, and (iii) that the LHA has consulted the HBA concerning this determination and offer of transfer.

(3) When a Homebuyers Ownership Opportunity Agreement is terminated pursuant to this paragraph (o), the amount in the homebuyer's EHPA shall be paid in accordance with the provisions of § 904.110(j).

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§ 904.108 Break-even amount.

(a) *Definition*. The term ''break-even amount'' as used herein means the minimum average monthly amount required to provide funds for the items listed in the illustration below. A separate break-even amount shall be established for each size and type of dwelling unit, as well as for the Project as a whole. The break-even amount for EHPA and NRMR will vary by size and type of dwelling unit; similar variations as to other line items may be made if the LHA deems this equitable.

Illustration. The following is an illustration of the computation of the break-even amount based upon hypothetical amounts.

(1) Operating Expense (see § 904.109):		
Administration	$8.50	
Homebuyer services	2.00	
Project supplied utilities	3.00	
Routine maintenance—common property	3.00	
Protective services	2.00	
General expense	6.50	
Nonroutine maintenance—common property (Contribution to operating reserve)	2.00	$27.00
(2) Earned Home Payments Account (see § 904.110)	.....	12.00
(3) Nonroutine Maintenance Reserve (see § 904.111)	.....	7.50
Break-Even Amount	.....	46.50

The break-even amount does not include the monthly allowance for utilities which the homebuyer pays for directly, nor does it include any amount for debt service on the Project notes.

(b) *Excess over break-even*. When the homebuyer's required monthly payment (see § 904.107(j)) exceeds the applicable break-even amount, the excess shall constitute additional Project income and shall be deposited and used in the same manner as other Project income.

(c) *Deficit in monthly payment*. When the homebuyer's required monthly payment is less than the applicable break-even amount, the deficit shall be applied as a reduction of that portion of the monthly payment designated for operating expense (i. e., as a reduction of Project income). In all such cases, the EHPA and the NRMR shall be credited with the amount included in the break-even amount for these accounts.

§ 904.109 Monthly operating expense.

(a) *Definition and categories of monthly operating expense*. The term ''monthly operating expense'' means the monthly amount needed for the following purposes:

(1) *Administration*. Administrative salaries, travel, legal expenses, office supplies, postage, telephone and telegraph, etc.;

(2) *Homebuyer services*. LHA expenses in the achievement of social goals, including costs such as salaries, publications, payments to the HBA to assist its operation, contract and other costs;

(3) *Utilities*. Those utilities (such as water), if any, to be furnished by the LHA as part of operating expense;

(4) *Routine maintenance—common property*. For community building, grounds, and other common areas, if any. The amount required for routine maintenance of common property depends upon the type of common property included in the development and the extent of the LHA's responsibility for maintenance (see also § 904.109(c));

(5) *Protective services*. The cost of supplemental protective services paid by the LHA for the protection of persons and property;

(6) *General expense.* Premiums for fire and other insurance, payments in lieu of taxes to the local taxing body, collection losses, payroll taxes, etc.;

(7) *Nonroutine maintenance—common property (Contribution to operating reserve).* Extraordinary maintenance of equipment applicable to the community building and grounds, and unanticipated items for non-dwelling structures (see §904.112).

(b) *Monthly operating expense rate.* The monthly operating expense rate for each fiscal year shall be established on the basis of the LHA's HUD-approved operating budget for that fiscal year. The operating budget may be revised during the course of the fiscal year in accordance with HUD requirements. If it is subsequently determined that the actual operating expense for a fiscal year was more or less than the amount provided by the monthly operating expense established for that fiscal year, the rate of monthly operating expenses to be established for the next fiscal year may be adjusted to account for the difference (see §904.112(b)). Such adjustment may result in a change in the required monthly payment, see §904.107(j)(3).

(c) *Provision for common property maintenance.* During the period the LHA is responsible for the maintenance of common property, the annual operating budget and the monthly operating expense rate shall include the amount required for routine maintenance of all common property in the development, even though a number of the homes may have been acquired by homebuyers. During such period, this amount shall be computed on the basis of the total number of homes in the development (i. e., the annual amount budgeted for routine maintenance of common property shall be divided by the number of homes in the development, resulting in the annual amount for each home; this figure shall in turn be divided by 12 to determine the monthly amount to be included in the monthly operating expense (and in the break-even amount) for routine maintenance of common property). After the home owners association assumes responsibility for maintenance of common property, the monthly operating expense (and break-even amount) shall include an amount equal to the monthly assessment by the homeowners association for the remaining homes owned by the LHA (see §904.112(b) for nonroutine maintenance of common property).

(d) *Posting of monthly operating expense statement.* A statement showing the budgeted monthly amount allocated in the current operating budget to each operating expense category shall be provided to the HBA and copies shall be provided to homebuyers upon request.

§904.110 Earned Home Payments Account (EHPA)

(a) *Credits to the account.* The LHA shall establish and maintain a separate EHPA for each homebuyer. Since the homebuyer is responsible for maintaining the home, a portion of his required monthly payment equal to the LHA's estimate, approved by HUD, of the monthly cost for such routine maintenance, taking into consideration the relative type and size of the homebuyer's home, shall be set aside in his EHPA. In addition, this account shall be credited with

(1) Any voluntary payments made pursuant to paragraph (f) of this section, and

(2) Any amount earned through the performance of maintenance as provided in paragraph (d) of this section and §904.111(c).

(b) *Charges to the account.* (1) If for any reason the homebuyer is unable or fails to perform any item of required maintenance as described in §904.107(a), the LHA shall arrange to have the work done in accordance with the procedures established by the LHA and the HBA and the cost thereof shall be charged to the homebuyer's EHPA. Inspections of the home shall be made jointly by the LHA and the HBA.

(2) To the extent NRMR expense is attributable to the negligence of the homebuyer as determined by the HBA and approved by the LHA (see §904.111), the cost thereof shall be charged to the EHPA.

(c) *Exercise of option; required amount in EHPA.* The homebuyer may exercise his option to buy the home, by paying the applicable purchase price pursuant

to § 904.113 or § 904.115, only after satisfying the following conditions precedent:

(1) Within the first two years of his occupancy, he has achieved a balance in his EHPA equal to 20 times the amount of the monthly EHPA credit as initially determined in accordance with paragraph (a) of this section;

(2) He has met, and is continuing to meet, the requirements of the Homebuyers Ownership Opportunity Agreement;

(3) He has rendered, and is continuing to render, satisfactory performance of his responsibilities to the HBA.

When the homebuyer has met these conditions precedent, the LHA shall give the homebuyer a certificate to that effect. After achieving the required minimum EHPA balance within the first two years of his occupancy, the homebuyer shall continue to provide the required maintenance, thereby continuing to add to his EHPA. If the homebuyer fails to meet either his obligation to achieve the minimum EHPA balance, as specified, or his obligation thereafter to continue adding to the EHPA, the LHA and the HBA shall investigate and take appropriate corrective action, including termination of the Agreement by the LHA in accordance with § 904.107(m).

(d) *Additional equity through maintenance of common property.* Homebuyers may earn additional EHPA credits by providing in whole or in part any of the maintenance necessary to the common property of the development. When such maintenance is to be provided by the homebuyer, this may be done and credit earned therefor only pursuant to a prior written agreement between the homebuyer and the LHA (or the home owners association, depending on who has responsibility for maintenance of the property involved), covering the nature and scope of the work and the amount of credit the homebuyer is to receive. In such cases, the agreed amount shall be charged to the appropriate maintenance account and credited to the homebuyer's EHPA upon completion of the work.

(e) *Investment of excess.* (1) When the aggregate amount of all EHPA balances exceeds the estimated reserve requirements for 90 days, the LHA shall notify the HBA and shall invest the excess in federally insured savings accounts, federally insured credit unions, and/or securities approved by HUD and in accordance with any recommendations made by the HBA. If the HBA wishes to participate in the investment program, it should submit periodically to the LHA a list of HUD-approved securities, bonds, or obligations which the association recommends for investment by the LHA of the funds in the EHPAs. Interest earned on the investment of such funds shall be prorated and credited to each homebuyer's EHPA in proportion to the amount in each such reserve account.

(2) Periodically, but not less often than semi-annually, the LHA shall prepare a statement showing (i) the aggregate amount of all EHPA balances; (ii) the aggregate amount of investments (savings accounts and/or securities) held for the account of all the homebuyers' EHPAs, and (iii) the aggregate uninvested balance of all the homebuyers' EHPAs. This statement shall be made available to any authorized representative of the HBA.

(f) *Voluntary payments.* To enable the homebuyer to acquire title to his home within a shorter period, he may, either periodically or in a lump sum, voluntarily make payments over and above his required monthly payments. Such voluntary payments shall be deposited to his credit in his EHPA.

(g) *Delinquent monthly payments.* Under exceptional circumstances as determined by the HBA and the LHA, a homebuyer's EHPA may be used to pay his delinquent required monthly payments, provided the amount used for this purpose does not seriously deplete the account and provided that the homebuyer agrees to cooperate in such counseling as may be made available by the LHA or the HBA.

(h) *Annual statement to homebuyer.* The LHA shall provide an annual statement to each homebuyer specifying at least (1) the amount in his EHPA, and (2) the amount in his NRMR. During the year, any maintenance or repair done on the dwelling by the LHA which is chargeable to the EHPA or to the NRMR shall be accounted for through a work order. A homebuyer shall receive

a copy of all such work orders for his home.

(i) *Withdrawal and assignment.* The homebuyer shall have no right to assign, withdraw, or in any way dispose of the funds in its EHPA except as provided in this section or in §904.113 and §904.115.

(j) *Application of EHPA upon vacating of dwelling.* (1) In the event a Homebuyers Ownership Opportunity Agreement with the LHA is terminated or if the homebuyer vacates the home (see §904.107 (m), (n) and (o)), the LHA shall charge against the homebuyer's EHPA the amounts required to pay

(i) The amount due the LHA, including the monthly payments the homebuyer is obligated to pay up to the date he vacates;

(ii) The monthly payment for the period the home is vacant, not to exceed 30 days from the date of notice of intention to vacate, or, if the homebuyer fails to give notice of intention to vacate, 30 days from the date the home is put in good condition for the next occupant in conformity with §904.107; and

(iii) The cost of any routine maintenance, and of any nonroutine maintenance attributable to the negligence of the homebuyer, required to put the home in good condition for the next occupant in conformity with §904.107.

(2) If the EHPA balance is not sufficient to cover all of these charges, the LHA shall require the homebuyer to pay the additional amount due. If the amount in the account exceeds these charges, the excess shall be paid to the homebuyer.

(3) Settlement with the homebuyer shall be made promptly after the actual cost of repairs to the dwelling has been determined (see paragraph (j)(1)(iii) of this section), provided that the LHA shall make every effort to make such settlement within 30 days from the date the homebuyer vacates. The homebuyer may obtain a settlement within 7 days of the date he vacates, even though the actual cost of such repair has not yet been determined, if he has given the LHA notice of intention to vacate at least 30 days prior to the date he vacates and if the amount to be charged against his EHPA for such repairs is based on the LHA's estimate of the cost thereof (determined after consultation with the appropriate representative of the HBA).

§904.111 Nonroutine Maintenance Reserve (NRMR).

(a) *Purpose of reserve.* The LHA shall establish and maintain a separate NRMR for each home, using a portion of the homebuyer's monthly payment. The purpose of the NRMR is to provide funds for the nonroutine maintenance of the home, which consists of the infrequent and costly items of maintenance and replacement shown on the Nonroutine Maintenance Schedule for the home (see paragraph (b) of this section). Such maintenance may include the replacement of dwelling equipment (such as range and refrigerator), replacement of roof, exterior painting, major repairs to heating and plumbing systems, etc. The NRMR shall not be used for nonroutine maintenance of common property, or for nonroutine maintenance relating to the home to the extent such maintenance is attributable to the Homebuyer's negligence or to defective materials or workmanship.

(b) *Amount of reserve.* The amount of the monthly payments to be set aside for NRMR shall be determined by the LHA, with the approval of HUD, on the basis of the Nonroutine Maintenance Schedule showing the amount likely to be needed for nonroutine maintenance of the home during the term of the Homebuyers Ownership Opportunity Agreement, taking into consideration the type of construction and dwelling equipment. This Schedule shall (1) list each item of nonroutine maintenance (e.g., range, refrigerator, plumbing, heating system, roofing, tile flooring, exterior painting, etc.), (2) show for each listed item the estimated frequency of maintenance or useful life before replacement, the estimated cost of maintenance or replacement (including installation) for each occasion, and the annual reserve requirement, and (3) show the total reserve requirements for all the listed items, on an annual and a monthly basis. This Schedule shall be prepared by the LHA and approved by HUD as part of the submission required to determine the financial feasibility of the Project. The Schedule shall be

revised after approval of the working drawings and specifications, and shall thereafter be reexamined annually in the light of changing economic conditions and experience.

(c) *Charges to NRMR.* (1) The LHA shall provide the nonroutine maintenance necessary for the home and the cost thereof shall be funded as provided in paragraph (c)(2) of this section. Such maintenance may be provided by the homebuyer but only pursuant to a prior written agreement with the LHA covering the nature and scope of the work and the amount of credit the homebuyer is to receive. The amount of any credit shall, upon completion of the work, be credited to the homebuyer's EHPA and charged as provided in paragraph (c)(2) of this section.

(2) The cost of nonroutine maintenance shall be charged to the NRMR for the home except that (i) to the extent such maintenance is attributable to the fault or negligence of the homebuyer, the cost shall be charged to the homebuyer's EHPA after consultation with the HBA if the hombuyer disagrees, and (ii) to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty, or even though covered by warranty if not paid for thereunder through no fault or negligence of the homebuyer, the cost shall be charged to the appropriate operating expense account of the Project.

(3) In the event the amount charged against the NRMR exceeds the balance therein, the difference (deficit) shall be made up from continuing monthly credits to the NRMR based upon the homebuyer's monthly payments. If there is still a deficit when the homebuyer acquires title, the homebuyer shall pay such deficit at settlement (see paragraph (d)(2) of this section).

(d) *Transfer of NRMR.* (1) In the event the Homebuyer's Ownership Opportunity Agreement is terminated, the homebuyer shall not receive any balance or be required to pay any deficit in the NRMR. When a subsequent homebuyer moves in, the NRMR shall continue to be applicable to the home in the same amount as if the preceding homebuyer had continued in occupancy.

(2) In the event the homebuyer purchases the home, and there remains a balance in the NRMR, the LHA shall pay such balance to the homebuyer at settlement. In the event the homebuyer purchases and there is a deficit in the NRMR, the homebuyer shall pay such deficit to the LHA at settlement.

(e) *Investment of excess.* (1) When the aggregate amount of the NRMR balances for all the homes exceeds the estimated reserve requirements for 90 days the LHA shall invest the excess in federally insured savings accounts, federally insured credit unions, and/or securities approved by HUD. Income earned on the investment of such funds shall be prorated and credited to each homebuyer's NRMR in proportion to the amount in each reserve account.

(2) Periodically, but not less often than semi-annually, the LHA shall prepare a statement showing (i) the aggregate amount of all NRMR balances, (ii) the aggregate amount of investments (savings accounts and/or securities) held for the account of the NRMRs, and (iii) the aggregate uninvested balance of the NRMRs. A copy of this statement shall be made available to any authorized representative of the HBA.

§ 904.112 Operating reserve.

(a) *Purpose of reserve.* To the extent that total operating receipts (including subsidies for operations) exceed total operating expenditures of the Project, the LHA shall establish an operating reserve up to the maximum approved by HUD in connection with its approval of the annual operating budgets for the Project. The purpose of this reserve is to provide funds for

(1) The infrequent but costly items of nonroutine maintenance and replacements of common property, taking into consideration the types of items which constitute common property, such as nondwelling structures and equipment, and in certain cases, common elements of dwelling structures,

(2) Nonroutine maintenance for the homes to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty,

(3) Working capital for payment of a deficit in a homebuyer's NRMR, until such deficit is offset by future monthly

payments by the homebuyer or at settlement in the event the homebuyer should purchase, and

(4) A deficit in the operation of the Project for a fiscal year, including a deficit resulting from monthly payments totaling less than the break-even amount for the Project.

(b) *Nonroutine maintenance—common property (Contribution to operating reserve).* The amount under this heading to be included in operating expense (and in the break-even amount) established for the fiscal year (see §904.108 and §904.109) shall be determined by the LHA, with the approval of HUD, on the basis of estimates of the monthly amount needed to accumulate an adequate reserve for the items described in paragraph (a)(1) of this section. This amount shall be subject to revision in the light of experience. This contribution to the operating reserve shall be made only during the period the LHA is responsible for the maintenance of any common property; and during such period, the amount shall be determined on the basis of the requirements of all common property in the development in a manner similar to that explained in §904.109(c). When the operating reserve reaches the maximum authorized in paragraph (c) of this section, the break-even (monthly operating expense) computations (see §§904.108 and 904.109) for the next and succeeding fiscal years need not include a provision for this contribution to the operating reserve unless the balance of the reserve is reduced below the maximum during any such succeeding fiscal year.

(c) *Maximum operating reserve.* The maximum operating reserve that may be retained by the LHA at the end of any fiscal year shall be the sum of (1) one-half of total routine expense included in the operating budget approved for the next fiscal year and (2) one-third of total break-even amounts included in the operating budget approved for the next fiscal year; provided that such maximum may be increased if necessary as determined or approved by HUD. Total routine expense means the sum of the amounts budgeted for administration, homebuyers services, LHA-supplied utilities, routine maintenance of common property, protective services, and general expense or other category of day-to-day routine expense (see §904.109 above for explanation of various categories of expense).

(d) *Transfer to homeowners association.* The LHA shall be responsible for and shall retain custody of the operating reserve until the homeowners acquire voting control of the homeowners association (see §§904.118(c) and 904.119(f). When the homeowners acquire voting control, the homeowners association shall then assume full responsibility for management and maintenance of common property under a plan approved by HUD, and there shall be transferred to the homeowners association a portion of the operating reserve then held by the LHA. The amount of the reserve to be transferred shall be based upon the proportion that one-half of budgeted routine expense (used as a basis for determining the current maximum operating reserve—see paragraph (c) of this section) bears to the approved maximum operating reserve. Specifically, the portion of operating reserve to be transferred shall be computed as follows: Obtain a percentage by dividing one-half of budgeted routine expense by the approved maximum operating reserve; and multiply the actual operating reserve balance by this percentage.

(e) *Disposition of reserve.* If, at the end of a fiscal year, there is an excess over the maximum operating reserve this excess shall be applied to the operating deficit of the Project, if any, and any remainder shall be paid to HUD. Following the end of the fiscal year in which the last home has been conveyed by the LHA, the balance of the operating reserve held by the LHA shall be paid to HUD, provided that the aggregate amount of payments by the LHA under this paragraph shall not exceed the aggregate amount of annual contributions paid by HUD with respect to the Project.

§904.113 Achievement of ownership by initial homebuyer.

(a) *Determination of initial purchase price.* The LHA shall determine the initial purchase price of the home by two basic steps, as follows:

Step 1: The LHA shall take the Estimated Total Development Cost (including the full

amount for contingencies as authorized by HUD) of the development as shown in the Development Cost Budget in effect upon award of the Main Construction Contract or execution of the Contract of Sale, and shall deduct therefrom the amounts, if any, attributed to (1) relocation costs, (2) counseling and training costs, and (3) the cost of any community, administration or management facilities including the land, equipment, and furnishings attributable to such facilities as set forth in the development program for the development. The resulting amount is herein called Estimated Total Development Cost for Homebuyers.

Step 2: The LHA shall apportion the Estimated Total Development Cost for Homebuyers among all the homes in the development. This apportionment shall be made by obtaining an FHA appraisal of each home and adjusting such appraised values (upward or downward) by the percentage difference between the total of the appraisal for all the Homes and the Estimated Total Development Cost for Homebuyers. The adjusted amount for each home shall be the initial purchase price for that home.

(b) *Purchase price schedule.* Each homebuyer shall be provided with a Purchase Price Schedule showing (1) the monthly declining purchase price over a 30-year period,[1] commencing with the initial purchase price on the first day of the month following the effective date of the Homebuyers Ownership Opportunity Agreement and (2) the monthly debt service amount upon which the Schedule is based. The Schedule and debt service amount shall be computed on the basis of the initial purchase price, a 30-year period,[2] and a rate of interest equal to the minimum loan interest rate as specified in the Annual Contributions Contract for the Project on the date of HUD approval of the Development Cost Budget, described in paragraph (a) of this section, rounded up, if necessary, to the next multiple of one-fourth of one percent (¼ percent).

(c) *Methods of purchase.* (1) The homebuyer may achieve ownership when the amount in his EHPA, plus such portion of the NRMR as he wishes to use for the purchase, is equal to the purchase price as shown at that time on his Purchase Price Schedule plus all Incidental Costs (Incidental Costs mean the costs incidental to acquiring ownership, including, but not limited to, the costs for a credit report, field survey, title examination, title insurance, and inspections, the fees for attorneys other than the LHA's attorney, mortgage application and organization, closing and recording, and the transfer taxes and loan discount payment, if any). If for any reason title to the home is not conveyed to the homebuyer during the month in which such circumstances occur, the purchase price shall be fixed at the amount specified for such month and the homebuyer shall be refunded (i) the net additions, if any, credited to his EHPA subsequent to such month, and (ii) such part of the monthly payments made by the homebuyer after the purchase price has been fixed which exceeds the sum of the break-even amount attributable to the unit and the interest portion of the debt service shown in the Purchase Price Schedule.

(2) Where the sum of the purchase price and Incidental Costs is greater than the amounts in the homebuyer's EHPA and NRMR as described in paragraph (c)(1) of this section, the homebuyer may achieve ownership by obtaining financing for or otherwise paying the excess amount. The purchase price shall be the amount shown on his Purchase Price Schedule for the month in which the settlement date for the purchase occurs.

(d) The maximum period for achieving ownership shall be 30 years, but depending upon increases in the homebuyers income and the amount of credit which the homebuyer can accumulate through maintenance and voluntary payments, the period may be shortened accordingly.

[1] Change to 25-year period where appropriate pursuant to § 904.101(b)(3).

[2] Under section 234(c) of the National Housing Act, as of the date of publication of this subpart, mortgage insurance for a condominium unit in a multi-family project is generally authorized only if the project is currently or has been covered by a mortgage insured under another section of the National Housing Act. There is, however, a proviso which authorizes mortgage insurance for a condominium unit in a multi-family project even though the project is not or has not been covered by such a project mortgage, if the project involves eleven or less units.

§ 904.114 Payment upon resale at profit.

(a) *Promissory note.* (1) When a homebuyer achieves ownership (regardless of whether ownership is achieved under § 904.113 or § 904.115), he shall sign a note obligating him to make a payment to the LHA, subject to the provisions of paragraph (a)(2) or this section, in the event he resells his home at a profit within 5 years of actual residence in the home after he becomes a homeowner. If, however, the homeowner should purchase and occupy another home within one year (18 months in case of a newly constructed home) of the resale of the Turnkey III home, the LHA shall refund to the homeowner the amount previously paid by him under the note, less the amount, if any, by which the resale price of the Turnkey III home exceeds the acquisition price of the new home, provided that application for such refund shall be made no later than 30 days after the date of acquisition of the new home.

(2) The note to be signed by the homebuyer pursuant to paragraph (a)(1) of this section shall be a non interest-bearing promissory note (see Appendix IV) to the LHA. The note shall be executed at the time the homebuyer becomes a homeowner and shall be secured by a second mortgage. The initial amount of the note shall be computed by taking the appraised value of the home at the time the homebuyer becomes a homeowner and subtracting (i) the homebuyer's purchase price plus the Incidental Costs and (ii) the increase in value of the home, determined by appraisal, caused by improvements paid for by the homebuyer with funds from sources other than the EHPA or NRMR. The note shall provide that this initial amount shall be automatically reduced by 20 percent thereof at the end of each year of residency as a homeowner, with the note terminating at the end of the five-year period of residency, as determined by the LHA. To protect the homeowner, the note shall provide that the amount payable under it shall in no event be more than the net profit on the resale, that is, the amount by which the resale price exceeds the sum of (A) the homebuyer's purchase price plus the Incidental Costs, (B) the costs of the resale, including commissions and mortgage prepayment penalties, if any, and (C) the increase in value of the home, determined by appraisal, due to improvements paid for by him as a homebuyer (with funds from sources other than the EHPA or NRMR) or as a homeowner.

(3) Amounts collected by the LHA under such notes shall be retained by the LHA for use in making refunds pursuant to paragraph (a)(1) of this section. After expiration of the period for the filing of claims for such refunds, any remaining amounts shall be applied (i) to reduce the LHA's capital indebtedness on the Project and (ii) after such indebtedness has been paid, for such purposes as may be authorized or approved by HUD under such Annual Contributions Contract as the LHA may then have with HUD.

Illustration. If the homeowner's purchase price is $10,000, the Incidental Costs are $500, the value added by improvements is $1,000, and the FHA appraised value at the time he acquires ownership is $17,000, the note computation would be as follows:

FHA appraised value	.....	$17,000
Homeowner's purchase price	$10,000	.....
Incidental costs	500	.....
Improvements	1,000	11,500
Initial note amount	.....	5,500

In this example, the amount of the note during the first year of residence is $5,500. In the second year, the amount of the note is $4,400, and in the third year, it is $3,300, etc. The note shall terminate at the end of the fifth year.

If the homeowner in this example resells his home during the first year for a sales price of $17,500, has resale costs of $1,600 (including a sales commission), and has added $1,500 value by further improvements, he would be required to pay the LHA $2,900 rather than the $5,500, as indicated in the following computations:

Resale price	.....	$17,500
Resale costs	$1,600	.....
Purchase price and Incidental costs	10,500	.....
All improvements	2,500	14,600
Payable to LHA	.....	2,900

(b) *Residency requirements.* The five-year note period does not end if the homeowner rents or otherwise does not use the home as his principal place of residence for any period within the first five years after he achieves ownership. Only the actual amount of time

he is in residence is counted and the note shall be in effect until a total of five years time of residence has elapsed, at which time the homeowner may request the LHA to release him from the note, and the LHA shall do so.

§ 904.115 Achievement of ownership by subsequent homebuyers.

(a) *Definition.* In the event the initial homebuyer and his family vacate the home before having acquired ownership, a subsequent occupant who enters into a Homebuyer's Ownership Opportunity Agreement and who is not a successor pursuant to § 904.107(l)(2) is herein called a ''subsequent homebuyer.''

(b) *Determination of initial purchase price.* The initial purchase price for a subsequent homebuyer shall be an amount equal to (1) the purchase price shown in the initial homebuyer's Purchase Price Schedule as of the date of this Agreement with the subsequent homebuyer plus (2) the amount, if any, by which the appraised fair market value of the home, determined or approved by HUD as of the same date, exceeds the purchase price specified in paragraph (b)(1) of this section.

(c) *Purchase price schedule.* The subsequent homebuyer's Purchase Price Schedule shall be the same as the unexpired portion of the initial homebuyer's Purchase Price Schedule except that where his purchase price includes an additional amount as specified in paragraph (b)(2) of this section, the initial homebuyer's Purchase Price Schedule shall be followed by an Additional Purchase Price Schedule for such additional amount based upon the same monthly debt service and the same interest rate as applied to the initial homebuyer's Purchase Price Schedule.

(d) *Residual receipts.* After payment in full of the LHA's debt, if there are any subsequent homebuyers who have not acquired ownership of their homes, the LHA shall continue to pay to HUD all residual receipts from the operation of the Project, including payments received on account of any Additional Purchase Price Schedules applicable to the homes, provided the aggregate amount of such payments of residual receipts does not exceed the aggregate amount of annual contributions paid by HUD with respect to the Project.

§ 904.116 Transfer of title to homebuyer.

When the homebuyer is to obtain ownership as described in § 904.113 or § 904.115, a closing date shall be mutually agreed upon by the parties. On the closing date the homebuyer shall pay the required amount of money to the LHA, sign the promissory note pursuant to § 904.114, and receive a deed for the home.

§ 904.117 Responsibilities of homebuyer after acquisition of ownership.

After acquisition of ownership, each homeowner shall be required to pay to the LHA or to the homeowners association, as appropriate, a monthly fee for (a) the maintenance and operation of community facilities including utility facilities, if any, (b) the maintenance of grounds and other common areas and, (c) such other purposes as determined by the LHA or the homeowners association, as appropriate, including taxes and a provision for a reserve. This requirement shall be set out in the planned unit development or condominium documents which shall be recorded prior to the date of full availability, or in an LHA-homeowner contract in this regard.

§ 904.118 Homeowners association—planned unit development (PUD).

If the development is organized as a planned unit development:

(a) *Ownership and maintenance of common property.* The common areas, sidewalks, parking lots, and other common property in the development shall be owned and maintained as provided for in the approved planned unit development (PUD) program except that the LHA shall be responsible for maintenance until such time as the homeowners association assumes such responsibility (see § 904.112(d)).

(b) *Title restrictions.* The title ultimately conveyed to each homebuyer shall be subject to restrictions and encumbrances to protect the rights and property of all other owners. The homeowners association shall have the

right and obligation to enforce such restrictions and encumbrances and to assess owners for the costs incurred in connection with common areas and property and other responsibilities.

(c) *Votes in association.* There shall be as many votes in the association as there are homes in the development, and, at the outset, all the voting rights shall be held by the LHA. As each home is conveyed to the homebuyer, one vote shall automatically go to the homeowner so that, when all the homes have been conveyed, the LHA shall no longer have any interest in the homeowners association.

(d) *Voting control.* The LHA shall not lose its majority voting interest in the association as soon as a majority of the homes have been conveyed, unless the law of the state requires control to be transferred at a particular time, or the LHA so desires. If permitted by state law, provision shall be made for each home owned by the LHA to carry three votes, while each home owned by a homeowner shall carry one vote. Under this weighted voting plan, the LHA shall continue to have voting control until 75 percent of the homes have been acquired by homeowners. However, at its discretion, the LHA may transfer voting control to the homeowners when at least 50 percent of the homes have been acquired by the homeowners.

§ 904.119 Homeowners association—condominium.

If the development is organized as a condominium:

(a) The LHA at the outset shall own each condominium unit and its undivided interest in the common areas;

(b) All the land, including that land under the housing units, shall be a part of the common areas;

(c) The homeowners association shall own no property but shall maintain and operate the common areas for the individual owners of the condominium units except that the LHA shall be responsible for maintenance until such time as the homeowners association assumes such responsibility (see § 904.112(d));

(d) The percentage of undivided interest attached to each condominium unit shall be based on the ratio of the value of the units to the value of all units and shall be fixed when the development is completed. This percentage shall determine the homeowner's liability for the maintenance of the common areas and facilities;

(e) Each homeowner's vote in the homeowners association shall be identical with the percentage of undivided interest attached to his unit; and

(f) The LHA shall not lose its majority voting interest in the association as soon as units representing 50 percent of the value of all units have been conveyed, unless the law of the state requires control to be transferred at a particular time or the LHA so desires. For voting purposes, until units representing 75 percent of the value of all units have been acquired by homeowners, the total undivided interest attributable to the homes owned by the LHA shall be multiplied by three, if such weighted voting plan is permitted by state law. Under this plan, the LHA shall continue to maintain voting control until 75 percent of the homes have been acquired by homeowners. However, at its discretion, the LHA may transfer voting control to the homeowners when units representing at least 50 percent of the value of all units have been acquired by the homeowners.

§ 904.120 Relationship of homeowners association to HBA.

The HBA and the LHA may make arrangements to permit homebuyers to participate in homeowners association matters which affect the homebuyers. Such arrangements may include rights to attend meetings and to participate in homeowners association deliberations and decisions.

§ 904.121 Use of appendices.

Use of the following Appendices is mandatory for Projects developed under this subpart:

§ 904.122 Statutory preferences.

In selecting applicants for assistance under this part, the LHA must give preference, in accordance with the authorized preference requirements described in 24 CFR 5.410 through 5.430. Notwithstanding those preferences, the

LHA can limit homeownership admission to eligible homeownership candidates.

[59 FR 36651, July 18, 1994, as amended at 61 FR 9048, Mar. 6, 1996]

APPENDIX I—ANNUAL CONTRIBUTIONS CONTRACT ''SPECIAL PROVISIONS FOR TURNKEY III HOMEOWNERSHIP OPPORTUNITY PROJECT''
APPENDIX II—HOMEBUYERS OWNERSHIP OPPORTUNITY AGREEMENT (TURNKEY III)
APPENDIX III—CERTIFICATE OF ACHIEVEMENT OF HOMEBUYER STATUS
APPENDIX IV—PROMISSORY NOTE FOR PAYMENT UPON RESALE BY HOMEBUYER AT PROFIT

No modification may be made in format, content or text of these Appendices except (1) as required under state or local law as determined by HUD or (2) with approval of HUD.

APPENDIX I TO SUBPART B OF PART 904—ANNUAL CONTRIBUTIONS CONTRACT

(Subpart B)

( ) Special Provisions for Turnkey III Homeownership Opportunity Project No. _____.

(1) The Local Authority agrees to operate the Project in accordance with requirements for the Homeownership Opportunity Program for Low-Income Families (Turnkey III) as prescribed by the Government. The Local Authority shall enter into an agreement with the occupant of each dwelling unit in the Project which agreement shall be in the form of the Homebuyers Ownership Opportunity Agreement approved by the Government, which form provides an opportunity for the acquisition of ownership of the dwelling unit by each occupant who has performed all of the obligations and conditions precedent imposed upon him by such agreement. Upon conveyance of any such dwelling unit, the Local Authority's outstanding obligations in respect to the Project shall be reduced by the amount received for such conveyance, and the Government's obligation for payment of annual contributions in respect to the Project shall be reduced by the amount allocable to the initial purchase price of the dwelling unit. The term ''initial purchase price'' as used in these Special Provisions shall have the same meaning as in the Homebuyers Ownership Opportunity Agreement, and the term ''dwelling unit'' shall have the same meaning as the term ''Home'' used in the Homebuyers Ownership Opportunity Agreement.

(2) Failure of the Local Authority to enter into such Homebuyers Ownership Opportunity Agreements at the time and in the form as required by the Government, failure to perform any such agreement, and failure to meet any of its obligations under these Special Provisions shall constitute a Substantial Default under this Contract.

(3) The books of account and records of the Local Authority shall be maintained to meet the requirements of the Homebuyers Ownership Opportunity Agreement as well as the other provisions of this Contract and in such manner as will at all times show the operating receipts, operating expenditures, reserves, residual receipts, and other required accounts for the Project separate and distinct from all other Projects under this Contract.

(4) As of the Date of Full Availability, or at such earlier date as the Government may require, the Local Authority shall determine and submit to the Government for its approval the amount below which the Development Cost of the Project will in no event fall. Upon approval thereof by the Government, such amount shall constitute and be known as the ''Minimum Development Cost'' of the Project. The Local Authority shall issue its Project Loan Notes, Permanent Notes or Project Notes as the Government may require to finance the Minimum Development Cost. On each Annual Contribution Date the Government shall pay an annual contribution for the Project in an amount equal to the Maximum Contribution Percentage of the latest approved Minimum Development Cost. The first annual contribution shall be paid or made available as of the next Annual Contribution Date following the approval of the Minimum Development Cost of the Project.

(5) Notwithstanding section 403(A)(4), the term ''Development Cost'' shall include interest on that portion of borrowed monies allocable to the Project for the period ending with the Date of Full Availability or such earlier date as may be specifically approved by the Government.

(6) (a) During the __[1] year Maximum Contribution Period established for the Project, the Local Authority shall, within 60 days after the end of each Fiscal Year, pay to the Government all Residual Receipts of the Project for such Fiscal Year for application to the reduction of Annual Contributions payable by the Government with respect to the Project.

(b) During the period of years immediately following and equal to the Maximum Contribution Period established for the Project, the Local Authority shall, within 60 days after the end of each Fiscal Year, pay to the Government all Residual Receipts of the Project for such Fiscal Year.

(c) Following the end of the Fiscal Year in which the last dwelling unit has been conveyed by the Local Authority, the balance of

[1] 25 or 30, as applicable.

the operating reserve held by the Local Authority shall be paid to the Government, provided that the aggregate amount of payments under (b) and (c) of this paragraph shall not exceed the aggregate amount of annual contributions paid by the Government with respect to the Project.

(7) No part of the Funds on deposit in the Debt Service Fund or the Advance Amortization Fund with respect to any other Project under this Contract or the funds available for deposit in such Funds for such other Projects, shall be applied to the retirement of Notes issued for this Project, nor shall any such funds on deposit for this Project be used with respect to any other Project or Projects under this Contract.

(8) To the extent that the provisions of this section conflict with other provisions of this Contract, the provisions of this section shall be controlling with respect to the Project.

APPENDIX II TO SUBPART B OF PART 904—HOMEBUYERS OWNERSHIP OPPORTUNITY AGREEMENT (TURNKEY III)

(Subpart B)

PART I

This Agreement, made and entered into _____, 19__, by and between _____ (herein called the ''Authority''), and _____ (herein called the ''Homebuyer'');

WITNESSETH:

In consideration of the agreements and covenants contained in this Agreement and in Homebuyers Ownership Opportunity Agreement Part II, which is hereby incorporated into this Agreement by reference, the Authority leases to the Homebuyer the following described land and improvements thereon together with an undivided interest in all common areas and property (herein called the ''Home'') located in the _____ Development (Project No. ____), which Home is identified and located as follows: [Insert address and legal description of location of Home, including rights with respect to common areas and property, and making reference to Book and Page No. in Recorder of Deeds Recorded].

A. *Term of Agreement.* The term of this Agreement shall commence on _____, 19__, and shall expire at midnight on the last day of this same calendar month. Said term shall be extended automatically for successive periods of one calendar month for a total term of ___[1] years from the first day of the next calendar month unless the Homebuyer acquires title to the home pursuant to section 16 or 17 of Part II, as applicable, or unless this Agreement is terminated pursuant to section 24 of Part II.

B. *Monthly Payment.* 1. Until changed in accordance with this Agreement, the Homebuyer's Monthly Payment shall be $___ per month, due and payable on or before the first day of each month. If liability for the Monthly Payment shall start on a day other than the first day of a calendar month, or if for any reason the effective date of termination occurs on other than the last day of the month, the Monthly Payment for such month shall be proportionate to the period of occupancy during that month.

2. The amount of the Monthly Payment may be increased or decreased only by reason of changes in the Rent Schedule (see section 7c of Part II) or changes in the Homebuyer's family income or other circumstances (see section 7b of Part II). Any change in Monthly Payment shall become effective by written notice from the Authority to the Homebuyer as of the date specified in such notice, and such notice shall be deemed to constitute an Amendment to this Agreement.

C. *Option to Purchase.* In consideration of the covenants contained herein, the Authority grants the Homebuyer an option to purchase the Home for the applicable purchase price, to be exercised in accordance with section 10d of Part II.

D. *Purchase Price.* The Initial Purchase Price of this Home is $_____ (this price has been determined in accordance with section 16 or 17 of Part II as applicable); this amount shall be reduced periodically in accordance with the schedule (hereinafter called Purchase Price Schedule) for that amount, which Schedule is hereby furnished the Homebuyer.

E. *Amount of NRMR.* The balance (or deficit) in the NRMR on the date of this Agreement is $_____.

F. *Homebuyers Association.* Upon the signing of this Agreement, the Homebuyer's family automatically becomes a member of the Homebuyers Association, as provided in section 5 of Part II.

G. *Designation of Successor.* For the purpose of section 25 of Part II, the designee and his address are: _____

_____
First Name Initial Last Name

_____
Relationship

H. *Entire Agreement.* THIS AGREEMENT (COMPRISING PARTS I AND II, THE PURCHASE PRICE SCHEDULE, THE NONROUTINE MAINTENANCE SCHEDULE, AND THE PROMISSORY NOTE) IS THE ENTIRE AGREEMENT BETWEEN THE AUTHORITY AND THE HOMEBUYER, AND, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, NO CHANGES SHALL BE MADE

[1] Fill in term of years equal to term of Purchase Price Schedule (and Additional Purchase Price Schedule, if applicable) (see Section 16 or 17 of Part II as applicable).

OTHER THAN IN WRITING SIGNED BY THE AUTHORITY AND THE HOMEBUYER.

THIS AGREEMENT is signed in duplicate, original for all purposes. The Homebuyer hereby acknowledges receipt of one of these signed copies.

WITNESSES:

_____

_____

The Authority:
By _____

(Official Title)

The Homebuyer(s):
Initial
Subsequent

_____

_____

PART II

TERMS AND CONDITIONS

1. *Introduction*— a. *The Home.* The Home described in Part I of this Agreement is part of a Development, which the Authority has acquired or caused to be constructed. This Development contains a number of dwelling units including related land, and may also include common areas and property as described in Part I for occupancy by low-income families under lease-purchase agreements, each in the form of this Homebuyers Ownership Opportunity Agreement. This Development is financed by sale of the Authority's notes which will be amortized over the period of years specified in the Annual Contributions Contract relating to this Development.

b. *Annual Contributions Contract.* The Authority has entered into an Annual Contributions Contract (''ACC'') with the Department of Housing and Urban Development (''HUD'') under which the Authority will receive Annual Contributions provided by HUD, and will perform certain operational functions, to provide housing for the Homebuyers and assist the Homebuyers in achieving homeownership.

c. *Management.* The Authority may enter into a contract or contracts for management of the Development or for performance of management functions, by the Homebuyers Association (see section 5) or others.

d. *Definitions.*

(1) The term ''Authority'' means the local housing authority which acquires or develops a low-rent housing development with financial assistance from HUD, owns the Homes until title is transferred to the Homebuyers, and is responsible for the management of the homeownership opportunity program.

(2) The term ''common property'' means the nondwelling structures and equipment, common areas, community facilities, and in some cases certain component parts of dwelling structures, which are contained in the Development: *Provided, however,* That in the case of a Development that is organized as a condominium or a planned unit development (PUD), the term ''common property'' shall have the meaning established by the condominium or PUD documents and the State law pursuant to which the condominium or PUD is organized, under the terms, ''common areas,'' ''common facilities,'' ''common elements,'' ''common estate,'' or other similar terms.

(3) The term ''Development'' means the entire undertaking including all real and personal property, funds and reserves, rights, interests and obligations, and activities related thereto.

(4) The term ''EHPA'' means the Earned Home Payments Account established and maintained pursuant to section 10 of the Agreement.

(5) The term ''Homebuyer'' means the member or members of a low-income family who have executed a Homebuyers Ownership Opportunity Agreement with the Authority.

(6) The term ''Homebuyers Association'' (HBA) means an organization as defined in section 5 of this Agreement.

(7) The term ''Homeowner'' means a Homebuyer who has acquired title to his Home.

(8) The term ''Homeowners Association'' means an association comprised of Homeowners, including condominium associations, having responsibilities with respect to common property.

(9) The term ''HUD'' means the Department of Housing and Urban Development which provides the Authority with financial assistance through loans and annual contributions and technical assistance in development and operation.

(10) The term ''NRMR'' means the Nonroutine Maintenance Reserve established and maintained pursuant to section 11 of this Agreement.

(11) The term ''Project'' is used to refer to the Development in relation to matters specifically related to the Annual Contributions Contract.

2. *The Homebuyers Ownership Opportunity Agreement.* Under this Homebuyers Ownership Opportunity Agreement, the Homebuyer may achieve ownership of the home described in Part I by making the required monthly payments and providing maintenance and repairs to build up a credit in his Earned Home Payments Account (hereinafter called ''EHPA''). While the Homebuyer is performing his obligations, the purchase price will be reduced in accordance with the Purchase Price Schedule, so that, while this purchase price is being reduced, the Homebuyer is increasing the amount of his EHPA. The Homebuyer may also make voluntary payments to his EHPA which will enable him to acquire ownership more quickly. The Homebuyer may take title to his Home when

he is able to finance or pay in full the balance of the purchase price as shown on the Purchase Price Schedule plus the costs incidental to acquiring ownership, as provided in section 16 or 17, as applicable.

3. *Status of Homebuyer.* Until the Homebuyer satisfies the conditions set forth in section 10d precedent to the exercise of his option to purchase the Home for the applicable purchase price, the Homebuyer shall have the status of a lessee of the Authority from month to month with an obligation to build up such balance in his EHPA within the first two years of his occupancy and to continue adding to his EHPA thereafter. For convenience the term ''Homebuyer'' also refers to the occupant during his status as a lessee.

4. *Counseling of Homebuyers.* The Authority shall provide training and counseling, as required and approved by HUD. The Authority's own staff and resources, existing community resources, a private agency under contract with the Authority, or any combination of the three, shall be utilized to prepare Homebuyers for the rights, responsibilities, and obligations of homeownership including participation in the Homebuyers Association. The Homebuyer agrees to participate in and cooperate fully in all official training and counseling activities.

5. *Homebuyers Association.*[2] Upon the signing of this Agreement, the Homebuyer's family automatically becomes a member of the Homebuyers Association having membership and purposes as set forth in the Articles of Incorporation of said Association. In the absence of a duly organized Homebuyers Association, the Authority shall be free to act without the HBA action required by this Agreement.

6. *Routine maintenance, repair and use of premises.* a. *Routine maintenance.* The Homebuyer shall be responsible for the routine maintenance of his dwelling and grounds, to the satisfaction of the Homebuyers Association and the Authority. This routine maintenance includes the work (labor and materials) of keeping the dwelling structure, grounds and equipment in good repair, condition and appearance so that they may be utilized continually at their designed capacities and at the satisfactory level of efficiency for their intended purposes, and in conformity with the requirements of local housing codes and applicable regulations and guidelines of HUD. It includes repairs (labor and materials) to the dwelling structure, plumbing fixtures, dwelling equipment (such as range and refrigerator), shades and screens, water heaters, heating equipment and other component parts of the dwelling. It also includes all interior painting and maintenance of the grounds (lot) on which the dwelling is located. It does not include maintenance and replacements provided for by the Nonroutine Maintenance Reserve described in Section 11.

b. *Repair of damage.* In addition to his obligation for routine maintenance, the Homebuyer shall be responsible for repair of any damage caused by the Homebuyer, members of his family, or visitors.

c. *Care of Home.* The Homebuyer agrees to keep his dwelling in a sanitary condition; to cooperate with the Authority and the Homebuyers Association in keeping and maintaining the common area and property, including fixtures and equipment, in good condition and appearance; and to follow all rules of the Authority and of the Homebuyers Association concerning the use and care of the dwellings and the common areas and property.

d. *Inspections.* The Homebuyer agrees to permit officials, employees, or agents of the Authority, and of the Homebuyers Association to inspect his Home at reasonable hours and intervals in accordance with rules established by the Authority and the Homebuyers Association.

e. *Use of Home.* The Homebuyer shall not (1) sublet his Home without the prior written approval of the Authority and HUD, (2) use or occupy his home for any unlawful purpose nor for any purpose deemed hazardous by insurance companies on account of fire and other risks, or (3) provide accommodations (unless approved by the Homebuyers Association and the Authority) to boarders or lodgers. The Homebuyer agrees to use the Home only as a place to live for himself and his family (as identified in his initial application or by subsequent amendment with the approval of the Authority), for children thereafter born to or adopted by members of such family, and for aged or widowed parents of the Homebuyer or spouse who may join the household.

f. *Obligations with respect to other persons and property.* Neither the Homebuyer nor any member of his family shall interfere with rights of other occupants of the Development, or damage the common property or the property of others, or create physical hazards.

g. *Structural changes.* A Homebuyer shall not make any structural changes in or additions to his Home unless the Authority has first determined in writing that such change would not (1) impair the value of the unit, the surrounding units, or the Development as a whole, or (2) affect the use of the Home

[2] There may be cases, such as where the homes are on scattered sites, where there is no Homebuyers Association but an alternative method for homebuyer representation and counseling is provided (see 24 CFR 904.307). In such cases, section 5 and other portions of this Agreement referring to the Homebuyers Association should be modified to reflect the alternative method provided for homebuyer representation and counseling.

for residential purposes, or (3) violate HUD requirements as to construction and design. Any changes made in accordance with this paragraph shall be at the Homebuyer's expense, and in the event of termination of this Agreement before the Homebuyer acquires title to the Home, whether by reason of the Homebuyer's default or otherwise, the Homebuyer shall not be entitled to any compensation on account of his having made such changes.

h. *Statement of condition and repair.* When the Homebuyer moves in, the Authority shall inspect the Home and shall give the Homebuyer a written statement, to be signed by the Authority and the Homebuyer, of the condition of the Home and the equipment in it. Should the Homebuyer vacate, the Authority shall inspect the Home and give the Homebuyer a written statement of the repairs and other work, if any, required to put the Home in good condition for the next occupant (see section 10k). The Homebuyer or his representative, or both, may join in any such inspections with the Authority and the Homebuyer Association.

7. *Monthly payments by Homebuyer*— a. *Determination of amount.* Except as otherwise provided hereinafter, the Homebuyer agrees to pay to the Authority, so long as this Agreement is in effect, a required Monthly Payment as lease rental in an amount determined in accordance with a schedule adopted by the Authority and approved by HUD. Although the total monthly housing cost consists of the sum of the break-even amount (see section 8) and the debt service (payment of principal and interest) on the applicable share of the capital cost of the Development, the Homebuyer, so long as he qualifies as low income, is not required to pay the full amount, but is assisted by HUD annual contributions. The schedule shall provide for payments to be based upon a percentage of the family's adjusted monthly income and shall indicate allowances for those utilities which the Homebuyer will pay for directly.

b. *Changes in monthly payment due to changes in family income or other circumstances.* The required Monthly Payment may be adjusted as a result of the Authority's regularly or specially scheduled reexamination of the Homebuyer's family income and family composition. Interim changes may be made in accordance with the Authority's policy on reexaminations, or under unusual circumstances, at the request of the Homebuyer, if both the Authority and the Homebuyers Association agree that such action is warranted.

c. *Changes in monthly payment due to changes in rent schedules.* The required Monthly Payment may also be adjusted by changes in the required percentage of income to reflect (1) changes in operating expense as described in section 9b and (2) changes in utility allowances.

d. *Acceptance of monthly payment.* The Authority shall not refuse to accept monthly payments because of any other charges (i.e., other than overdue monthly payments) owed by the Homebuyer to the Authority; however, by accepting monthly payments under such circumstances the Authority shall not be deemed to have waived any of its rights and remedies with respect to such other charges.

e. *Application of monthly payment.* The Homebuyer's Monthly Payment shall be applied by the Authority as follows: First, to the credit of the Homebuyer's EHPA pursuant to section 10 below; second, to the credit of the Nonroutine Maintenance Reserve for the Home pursuant to Section 11 below; and third, for payment of Monthly Operating Expense, including contribution to Operating Reserve, as provided in section 9 below.

8. *Break-even amount*— a. *Definition.* The term ''Break-even Amount'' means the minimum monthly amount needed to provide funds for:

(1) Monthly Operating Expense, including provision for a contribution to Operating Reserve, pursuant to section 9a below;

(2) The monthly amount to be credited to the Homebuyer's EHPA pursuant to Section 10 below; and

(3) The monthly amount to be credited to the Nonroutine Maintenance Reserve for the Home pursuant to section 11 below.

b. *Monthly payment in excess of break-even amount.* When the Homebuyer's required Monthly Payment exceeds the applicable Break-even Amount, the excess shall constitute additional Project income and shall be deposited and used in the same manner as other Project income.

c. *Monthly payment below break-even amount.* When the Homebuyer's required Monthly Payment is less than the applicable Break-even Amount, the deficit shall be applied as a reduction of that portion of the Monthly Payment designated for Operating Expense (i.e., as a reduction of project income). In all such cases, the EHPA and the NRMR shall be credited with the amount included in the Break-even Amount for these accounts.

9. *Monthly operating expense*— a. *Definition and categories of monthly operating expense.* The term ''monthly operating expense'' means the monthly amount needed for the following purposes:

(1) *Administration.* Administrative salaries, travel, legal expenses, office supplies, postage, telephone and telegraph, etc.;

(2) *Homebuyer services.* Authority expenses in the achievement of social goals, including costs such as salaries, publications, payments to the HBA to assist its operation, contract and other costs;

(3) *Utilities.* Those utilities (such as water), if any to be furnished by the Authority as part of operating expense;

(4) *Routine maintenance—Common property*. For community building, grounds, and other common areas, if any. The amount required for routine maintenance of common property depends upon the type of common property included in the Development and the extent of the Authority's responsibility for maintenance (see also section 9c);

(5) *Protective services.* The cost of supplemental protective services paid by the Authority for the protection of persons and property;

(6) *General expense.* Premiums for fire and other insurance, payments in lieu of taxes to the local taxing body, collection losses, payroll taxes, etc.;

(7) *Nonroutine maintenance—Common property (contribution to operating reserve).* Extraordinary maintenance of equipment applicable to the community building and grounds, and unanticipated items for nondwelling structures (see section 12).

b. *Monthly operating expense rate.* The monthly operating expense rate for each fiscal year shall be established on the basis of the Authority's HUD-approved operating budget for that fiscal year. The operating budget may be revised during the course of the fiscal year in accordance with HUD requirements. If it is subsequently determined that the actual operating expense for a fiscal year was more or less than the amount provided by the monthly operating expense established for that fiscal year, the rate of monthly operating expense to be established for the next fiscal year may be adjusted to account for the difference (see section 12). Such adjustment may result in a change in the required monthly payment (see section 7c).

c. *Provision for common property maintenance.* During the period the Authority is responsible for the maintenance of common property, the annual operating budget and the monthly operating expense rate shall include the amount required for routine maintenance of all common property in the Development, even though a number of the homes may have been acquired by homebuyers. During such period, this amount shall be computed on the basis of the total number of homes in the Development (i.e., the annual amount budgeted for routine maintenance of common property shall be divided by the number of Homes in the Development, resulting in the annual amount for each Home; this figure shall in turn be divided by 12 to determine the monthly amount to be included in the monthly operating expense (and in the break-even amount) for routine maintenance of common property). After the Homeowners Association assumes responsibility for maintenance of common property, the monthly operating expense (and break-even amount) shall include an amount equal to the monthly assessment by the homeowners association for the remaining homes owned by the Authority (see section 11 for nonroutine maintenance of common property).

d. *Posting of monthly operating expense statement.* A statement showing the budgeted monthly amount allocated in the current operating budget to each operating expense category shall be provided to the HBA and a copy shall be provided to the Homebuyer upon request.

10. *Earned Home Payments Account (EHPA)*— a. *Credits to the account.* The Authority shall establish and maintain a separate EHPA for each Homebuyer. Since the Homebuyer is responsible for maintaining his Home as provided in section 6, a portion of his required Monthly Payment equal to the Authority's estimate, approved by HUD, of the monthly cost for such routine maintenance, taking into consideration the relative type and size of the Home, shall be set aside in his EHPA. In addition, this account shall also be credited with (1) any voluntary payments made pursuant to section 10g and (2) any amount earned through the performance of maintenance pursuant to paragraph e of this section. All amounts received by the Authority for credit to the Homebuyer's account, including credits for performance of maintenance pursuant to paragraph e of this section, shall be held by the Authority for the account of the Homebuyer.

b. *Use of EHPA funds.* The unused balance in the Homebuyer's EHPA may be used toward purchase of the Home as provided in section 16 or 17 as applicable, or shall be payable to the Homebuyer if he leaves the Project as provided in paragraph k of this section.

c. *Charges to the account.* (1) If for any reason the Homebuyer is unable or fails to perform any item of required maintenance as described in section 6, the Authority shall arrange to have the work done in accordance with the procedures established by the Authority and the HBA and the cost thereof shall be charged to the Homebuyer's EHPA. Inspections of the Home shall be made jointly by the Authority and the HBA.

(2) To the extent nonroutine maintenance expense is made necessary by the negligence of the Homebuyer as determined by the HBA and the Authority (see section 11), the cost thereof shall be charged to the EHPA.

d. *Exercise of option; required amount in EHPA.* The Homebuyer may exercise his option to buy the Home, by paying the applicable purchase price pursuant to section 16 or 17, only after satisfying the following conditions precedent:

(1) Within the first two years of his occupancy, he has achieved a balance in his EHPA equal to 20 times the amount of the monthly EHPA credit as initially determined in accordance with paragraph a of this section;

(2) He has met, and is continuing to meet, the requirements of this Agreement;

(3) He has rendered, and is continuing to render, satisfactory performance of his responsibilities to the HBA.

When the Homebuyer has met these conditions precedent, the Authority shall give the Homebuyer a certificate to that effect. After achieving the required minimum EHPA balance within the first two years of his occupancy, the Homebuyer shall continue to be obligated to provide the required maintenance, thereby continuing to add to his EHPA. If the Homebuyer fails to meet either his obligation to achieve the minimum EHPA balance as specified or his obligation thereafter to continue adding to the EHPA, the Authority and the HBA shall investigate and take appropriate corrective action, including termination of this Agreement by the Authority in accordance with section 24.

e. *Additional equity through other maintenance.* Besides the maintenance which the Homebuyer must provide pursuant to section 6, the Homebuyer may earn additional EHPA credits by providing in whole or in part any of the maintenance necessary to the common property of the Development or maintenance for which the Nonroutine Maintenance Reserve is established (see section 11). Such maintenance may be provided by the Homebuyer and credit earned therefor only pursuant to a prior written agreement between the Homebuyer and the Authority (or the Homeowners Association, depending on who has responsibility for maintenance of the property involved), covering the nature and scope of the work and the amount of credit the Homebuyer is to receive. Upon completion of such work, the agreed amount shall be charged to the appropriate maintenance account and credited to the Homebuyer's EHPA.

f. *Investment of excess.* When the aggregate amount of all EHPA balances exceeds the estimated reserve requirements for 90 days, the Authority shall notify the HBA and shall invest the excess in federally-insured savings accounts, federally insured credit unions, and/or securities approved by HUD and in accordance with any recommendations made by the HBA. If the HBA wishes to participate in the investment program it should submit periodically to the Authority a list of HUD approved securities, bonds, or obligations which the HBA reecommends for investment by the Authority of the funds in the EHPAs. Interest earned on the investment of such funds shall be prorated and credited to each Homebuyer's EHPA in proportion to the amount in each such reserve account.

Periodically, but not less often than semiannually, the Authority shall prepare a statement showing: (1) the aggregate amount of all EHPA balances; (2) the aggregate amount of investments (savings accounts and/or securities) held for the account of all the Homebuyers' EHPAs, and (3) the aggregate uninvested balance of all the Homebuyers' EHPAs. This statement shall be made available to any authorized representative of the HBA.

g. *Voluntary payments.* To enable the Homebuyer to acquire title to the Home within a shorter period, he may either periodically or in a lump sum voluntarily make payments over and above his required monthly payments. Such voluntary payments shall be deposited to his credit in his EHPA.

h. *Delinquent monthly payments.* Under exceptional circumstances as determined by the HBA and the Authority, the Homebuyer's EHPA may be used to pay his delinquent required monthly payments, provided the amount used for this purpose does not seriously deplete the account and provided that the Homebuyer agrees to cooperate in such counseling as may be made available by the Authority or the HBA.

i. *Annual statement to homebuyer.* The Authority shall provide an annual statement to the Homebuyer specifying at least (1) the amount in his EHPA, and (2) the amount in his Nonroutine Maintenance Reserve. During the year, any maintenance or repair done on the dwelling by the Authority which is chargeable to the EHPA or to the Nonroutine Maintenance Reserve, shall be accounted for through a work order. The Homebuyer shall receive a copy of all such work orders for his Home.

j. *Withdrawal and assignment.* The Homebuyer shall have no right to assign, withdraw, or in any way dispose of the funds in his EHPA except as provided in this section or in sections 16 and 17.

k. *Application of EHPA upon vacating of dwelling.* (1) In the event this Agreement is terminated or if the Homebuyer vacates the Home, the Authority shall charge against the Homebuyer's EHPA the amounts required to pay; (i) The amount due the Authority, including the monthly payments the Homebuyer is obligated to pay up to the date he vacates; (ii) the monthly payment for the period the Home is vacant, not to exceed 30 days from the date of notice of intention to vacate, or if the Homebuyer failed to give notice of intention to vacate, 30 days from the date the Home is put in good condition for the next occupant in conformity with section 6; and (iii) the cost of any routine maintenance, and of any nonroutine maintenance attributable to the negligence of the Homebuyer, required to put the Home in good condition for the next occupant in conformity with section 6.

(2) If the Homebuyer's EHPA balance is not sufficient to cover all of these charges, the Authority shall require the Homebuyer to pay the additional amount due. If the amount in the EHPA exceeds these charges, the excess shall be paid the Homebuyer.

(3) Settlement with the Homebuyer shall be made promptly after the actual cost of repairs to the dwelling has been determined (see paragraph k(1)(iii) of this section), provided that the Authority shall make every effort to make such settlement within 30 days from the date the Homebuyer vacates. The Homebuyer may obtain a settlement within 7 days of the date he vacates, even though the actual cost of such repairs has not yet been determined, if he has given the Authority notice of intention to vacate 30 days prior to the date he vacates and if the amount to be charged against his EHPA for such repairs is based on the Authority's estimate of the cost thereof (determined after consultation with the appropriate representative of the HBA).

11. *Nonroutine maintenance reserve (NRMR)*— a. *Purpose of reserve.* The Authority shall establish and maintain a separate nonroutine maintenance reserve (NRMR) for the Home, using a portion of the Homebuyer's monthly payment. The purpose of the NRMR is to provide funds for the nonroutine maintenance of the Home, which consists of the infrequent and costly items of maintenance and replacement shown on the Nonroutine Maintenance Schedule for the Home (see paragraph b of this section). Such maintenance may include the replacement of dwelling equipment (such as range and refrigerator), replacement of roof, exterior painting, major repairs to heating and plumbing systems, etc. The NRMR shall not be used for nonroutine maintenance of common property, or for nonroutine maintenance relating to the Home to the extent such maintenance is attributable to the Homebuyer's negligence or to defective materials or workmanship.

b. *Amount of reserve.* The amount of the monthly payments to be set aside for NRMR shall be determined by the Authority, with the approval of HUD, on the basis of the Nonroutine Maintenance Schedule showing the amount estimated to be needed for nonroutine maintenance of the Home during the term of this Agreement, taking into consideration the type of construction and dwelling equipment. This Schedule shall (1) list each item of nonroutine maintenance (e.g., range, refrigerator, plumbing, heating system, roofing, tile flooring, exterior painting, etc.), (2) show for each listed item the estimated frequency of maintenance or useful life before replacement, the estimated cost of maintenance or replacement (including installation) for each occasion, and the annual reserve requirement, and (3) show the total reserve requirements for all the listed items, on an annual and a monthly basis. This Schedule shall be prepared by the Authority and approved by HUD as part of the Submission required to determine the financial feasibility of the Project. The Schedule shall be revised after approval of the working drawings and specifications, and shall thereafter be reexamined annually in the light of changing economic conditions and experience.

c. *Charges to reserve.* (1) The Authority shall provide the nonroutine maintenance necessary for the Home and the cost thereof shall be funded as provided in paragraph c(2) and c(3) of this section. Such maintenance may be provided by the Homebuyer but only pursuant to a prior written agreement with the Authority covering the nature and scope of the work and the amount of credit the Homebuyer is to receive. The amount of any credit shall, upon completion of the work, be credited to the Homebuyer's EHPA and charged as provided in paragraph c(2) of this section.

(2) The cost of nonroutine maintenance shall be charged to the NRMR for the Home except that (i) to the extent such maintenance is attributable to the fault or negligence of the Homebuyer, the cost shall be charged to the Homebuyer's EHPA after consultation with the HBA if the Homebuyer disagrees, and (ii) to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty, or even though covered by warranty if not paid for through no fault or negligence of the Homebuyer, the cost shall be charged to the appropriate operating expense account of the Project.

(3) In the event the amount charged against the NRMR exceeds the balance therein, the difference (deficit) shall be made up from continuing monthly credits to the NRMR based upon the Homebuyer's monthly payments. If there is still a deficit when the Homebuyer acquires title, the Homebuyer shall pay such deficit at settlement.

d. *Transfer of NRMR.* (1) In the event this Agreement is terminated, the Homebuyer shall not receive any balance or be required to pay any deficit in the NRMR. When a subsequent Homebuyer moves in, the NRMR shall continue to be applicable to the Home in the same amount as if the preceding Homebuyer had continued in occupancy.

(2) In the event the Homebuyer purchases the Home, and there remains a balance in the NRMR, the Authority shall pay such balance to the Homebuyer at settlement. In the event the Homebuyer purchases the Home and there is a deficit in the NRMR, the Homebuyer shall pay such deficit to the Authority at settlement.

e. *Investment of excess.* (1) When the aggregate amount of the NRMR balances for all the Homes exceeds the estimated reserve requirements for 90 days, the Authority shall invest the excess in federally insured savings accounts, federally insured credit unions, and/or securities approved by HUD. Income earned on the investment of such funds shall

be prorated and credited to each Homebuyer's NRMR in proportion to the amount in each reserve account.

(2) Periodically, but not less often that semi-annually, the Authority shall prepare a statement showing (i) the aggregate amount of all NRMR balances, (ii) the aggregate amount of investments (savings accounts and/or securities) held for the account of the NRMR and (iii) the aggregate uninvested balance of the NRMRs. A copy of this statement shall be made available to any authorized representative of the HBA.

12. *Operating reserve*— a. *Purpose of reserve.* To the extent that total operating receipts (including subsidies for operations) exceeds total operating expenditures of the Project, the LHA shall establish an operating reserve up to the maximum approved by HUD in connection with its approval of the annual operating budgets for the Project. The purpose of this reserve is to provide funds for (1) the infrequent but costly items of nonroutine maintenance and replacements of common property, taking into consideration the types of items which constitute common property, such as nondwelling structures and equipment, and, in certain cases, common elements of dwelling structures, (2) nonroutine maintenance for the Homes to the extent such maintenance is attributable to defective materials or workmanship not covered by warranty, (3) working capital for payment of a deficit in a Homebuyer's NRMR, until such deficit is offset by future monthly payments by the Homebuyer or at settlement in the event the Homebuyer should purchase, and (4) a deficit in the operation of the Project for a fiscal year, including a deficit resulting from monthly payments totaling less than the break-even amount for the Project.

b. *Nonroutine maintenance—_____ common property (contribution to operating reserve).* The amount under this heading to be included in operating expense (and in the break-even amount) established for the fiscal year (see sections 8 and 9) shall be determined by the Authority, with the approval of HUD, on the basis of estimates of the monthly amount needed to accumulate an adequate reserve for the items described in paragraph a(1) of this section. This amount shall be subject to revision in the light of experience. This contribution to the Operating Reserve shall be made only during the period the Authority is responsible for the maintenance of any common property; and during such period, the amount shall be determined on the basis of the requirements of all common property in the Development in a manner similar to that explained in Section 9. When the Operating Reserve reaches the maximum authorized in paragraph c of this Section, the break-even (monthly operating expense) computations (see Sections 8 and 9) for the next and succeeding fiscal years need not include a provision for this contribution to the Operating Reserve unless the balance of the Reserve is reduced below the maximum during any such succeeding fiscal year.

c. *Maximum operating reserve.* The maximum operating reserve that may be retained by the Authority at the end of any fiscal year shall be the sum of (1) one-half of total routine expense included in the operating budget approved for the next fiscal year and (2) one-third of total break-even amounts included in the operating budget approved for the next fiscal year; provided that such maximum may be increased if necessary as determined or approved by HUD. Total routine expense means the sum of the amounts budgeted for administration, homebuyer services. Authority-supplied utilities, routine maintenance of common property, protective services, and general expense or other category of day-to-day routine expense (see section 9 above for explanation of various categories of expense).

d. *Transfer to Homeowners Association.* The Authority shall be responsible for and shall retain custody of the Operating Reserve until the Homeowners acquire voting control of the Homeowners Association (see sections 21c and 22f). When the Homeowners acquire voting control, the Homeowners Association shall then assume full responsibility for management and maintenance of common property under a plan approved by HUD, and there shall be transferred to the Homeowners Association a portion of the Operating Reserve then held by the Authority, as determined by the Authority with the approval of HUD.

e. *Disposition of reserve.* If, at the end of a fiscal year, there is an excess over the maximum Operating Reserve, this excess shall be applied to the operating deficit of the Project, if any, and any remainder shall be paid to HUD. Following the end of the fiscal year in which the last Home has been conveyed by the Authority, the balance of the Operating Reserve held by the Authority shall be paid to HUD, provided that the aggregate amount of payments by the Authority under this paragraph shall not exceed the aggregate amount of annual contributions paid by HUD with respect to the Project.

13. *Annual statement and copies of work orders to homebuyer.* a. The Authority shall maintain books of accounts and provide a statement at least annually to each Homebuyer which will show (i) the amount in his EHPA, and (2) the amount in the NRMR for his Home.

b. During the year, any maintenance or repair done on the dwelling by the Authority, which is chargeable to the EHPA or to the NRMR shall be accounted for through a work order. The Homebuyer shall receive a copy of all such work orders for his Home.

14. *Insurance.* a. Until transfer of title to the Homebuyer, the Authority shall carry all

insurance prescribed by HUD including fire and extended coverage insurance upon the Home in such form and amount and with such company or companies as it determines. The Authority shall not carry any insurance on the Homebuyer's furniture, clothing, automobile, or any other personal property, or personal liability insurance covering the Homebuyer.

b. In the event the Home is damaged or destroyed by fire or other casualty, the Authority shall consult with the Homebuyer as to whether the Home shall be repaired or rebuilt. If the Authority determines that the Home should not be repaired or rebuilt but the Homebuyer disagrees, the matter shall be submitted to HUD for final determination. If the final determination is that the Home should not be repaired or rebuilt, the Authority shall terminate this Agreement upon reasonable notice to the Homebuyer. In such case, the Homebuyer shall be paid the balance in his EHPA and (to assist him in connection with relocation expenses) the balance in his NRMR, less amounts, if any, due from him to the Authority, including Monthly Payments he may be obligated to pay.

c. In the event of termination or if the Home must be vacated during the repair period, the Authority will use its best efforts to assist in relocating the Homebuyer. If the Home must be vacated during the repair period, Monthly Payments shall be suspended during the vacancy period.

15. *Eligibility for continued occupancy*. a. The Homebuyer shall cease to be eligible for continued occupancy with the aid of HUD annual contributions when the Authority determines the Homebuyer's adjusted monthly income has reached, and is likely to continue at, a level at which the Homebuyer's total payment equals or exceeds the monthly housing cost (see paragraph b of this section). In such an event, if the Authority determines, with HUD approval, that suitable financing is available, the Authority shall notify the Homebuyer that he or she must either: (1) Purchase the Home; or (2) move from the Development. If, however, the Authority determines that, because of special circumstances, the family is unable to find decent, safe and sanitary housing within the family's financial reach although making every reasonable effort to do so, the family may be permitted to remain for the duration of such a situation if it pays as rent a monthly payment consistent with its adjusted monthly income, in accordance with applicable HUD regulations prescribing rental payments for families in housing assisted under the United States Housing Act of 1937. Such a monthly payment shall also be payable by the family if it continues in occupancy without purchasing the home because suitable financing is not available.

b. The term ''monthly housing cost,'' as used in this section means the sum of: (1) The monthly debt service amount shown on the Purchase Price Schedule (except where the Homebuyer can purchase the Home by the method described in section 16 below); (2) one-twelfth of the annual real property taxes which the Homebuyer will be required to pay as a Homeowner; (3) one-twelfth of the annual premium attributable to fire and extended coverage insurance carried by the Authority with respect to the Home; (4) the current monthly per unit amount budgeted for routine maintenance (EHPA) and routine maintenance-common property; and (5) the current Authority and HUD approved monthly allowance for utilities paid for directly by the Homebuyer plus the monthly cost of utilities supplied by the Authority.

16. *Achievement of ownership by initial homebuyer*— a. *Determination of initial purchase price.* The Authority shall determine the initial purchase prices of the Homes by two basic steps, as follows:

Step 1. The Authority shall take the Estimated Total Development Cost (including the full amount for contingencies as authorized by HUD) of the Development as shown in the Development Cost Budget in effect upon award of the Main Construction Contract or execution of the Contract of Sale, and shall deduct therefrom the amounts, if any, attributed to (1) relocation costs, (2) counseling and training costs, and (3) the cost of any community, administration or management facilities including the land, equipment and furnishings attributable to such facilities as set forth in the development program for the Development.

The resulting amount is herein called Estimated Total Development Cost for Homebuyers.

Step 2. The Authority shall apportion the Estimated Total Development Cost for Homebuyers among all the Homes in the Development. This apportionment shall be made by obtaining an FHA appraisal of each Home, and adjusting such appraised values (upward or downward) by the percentage difference between the total of the appraisal for all the Homes and the Estimated Total Development Cost for Homebuyers. The adjusted amount for each Home shall be the Initial Purchase Price for that Home.

b. *Purchase Price Schedule.* The Homebuyer shall be provided with a Purchase Price Schedule showing (1) the monthly declining purchase price over a 30-year period,[3] commencing with the initial purchase price on the first day of the month following the effective date of this Agreement and (2) the monthly debt service amount upon which the

[3] Change to 25-year period where appropriate pursuant to §904.101(b)(3) of this subpart.

Schedule is based. This Schedule and debt service amount shall be computed on the basis of the initial purchase price, a 30-year period,[3] and a rate of interest equal to the minimum loan interest rate as specified in the Annual Contributions Contract for the Project on the date of HUD approval of the Development Cost Budget, described in paragraph a of this section, rounded up, if necessary, to the next multiple of one-fourth of one percent (¼ percent).

c. *Methods of Purchase.* (1) The Homebuyer may achieve ownership when the amount in his EHPA, plus such portion of the NRMR as he wishes to use for the purchase, is equal to the purchase price as shown at that time on his Purchase Price Schedule plus all Incidental Costs (''Incidental Costs'' means the costs incidental to acquiring ownership, including, but not limited to, the costs for a credit report, field survey title examination, title insurance, and inspections, the fees for attorneys other than the LHA's attorney, mortgage application and organization, closing and recording, and the transfer taxes and loan discount payment if any). If for any reason title to the Home is not conveyed to the Homebuyer during the month in which such circumstances occur, the purchase price shall be fixed at the amount specified for such month and the Homebuyer shall be refunded (i) the net additions, if any, credited to his EHPA subsequent to such month, and (ii) such part of the monthly payments made by the Homebuyer after the purchase price has been fixed which exceeds the sum of the break-even amount attributable to the Home and the interest portion of the debt service shown in the Purchase Price Schedule.

(2) Where the sum of the purchase price and Incidental Costs is greater than the amounts in the Homebuyer's EHPA and NRMR, the Homebuyer may achieve ownership by obtaining financing for or otherwise paying the excess amount. The purchase price shall be the amount shown on his Purchase Price Schedule for the month in which the settlement date for the purchase occurs.

d. The maximum period for achieving ownership shall be 30 years, but depending upon increases in the Homebuyer's income and the amount of credit which the Homebuyer can accumulate through maintenance and voluntary payments, the period may be shortened accordingly.

17. *Achievement of Ownership by Subsequent Homebuyer*—a. *Definition.* In the event the initial Homebuyer and his family vacate the Home before having acquired ownership, a subsequent occupant who enters into a Homebuyer's Ownership Opportunity Agreement and who is not a successor pursuant to section 25 is herein called ''Subsequent Homebuyer.''

b. *Determination of Initial Purchase Price.* The initial purchase price for a subsequent Homebuyer shall be an amount equal to (1) the purchase price shown in the initial Homebuyer's Purchase Price Schedule as of the date of this Agreement with the subsequent Homebuyer plus (2) the amount, if any, by which the appraised fair market value of the Home determined or approved by HUD as of the same date, exceeds the purchase price specified in (1). In the event such appraised value has not been determined by the date of execution of this Agreement, the amount of the Initial Purchase Price shall be inserted in part I, section D after this determination has been made, with appropriate initialling or signing by the parties.

c. *Purchase Price Schedule.* The Subsequent Homebuyer's Purchase Price Schedule shall be the same as the unexpired portion of the initial Homebuyer's Purchase Price Schedule except that where his purchase price includes an additional amount as specified in paragraph b(2) of this section, the initial Homebuyer's Purchase Price Schedule shall be followed by an Additional Purchase Price Schedule for such additional amount based upon the same monthly debt service and the same interest rate as applied to the initial Homebuyer's Purchase Price Schedule.

18. *Transfer of Title to Homebuyer.* When the Homebuyer is to obtain ownership, a closing date shall be mutually agreed upon by the parties. On the closing date, the Homebuyer shall pay the required amount of money to the Authority, sign the promissory note pursuant to section 19, and receive a deed for the Home.

19. *Payment Upon Resale at Profit*— a. *Promissory Note.* (1) When a Homebuyer (whether Initial or Subsequent Homebuyer) achieves ownership, he shall sign a note obligating him to make a payment to the Authority, subject to the provisions of paragraph (a)(2) of this section, in the event he resells his Home at a profit within 5 years of actual residence in the Home after he becomes a Homeowner. If, however, the Homeowner should purchase and occupy another Home within one year (18 months in case of a newly constructed home) of the resale of the Turnkey III Home, the Authority shall refund to the Homeowner the amount previously paid by him under the note, less the amount, if any, by which the resale price of the Turnkey III Home exceeds the acquisition price of the new home, provided that application for such refund shall be made no later than 30 days after the date of acquisition of the new home.

(2) The note to be signed by the Homebuyer pursuant to paragraph (a)(1) of this section shall be secured by a second mortgage. The initial amount of the note shall be computed by taking the appraised value of the Home at the time the Homebuyer becomes a Homeowner and subtracting (i) the Homebuyer's purchase price plus the Incidental Costs and (ii) the increase in value of the Home, determined by appraisal, caused by improvements

paid for by the Homebuyer with funds from sources other than the EHPA or NRMR. The note shall provide that this initial amount shall be automatically reduced by 20 percent thereof at the end of each year of residency as Homeowner, with the note terminating at the end of the five-year period of residency, as determined by the Authority. To protect the Homeowner, the note shall provide that the amount payable under it shall in no event be more than the net profit on the resale, that is, the amount by which the resale price exceeds the sum of (i) the Homebuyer's purchase price plus the Incidental Costs, (ii) the costs of the resale, including commissions and mortgage prepayment penalties, if any, and (iii) the increase in value of the Home, determined by appraisal, resulting from improvements paid for by him as a Homebuyer (with funds other than from the EHPA or NRMR) or as a Homeowner.

(b) *Residency requirements.* The five-year note periods does not end if the Homeowner rents or otherwise does not use the Home as his principal place of residence for any period within the first five years after he achieves ownership. Only the actual amount of time he is in residence is counted and the note shall be in effect until a total of five years time of residence has elapsed, at which time the Homeowner may request the Authority to release him from the note, and the Authority shall do so.

20. *Responsibilities of Homeowner.* After acquisition of ownership, the Homeowner shall pay to the Authority or to the Homeowners Association, as appropriate, a monthly fee for (a) the maintenance and operation of community facilities including utility facilities, if any, (b) the maintenance of grounds and other common areas, and (c) such other purpose as determined by the Authority or the Homeowners Association, as appropriate, including taxes and a provision for a reserve.

21. *Homeowners Association—Planned Unit Development (PUD)*[4]

If the Development is organized as a planned unit development:

a. The common areas, sidewalks, parking lots and other common property in the Development shall be owned and maintained as provided for in the approved planned unit development (PUD) program, except that the Authority shall be responsible for maintenance until such time as the Homeowners Association assumes such responsibility (see section 12 above).

b. The title ultimately conveyed to the Homebuyer shall be subject to restrictions and encumbrances to protect the rights and property of all other Homeowners. The Homeowners Association shall have the right and obligation to enforce such restrictions and encumbrances and to assess Homeowners for the costs incurred in connection with common areas and property and other responsibilities.

c. There shall be as many votes in the Association as there are Homes in the Development, and at the outset all the voting rights will be held by the Authority. As each Home is conveyed to a Homebuyer, one vote shall automatically go to that Homebuyer so that when all the Homes have been conveyed, the Authority shall no longer have any interest in the Homeowners Association.

d. The Authority shall not lose its majority voting interest in the Association as soon as a majority of the Homes have been conveyed, unless the law of the state requires control to be transferred at a particular time or the Authority so desires. If permitted by state law, provisions shall be made for each Home owned by the Authority to carry three votes while each Home owned by a Homeowner shall carry one vote. Under this weighted voting plan, the Authority will continue to have voting control until 75 percent of the Homes have been acquired by Homeowners. However, at its discretion, the Authority may transfer voting control to the Homeowners when at least 50 percent of the Homes have been acquired by the Homeowners.

22. *Homeowners Association—Condominium.*[5] If the Development is organized as a condominium:

a. The Authority at the outset shall own each condominium unit and the undivided interest of such unit in the common areas.

b. All the land, including that land under the housing units, shall be a part of the common areas.

c. The Homeowners Association shall own no property and shall merely maintain and operate the common areas for the individual owners of the condominium units, except that the Authority shall be responsible for maintenance until such time as the Homeowners Association assumes such responsibility (see section 12 above).

d. The percentage of undivided interest attached to each condominium unit shall be based on the ratio of the value of the unit to the value of all units and shall be fixed when the Development is completed. This percentage shall determine the Homeowner's liability for the maintenance of the common areas and facilities.

[4] If this Home is a Development of scattered sites, delete both sections 21 and 22. If this Home is in a Planned Unit Development, delete section 22. If this Home is in a Condominium, delete section 21.

[5] If this Home is a Development of scattered sites, delete both sections 21 and 22. If this Home is in a Planned Unit Development, delete section 22. If this Home is in Condominium, delete section 21.

e. Each Homeowner vote in the Homeowners Association will be identical with the percentage of undivided interest attached to his unit.

f. The Authority shall not lose its majority voting interest in the Association as soon as units representing more than 50 percent of the value of all units have been conveyed, unless the law of the state requires control to be transferred at a particular time or the Authority so desires. For voting purposes, until units representing 75 percent of the value of all units have been acquired by Homeowners, the total undivided interest attributable to the Homes owned by the Authority shall be multiplied by three, if such weighted voting plan is permitted by state law. Under this plan, the Authority will continue to have voting control until units representing 75 percent of the value of all units have been acquired by Homeowners. However, at its discretion the Authority may transfer voting control to the Homeowners when units representing at least 50 percent of the value of all units have been acquired by the Homeowners.

23. *Relationship of Homeowners Association to Homebuyers Association.* The Homebuyers Association and the Authority may make arrangements with the Homeowners Association to permit Homebuyers to participate in Homeowners Association matters which affect the Homebuyers. Such arrangements may include rights to attend meetings and to participate in Homeowners Association deliberations and decisions.

24. *Termination of Agreement*— a. *Termination by the Authority*—(1) In the event the Homebuyer should breach this Agreement by failure to make a required Monthly Payment within 10 days after its due date, by misrepresentation or withholding of information in applying for admission or in connection with any subsequent reexamination of income and family composition, or by failure to comply with any other Homebuyer obligation under this Agreement, the Authority may terminate this Agreement 30 days after giving the Homebuyer notice of its intention to do so in accordance with paragraph (2) of this section.

(2) Notice of termination by the Authority shall be in writing. Such notice shall state (i) the reason for termination, (ii) that the Homebuyer may respond to the Authority, in writing or in person, within a specified reasonable period of time regarding the reason for termination, (iii) that in such response he may be represented or accompanied by a person of his choice, including a representative of the HBA, (iv) that the Authority will consult the HBA concerning the termination, and (v) that, unless the Authority rescinds or modifies the notice, the termination will be effective at the end of the 30-day notice period.

b. *Termination by the Homebuyer.* The Homebuyer may terminate this Agreement by giving the Authority 30 days notice in writing of his intention to terminate and to vacate the Home. In the event that the Homebuyer vacates the Home without notice to the Authority, this Agreement shall be terminated automatically and the Authority may dispose of, in any manner deemed suitable by it, any items of personal property left by the Homebuyer in the Home.

c. *Transfer to rental unit.* (1) Inasmuch as the Homebuyer was found eligible for admission to the Project on the basis of having the necessary elements, of potential for Homeownership, continuation of eligibility requires continuation of this potential, subject only to temporary unforeseen changes in circumstances. The standards of potential for Homeownership are the following:

(i) Income sufficient to result in a required monthly payment which is not less than the sum of the amounts necessary to pay the EHPA, the NRMR, and the estimated average monthly cost of utilities attributable to the Home;

(ii) Ability to meet all the obligations of a Homebuyer under the Homebuyers Ownership Opportunity Agreement;

(iii) At least one member gainfully employed, or having an established source of continuing income.

(2) Accordingly, in the event it should develop that the Homebuyer no longer meets one or more of these elements of Homeownership potential, the Authority shall investigate the circumstances and provide such counseling and assistance as may be feasible in order to help the family overcome the deficiency as promptly as possible. After a reasonable time, not to exceed 30 days from the date of evaluation of the results of the investigation, the Authority shall make a re-evaluation as to whether the family has regained the potential for Homeownership or is likely to do so within a further reasonable time, not to exceed 30 days from the date of the re-evaluation. Further extension of time may be granted in exceptional cases, but in any event a final determination shall be made no later than 90 days from the date of evaluation of the results of the initial investigation. The Authority shall invite the HBA to participate in all investigations and evaluations.

(3) If the final determination of the Authority, after considering the views of the HBA, is that the Homebuyer should be transferred to a suitable dwelling unit in an Authority rental project, the Authority shall give the Homebuyer written notice of the Authority determination of the loss of Homeownership potential and of the offer of transfer to a rental unit. The notice shall state that the transfer shall occur as soon as a suitable rental unit is available for occupancy but no earlier than 30 days from the

date of the notice, provided that an eligible successor for the Homebuyer unit has been selected by the Authority. The notice shall also state that if the Homebuyer should refuse to move under such circumstances, the family may be required to vacate the Homebuyer unit, without further notice. The notice shall include a statement (i) that the Homebuyer may respond to the Authority in writing or in person, within a specified reasonable time, regarding the reason for the determination and offer of transfer, (ii) that in such response he may be represented or accompanied by a person of his choice including a representative of the HBA, and (iii) that the Authority has consulted the HBA concerning this determination and offer of transfer.

(4) When a Homebuyers Ownership Opportunity Agreement is terminated pursuant to this paragraph 24c, the amount in the Homebuyer's EHPA shall be paid in accordance with the provisions of paragraph 10k of this Agreement.

25. *Survivorship.* (1) In the event of death, mental incapacity or abandonment of the family by the Homebuyer, the person designated as the successor in part I of this Agreement shall succeed to the rights and responsibilities under the Agreement if that person is an occupant of the Home at the time of the event and is determined by the Authority to meet all of the standards of potential for homeownership as set forth in section 24a. This designation may be changed by the Homebuyer at any time. If there is no such designation or the designee is no longer an occupant of the Home or does not meet the standards of potential for homeownership, the Authority may consider as the Homebuyer any family member who was in occupancy at the time of the event and who meets the standards of potential for homeownership.

(2) If there is no qualified successor in accordance with the above, the Authority shall terminate the Agreement and another family shall be selected, except under the following circumstances: where a minor child or children of the Homebuyer family are in occupancy, then in order to protect their continued occupancy and opportunity for acquisition of ownership of the Home, the Authority may approve as occupants of the unit, an appropriate adult(s) who has been appointed legal guardian of the children with a duty to perform the obligations of the Homebuyers Ownership Opportunity Agreement in their interest and behalf.

26. *Nonassignability and Use of Reserves and Accounts*— a. *Nonassignability.* The Homebuyer shall not assign this Agreement, or assign, mortgage or pledge any right or interest in the Home or in this Agreement including any right or interest in any reserve or account, except with the prior written approval of the Authority and HUD.

b. *Use of Reserves and Accounts.* It is understood and agreed that the Homebuyer shall have no right to receive or use the money in any reserve or account created pursuant to this Agreement except for the limited purposes and under the special circumstances set forth by the terms of this Agreement. It is further understood and agreed that both the Authority and HUD have a financial and a governmental interest in the Earned Home Payments Account and other reserves as security for the financial integrity of the Development, as a means of savings in cost to the Government by minimizing the amount and period over which HUD annual contributions must be paid, and as a means of advancing the public interest and welfare by assisting low-income families to achieve homeownership.

27. *Notices.* Any notice required hereunder or by law shall be sufficient if delivered in writing to the Homebuyer personally or to an adult member of his family residing in the dwelling unit or if sent by certified mail, return receipt requested, properly addressed to the Homebuyer, postage prepaid. Notice to the Authority shall be in writing, and either delivered to any Authority employee at the office of the Authority or sent to the Authority by certified mail, properly addressed, postage prepaid.

28. *Grievance Procedure.* All grievances or appeals arising under this Agreement shall be processed and resolved pursuant to the grievance procedure of the Authority, which procedure shall provide for participation of the HBA in the grievance process. This grievance procedure shall be posted in the Authority's Office.

[39 FR 10966, Mar. 22, 1974. Redesignated at 49 FR 15580, Apr. 7, 1975. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 49 FR 21490, May 21, 1984]

APPENDIX III TO SUBPART B OF PART 904—CERTIFICATION OF HOMEBUYER STATUS

(Subpart B)

State of _____

County of _____

This is to certify that _____

(Homebuyer)

of the Home located at _____:

(1) Has achieved, within the first two years of his occupancy a balance in his Earned Home Payments Account (EHPA) of at least _____ dollars (representing 20 times the amount of the monthly EHPA credit applicable to said Home);

(2) Has met and is continuing to meet the requirements of his Homebuyers Ownership Opportunity Agreement; and

(3) Has rendered and is continuing to render satisfactory performance of his responsibilities to the Homebuyers Association.

Accordingly, said Homebuyer may, upon payment of the purchase price, exercise the option to purchase the Home in accordance with and subject to the provisions of his Homebuyers Ownership Opportunity Agreement.

Housing Authority _____

By _____

(Signature and official title)

(Date) _____

Homebuyers Association _____

By _____

(Signature and official title)

(Date) _____

APPENDIX IV TO SUBPART B OF PART 904—PROMISSORY NOTE FOR PAYMENT UPON RESALE BY HOMEBUYER AT PROFIT

(Subpart B)

FOR VALUE RECEIVED, _____ (Homeowner) promises to pay to _____ (Authority) or order, the principal sum of _____[1] Dollars ($_____), without interest, on the date of resale by the Homeowner of the property conveyed by the Authority to the Homeowner.

Such principal sum shall be reduced automatically by 20 percent of the initial amount at the end of each year of such residency, as a Homeowner, and this note shall terminate at the end of five years of such residency, as determined by the Authority; Provided, however, that the amount payable under this note shall in no event be more than the net profit on the resale, that is, the amount by which the resale price exceeds the sum of (1) the Homeowner's purchase price, (2) the costs incidental to his acquisition of ownership, (3) the costs of the resale, including commissions and mortgage prepayment penalties, if any, and (4) the increase in value of the Home, determined by appraisal, due to improvements paid for by the Homeowner whether as a Homebuyer (with funds from sources other than his Earned Home Payments Account or his Nonroutine Maintenance Reserve) or as a Homeowner.

If the Homeowner shall pay this note at the time and in the manner set forth above, or if, by its provisions, the amount of this note shall be zero, then the note shall terminate and the Authority shall, within thirty (30) days after written demand therefor by the Homeowner, execute a release and satisfaction of this note. The Homeowner hereby waives the benefits of all statutes or laws which require the earlier execution or delivery of such release and satisfaction by the Authority.

Presentment, protest, and notice are hereby waived.

Dated _____, 19___

Local Housing Authority _____

By: _____(Homeowner)

_____ (Homeowner's Spouse)

[1] Amount determined in accordance with section 19 of the Homebuyers Ownership Opportunity Agreement.

Subpart C—Homeownership Counseling and Training

§ 904.201 Purpose.

The purpose of the counseling and training program shall be to assure that the homebuyers, individually and collectively through their homebuyers association (HBA), will be more capable of dealing with situations with which they may be confronted, making decisions related to these situations, and understanding and accepting the responsibility and consequences that accompany those decisions.

§ 904.202 Objectives.

The counseling and training program should seek to achieve the following objectives:

(a) Enable the potential homebuyer to have a full understanding of the responsibilities that accompany his participation in the Homeownership Opportunity Program;

(b) Enable the potential homebuyer to have an understanding of homeownership tasks with specific training given to individuals as the need and readiness for counseling or training indicates;

(c) Assure that the role of the HBA is understood and plans for its organization are initiated at the earliest practical time;

(d) Develop an understanding of the role of the LHA and of the need for a cooperative relationship between the homebuyer and the LHA;

(e) Encourage the development of self-help by the homebuyer through reducing dependency and increasing independent action;

(f) Develop an understanding of mutual assistance and cooperation that will develop a feeling of self-respect, pride and community responsibility;

(g) Develop local resources that can be of assistance to the individual and the community on an on-going basis.

§ 904.203 Planning.

(a) The counseling and training program shall be flexible and responsive to the needs of each prospective homebuyer. While many subjects lend themselves to group sessions, consideration shall be given to individual counseling. Individuals should not be required to attend training classes on subject matter they are familiar with unless they can actively participate in the instruction process.

(b) The program may be provided by contract with an outside organization, or by the LHA staff, in either case with voluntary involvement and assistance of groups and individuals within the community. It is essential that the training entity be completely knowledgeable and supportive of the entire Homeownership Opportunity Program. It may be recognized that most of the objectives stated require specialized instructional skill and content knowledge. There shall be recognition of the differences in communication and in value systems, and an understanding and respect for past experience of the individual. Maximum possible use shall be made of indigenous trainers to insure good communication and rapport. Special attention shall be directed to the needs of working members of the family for counseling and training sessions to be held where and during the time they can attend. Where the services of outside contractors are utilized, there shall be a close working relationship with the LHA and a program for phasing in LHA staff who will have the on-going responsibility for the program. The value of local agencies, educational institutions, etc., for implementing the program rather than an outside firm shall be carefully considered since the continuing presence of such agencies and institutions in the community can often develop into an on-going resource beyond the contract period.

(c) In planning a homeownership counseling and training program, whether self-administered or contracted, the LHA shall consult with HUD for advice and information on programs, qualified contractors, local resources, reasonable costs, and other similar matters.

(d) Where the program is to be contracted to an outside group, proposals shall be secured either by public advertising or by sending requests for proposals to a number of competent public or private organizations.

(e) In areas where there are large concentrations of homebuyers who do not read, write, or understand English fluently, the native language of the people shall be used. If feasible all instructional materials shall be in both languages.

§ 904.204 General requirements and information.

(a) The counseling and training program shall be designed to meet the needs of the homebuyers and be sufficiently flexible to meet new needs as they arise. The nature of the program suggests four phases of counseling: (1) Pre-occupancy; (2) move-in; (3) post-occupancy; (4) assistance to the HBA. While some elements of the program lend themselves more to one phase than another, the program areas shall be coordinated and interrelated. It is recommended that the entity providing these services work closely with the participants and ensure that policies established are agreeable to both the LHA and the homebuyer.

(b) The following is a description of major elements of the program which experience thus far has shown to be relevant. More detailed information is set forth in Appendix I, ''Content Guide for Counseling and Training Program.''

(1) *Pre-occupancy phase.* The purpose of this phase is to prepare the selected families to assume the responsibilities of homeownership, and to provide an opportunity for the LHA and each family to reassess the family's potential for successful participation in the homeownership development.

(i) An overload of information should be avoided in this phase since many of the subjects will be dealt with in greater depth after the family is in occupancy, and experience has shown that much of the information will be more relevant at that time.

(ii) This phase should be completed for each family before the beginning of its occupancy.

(2) *Move-in phase.* During this phase, the counseling and training staff should be available to the homebuyers on an individual basis. Services may include (i) inspecting the units, interior and exterior, with the homebuyers and a representative of the LHA, (ii) testing appliances and equipment, (iii) providing information on the moving process (packing, trucks, etc.), and (iv) assisting homebuyers in making adjustments occasioned by the move, serving as liaison among homebuyers, LHA, builder and other agencies, and assisting homebuyers in meeting new neighbors.

(3) *Post-occupancy phase.* Before this phase begins, a period (possibly one month) should elapse to allow homebuyers an opportunity to adjust to their new surroundings. This is a time when new questions and problems come to light that can be dealt with in further counseling and training. This phase should be designed to cover many of the same basic subjects as the pre-occupancy phase, both by review and refresher where necessary but in much greater depth.

(4) *Assistance to the HBA.* The parties responsible for the counseling and training program shall be responsible for the formation, incorporation, and development of the HBA, including the execution of the Recognition Agreement between the LHA and HBA, as provided in subpart D of this part.

§ 904.205 Training methodology.

Equal in importance to the content of the pre- and post-occupancy training is the training methodology. Because groups vary, there should be adaptability in the communication and learning experience. Methods to be utilized may include group presentations, small discussion groups, special classes, and workshops. Especially important to a successful program are individual family home visits for discussion and instruction on unique problems and operation of equipment.

§ 904.206 Funding.

(a) *Source of funds.* For purpose of funding counseling and training pursuant to this subpart and for establishing the HBA, the LHA shall include an amount equal to $500 per dwelling unit in the development cost budget. If additional funds should be needed for any of these purposes, the LHA with the assistance of the CPC, if any, shall explore all other possible sources of services and funds.

(b) *Planned use of $500-per-unit funds.* These funds are to be used to pay for:

(1) Pre- and post-occupancy counseling and training;

(2) Establishment and initial operation of the HBA (for operation in the management phase, see § 904.305).

In planning the use of these funds, the LHA shall recognize that for a number of years after the initial counseling and training there is likely to be some turnover and follow-up counseling and training needs. Therefore, the LHA shall limit the amounts for the counseling and training of the initial homebuyers and shall reserve a reasonable amount for future counseling and training needs during the management phase of the development.

(c) *Period of availability of $500-per-unit funds.* These funds shall be available during the development phase, and a specific amount shall be set aside, in accordance with paragraph (b) of this section, to be used for ongoing needs after the close of the development period.

(d) *Budgeting of $500-per-unit funds.* (1) The Development Cost Budget submitted with the Development Program shall include an estimated amount for counseling and training program costs. However, such costs shall not be incurred until after HUD approval of the counseling and training program.

(2) Upon HUD approval of the counseling and training program, the LHA shall include the approved amount in its Contract Award Development Cost Budget. This amount shall constitute the maximum amount that may be included for such purposes in the project development cost; provided that, if the approved amount is less than $500 per dwelling unit, it may, if necessary, be amended with HUD approval, but not later than the Final Development Cost Budget and subject to the $500-per-unit limitation.

(e) *Application for approval of counseling and training program.* (1) The LHA shall submit an application for approval of a counseling and training program and for approval of funds therefor. This application shall be submitted to HUD at the time of the submission of the development program or as soon thereafter as possible but no later than the submission of the working drawings and specifications.

(2) The application shall include a narrative statement outlining the counseling and training program, including any services and funds to be obtained from other sources, together with copies of any proposed contract and other pertinent documents. This statement shall include the following:

(i) Indication that the training entity is completely knowledgeable of the Homeownership Opportunity Program and is aware of the needs and problems of prospective homebuyers;

(ii) The method and/or instruments to be used to determine individual training and counseling needs;

(iii) The scope of the proposed program, including a detailed breakdown of tasks to be performed, products to be produced, and a time schedule, including provision for progress payments for specific tasks;

(iv) An outline of the proposed content of the counseling and training to be provided, and the local community resources to be utilized;

(v) The methods of counseling and training to be utilized;

(vi) The experience and qualifications of the organization and of personnel who will directly provide the counseling and training;

(vii) The estimated cost, source of funds, and methods of payment for the tasks and products to be performed or produced, including estimates of costs for each of the following categories:

(*a*) Counseling and training during development phase:

Salaries
Materials, supplies and expendable equipment
Contract costs
Other costs

(*b*) Establishment and initial operation of HBA

(*c*) Counseling and training during management phase

§ 904.207 Use of appendix.

A Content Guide for Counseling and Training Program (Appendix I) is provided as further detailed information for consideration in designing the counseling and training program. The items set forth therein are not to be considered mandatory.

APPENDIX I TO SUBPART C OF PART 904—CONTENT GUIDE FOR COUNSELING AND TRAINING PROGRAM

(Subpart C)

Inclusion of the following items in the Counseling and Training Program should be considered, keeping in mind that the extent to which they are covered will depend on specific needs of homebuyers in the given development.

PREOCCUPANCY PHASE

1. *Explanation of program.* Includes the background and a full description of the program with special emphasis on the financial and legal responsibilities of the homebuyers, the HBA, and the LHA; and a review for homebuyers of the computation of the monthly payment and of the accumulation and purpose of EHPA and reserves.

2. *Property care and maintenance.* Includes making homebuyers generally familiar with the overall operation of the home, including fixtures, equipment, interior designing, and building and equipment warranties, and the appropriate procedures for obtaining services and repairs to which the homebuyers may be entitled. (This aspect will probably have to be covered in more detail during the Post-Occupancy Phase.)

3. *Money management.* Includes budgeting, consumer education, credit counseling, insurance, utility costs, etc.

4. *Developing community.* Includes a view of the surrounding community, and especially how the homebuyer relates to it as an individual and as a member of the HBA.

5. *Referrals.* Includes information as to community resources and services where assistance can be obtained in relation to individual or family problems beyond the scope of the contract agency. This may include referrals to community services that can upgrade employment skills, provide legal services, offer educational opportunities, care for health and dental needs, care for children of working mothers, provide guidance in marital problems and general family matters, including drugs and alcohol.

POST-OCCUPANCY PHASE

1. *Home maintenance.* This should include builder responsibility, identification of minor and major repairs, instructions on do-

it-yourself repairs and methods of having major repairs completed.

2. *Money management.* This should involve an in-depth study of the legal and financial aspects of consumer credit, savings and investments, and budget counseling.

3. *Developing community.* This will consist primarily of creating an awareness on the part of the homebuyer of the nature and function of the HBA and the value of his participation in, and working through, the HBA as a responsible member of his community. By this means much will be learned about relationships with neighbors, community cooperation, and the ways in which individual and group problems are solved.

OTHER ITEMS

In addition to the above, there are other needs and concerns, especially those expressed by the homebuyers, that may be dealt with in special classes or workshops. These may include such topics as child care, selection of furnishings, decorating and furnishing, refinishing of furniture, upholstery, sewing, food and nutrition, care of clothing, etc.

Subpart D—Homebuyers Association (HBA)

§ 904.301 Purpose.

(a) It is essential that the homebuyers have an organized vehicle for pursuing their common interests, for effectively representing the needs of residents in dealing with the LHA, and for undertaking eventual management responsibility for the development. Although this organization, called the homebuyers association (HBA), shall be representative of the homebuyers and independent of the LHA, it shall be the responsibility of the LHA and the training and counseling staff to assist the homebuyers in their initial efforts at organization.

(b) Except as noted in § 904.307, each Turnkey III development shall have an HBA. There shall be a separate HBA for each development or developments where there is a physical and financial community of interest.

§ 904.302 Membership.

Every family entitled to occupancy pursuant to a Homebuyers Ownership Opportunity Agreement and every family which is a homeowner shall automatically be a member of the HBA.

§ 904.303 Organizing the HBA.

(a) The HBA should be organized and incorporated as early in the life of the development as is feasible, in order to allow selected homebuyers an opportunity to meet each other and begin forging a sense of community, but in any case the HBA shall be organized and incorporated no later than the date on which 50 percent of the homebuyers have been selected. Interim officers and directors shall be designated as part of the initial organization of the HBA to serve until full-term officers and directors are elected. Such full-term officers and directors shall be elected when 60 percent of the homebuyers are in occupancy, but, in any event, not later than one year from the date the first home is occupied.

(b) The LHA, in cooperation with the CPC, if any, shall be responsible for assuring that competent counseling and training assistance pursuant to Subpart C of this part will be provided in organizing the HBA. These services shall be continued until the HBA is fully operational.

(c) The provision of such services shall include at least the following functions:

(1) Assembling homebuyers for initial orientation and planning;

(2) Explaining to homebuyers the structure and functions of an HBA and the rights and responsibilities of the HBA and the LHA;

(3) Aiding in the preparation of charters, by-laws, contracts with the LHA and other appropriate documents;

(4) Assisting in the formation of the organization, including such things as the initial designation of interim officers and directors and subsequent election of full-term HBA officers and directors, and the establishment of necessary committees, if any.

(d) The LHA and the HBA shall execute an agreement recognizing the HBA as the official representative of the homebuyers, and establishing the functions, rights, and responsibilities of both parties (see Appendix II). This agreement shall be executed as soon as possible after incorporation of the HBA.

§ 904.304 Functions of the HBA.

(a) Subject to possible variations agreed to by the HBA and approved by HUD, the functions of the HBA shall include the following:

(1) Representing its members, individually and collectively, with respect to any deficiencies in the development or in the homes and with respect to fulfillment of the construction contract and related warranties;

(2) Representing its members, individually and collectively, in their relationships with the LHA and others in regard to financial matters such as monthly payments, credits to and charges against reserves, settlement upon vacating the home, acquisition of ownership, and other matters pertaining to operation and management of the development;

(3) Recommending policies and rules to the LHA for operation and management including rules concerning use of the common areas and community facilities;

(4) Participating in the operation of official grievance mechanisms;

(5) Advising and assisting its members regarding procedures and practices relative to the Earned Home Payments Account and the acquisition of homeownership;

(6) Participating with the LHA in periodic maintenance inspections of homes after occupancy, and making recommendations in case of disagreements arising out of maintenance inspections;

(7) Participating with the LHA in the selection of subsequent homebuyers;

(8) Coordinating, supervising, or managing the operation of credit union, child care, or other supportive services established for the development;

(9) Participating with the LHA in the establishment and implementation of policies related to collection of monthly payments, termination of occupancy, and resolution of hardship situations; and

(10) Performing management services as specified under contract with the Authority or with the Homeowners Association and participating in other activities pursuant to agreement with the LHA or with the Homeowners Association.

(b) In addition, the HBA may offer such special services as the following:

(1) The development of self-help such as consumer clubs, furniture and other co-ops, credit unions, transportation pools, and skill pools;

(2) Assisting homebuyers in acquiring group insurance;

(3) Developing programs and contracting for services such as child care centers to be located in the community facility where such a facility exists;

(4) Assisting homebuyers in their employment, especially by participating in skill development and apprenticeship programs in cooperation with local educational organizations;

(5) Assisting homebuyers in planning the management role of the HBA and in negotiating any contract for management services with the LHA.

§ 904.305 Funding of HBA.

(a) In addition to providing the HBA with noncash contributions such as office space and duplicating services, the LHA shall make cash contributions for operating expenses of the HBA, in the amount provided for in paragraph (b) of this section. Until the project goes into management, these contributions shall be made from the development funds budgeted for the counseling and training program (see § 904.206). Thereafter, these contributions shall be provided for in the annual operating budgets of the LHA.

(b) The cash contributions pursuant to paragraph (a) of this section shall be in the amount provided for in the LHA budget (development cost budget or annual operating budget, as the case may be) and approved by HUD. Such contributions shall be subject to whatever restrictions are applied by HUD to the funding of tenant councils generally, but they shall not exceed $3 per year per dwelling unit; provided that as an incentive to the HBA to provide additional funds from other sources such as homebuyer's dues, contributions, revenues from special projects or activities, etc., the LHA shall, to the extent approved by HUD in the LHA budget, match such additional funds beyond the $3 up to a maximum of $4.50, for a total LHA share of $7.50 where the total funding for the HBA is $12 or more. The HBA shall not be precluded

from seeking to achieve total funding in excess of $12 per unit where this can be done with additional funds from sources other than the LHA. Furthermore, funding by the LHA for the normal expenses of the HBA is not to be confused with fees paid pursuant to management services contracts as described in § 904.306.

§ 904.306 Performing management services.

The LHA may also contract with the HBA to perform some or all of the functions of project management for which the HBA may be better suited or located than the LHA. Such functions may include security, maintenance of common property, or collection of monthly payments. For this purpose, the HBA may form a management corporation and the officers of the HBA shall be the directors of such corporation. This corporation and the LHA shall then negotiate a management services contract. Such arrangements are consistent with the objective of providing for maximum participation by residents in the management of their developments. As an alternative, the HBA and the LHA may elect to undertake any other arrangement approved by HUD.

§ 904.307 Alternative to HBA.

Where the homes are on scattered sites (noncontiguous lots throughout a multi-block area, with no common property), or where the number of homes may be too few to support an HBA, and where an alternative method for homebuyer representation and continuing counseling is provided, an HBA shall not be required. For such cases, a modified form of homebuyers association may be called for or a less formal organization may be desirable. This decision shall be made jointly by the LHA and the homebuyers, acting on the recommendation of HUD.

§ 904.308 Relationship with homeowners association.

The HBA and the homeowners association are, in legal terms, separate and distinct organizations with different functions. The homeowners association may hold title to and be responsible for maintenance of common property (see §§ 904.119 and 904.120), while the HBA has more general service and representative functions. While all residents are members of the HBA, only those who have acquired title to their homes are members of the homeowners association.

§ 904.309 Use of appendices.

Use of the Articles of Incorporation (Part I of Appendix I) and the Recognition Agreement between the Local Housing Authority and Homebuyers Association (Appendix II) is mandatory for projects developed under subpart B of this part which have homebuyers associations. No modification may be made in format, content or text of these Appendices except (1) as required under state or local law as determined by HUD or (2) with approval of HUD. The By-Laws of the Homebuyers Association is provided as a guide for such projects and it may be used or modified to the extent required by the HBA and LHA respectively to meet local needs and desires.

APPENDIX I TO SUBPART D OF PART 904—ARTICLES OF INCORPORATION AND BY-LAWS OF _____ HOMEBUYERS ASSOCIATION

(Subpart D)

Part I—*Articles of Incorporation*

In compliance with the requirements of —

_____

(reference to statute under which incorporation is sought) the undesigned, all of whom are natural persons, residents of _____, of full age, have this day voluntarily associated themselves together for the purpose of forming a Corporation, not-for-profit, and do hereby certify:

ARTICLE I—NAME

The name of the corporation is _____ _____ Homebuyers Association (hereinafter referred to as the ''Association'').

ARTICLE II—OFFICE

The principal office of the Association is located at _____

ARTICLE III—AGENT

_____, whose address is _____, is hereby appointed the initial registered agent of the Association.

ARTICLE IV—DURATION

The period of duration of the Association is perpetual.

ARTICLE V—MEMBERSHIP

Membership in the Association shall be limited to families who are entitled to occupancy of a Home in the Development pursuant to a Homebuyers Ownership Opportunity Agreement and families who are Homeowners in the Development, and all such families shall automatically be members so long as they are in occupancy of a Home. For purposes of these Articles, the term ''Development'' includes the following described Development or Developments in the Homeownership Opportunity Program of _____ (hereinafter referred to as the Authority):

_____

_____

ARTICLE VI—PURPOSES

The purposes for which this Association is formed shall not result in pecuniary gain or profit to the members thereof. These purposes are to provide organization and representation for its members in their relationships with the Authority in all matters regarding the homeownership opportunity program and, if appropriate, to perform management responsibilities for the Development under contract with the Authority.

1. In order to carry out these purposes, the Association shall perform the following functions:

a. Represent its members, individually and collectively, with respect to any deficiencies in the Development or in the Homes and with respect to fulfillment of the construction contract and related warranties;

b. Represent its members, individually and collectively, in their relationships with the Authority and others in regard to financial matters such as monthly payments, credits to and charges against reserves, settlement upon vacating a Home, and acquisition of ownership, and other matters pertaining to operation and management of the development;

c. Recommend policies and rules to the Authority for operation and management including rules concerning use of the common areas and community facilities;

d. Participate in the operation of official grievance mechanisms;

e. Advise and assist its members regarding procedures and practices relative to their Earned Home Payments Accounts and to their acquisition of homeownership;

f. Participate with the Authority in periodic maintenance inspections of the Homes after occupancy and make recommendations in case of disagreement arising out of maintenance inspections;

g. Participate with the Authority in the selection of subsequent homebuyers;

h. Coordinate, supervise, or manage the operation of credit union, child care, or other supportive services established for the Development;

i. Participate with the Authority in the establishment and implementation of policies related to collection of monthly payments, termination of occupancy, and resolution of hardship situations;

j. Perform management services as specified under contract with the Authority or with the Homeowners Association and participate in other activities pursuant to agreement with the Authority or with the Homeowners Association.

2. The Association may also offer special services such as:

a. The development of self-help such as consumer clubs, furniture and other co-ops, credit unions, transportation pools, and skill pools;

b. Assisting Homebuyers in acquiring group insurance;

c. Developing programs and contracting for services such as child care centers to be located in the community facility, where such a facility exists;

d. Assisting Homebuyers in their employment, especially by participating in skill development and apprenticeship programs in cooperation with local educational organizations; and

e. Assisting Homebuyers in planning the management role of the Association and in negotiating any contract for management services with the Authority.

ARTICLE VII—POWERS

This Association shall have all the powers, privileges, rights and immunities which are necessary or convenient for carrying out its purposes and which are conferred by the provisions of all applicable laws of the State of _____ pertaining to non-profit corporations.

ARTICLE VIII—VOTING

There shall be only one vote per Home regardless of the number of persons in the family that occupies the Home.

ARTICLE IX—BOARD OF DIRECTORS AND BY-LAWS

The affairs of the Association shall be managed by a Board of Directors, all of whom shall be members of the Association. The number of Directors shall be as provided in the By-Laws of the Association. The following persons shall serve as the first Board of Directors and as the first officers:

Office	Address
.....	.....
.....	.....

Office	Address
.....	.....

This Board shall manage the affairs of the Association until election of their successors by the membership.

Promptly after 60 percent of the Homes are occupied, or one year from the date the first Home is occupied, whichever occurs sooner, the Board shall call the first annual meeting of the Association at which the members shall adopt By-Laws and elect one-third of the Board for a term of one year, one-third for a term of two years, and one-third for a term of three years. At each annual meeting thereafter the members shall elect one-third of the Board for a term of three years.

ARTICLE X—DISSOLUTION

After all members have acquired ownership of their Homes, the Association shall be dissolved with the assent given in writing and signed by not less than two-thirds of the members. The dissolution shall be effective when all of the assets of the Association remaining after payment of its liabilities have been granted, conveyed and assigned in such manner as the Association and Authority may mutually agree.

ARTICLE XI—AMENDMENT

Amendment of these Articles shall require the assent of 75 percent of the entire membership.

In witness whereof, for the purposes of incorporating this Association under the laws of the State of _____, we, the undersigned constituting the incorporators of this Association, have executed these Articles of Incorporation this _____ day of _____, 19___.

_____

_____

_____

[Witness, Notary, or Acknowledgment as required by state law]

NOTE: The following is a suggested form of By-Laws. Different format and content to meet local needs may be used. For example, it may be considered desirable to combine HBA offices, eliminate or change functions of various committees, provide for other committees, etc.

Part II—*By-Laws*

The members of the _____ Homebuyers Association (hereinafter referred to as the ''Association'') do hereby adopt in accordance with Article IX of the Articles of Incorporation the following By-Laws:

SECTION 1. *Organization*—The affairs of the Association shall be managed by a Board of Directors elected by and from the members of the Association. The Board shall elect officers of the Association, including a President, Vice President, Secretary, and Treasurer, who shall carry out such functions and duties as are prescribed by these By-Laws and the Board.

SEC. 2. *Association meetings*— A. *Annual meetings.* The Association shall have an annual meeting at _____ (time) on the _____ (day of week and month) each year for the purpose of transacting such business as may be necessary or appropriate. If the date of the annual meeting is a legal holiday, the meeting shall be held at the same hour on the first day following which is not a legal holiday.

B. *Quarterly and special meetings.* Between annual meetings, quarterly meetings shall be called by the President and be held for the purpose of advising the membership of activities of the Board and enabling the members to bring up matters of common concern. Special meetings may be called at any time (1) by the President with the written concurrence of at least two of the other officers or (2) by a petition filed with the Secretary stating the purpose of the meeting and signed by at least one-fifth of the total number of members in the Association.

C. *Notice of meetings.* Written notice of each annual, quarterly or special meeting of the members shall be given by, or at the direction of, the Secretary by mailing a copy of such notice at least fifteen days before an annual or quarterly meeting or at least seven days before a special meeting, addressed to each member at the member's address shown on the records of the Association. Such notice shall specify the place, date, and hour of the meeting and, in the case of a special meeting, the purpose of such meeting. No business shall be transacted at any special meeting other than that stated in the notice unless by consent of at least one-half of the total number of votes of the Association.

D. *Quorum.* A quorum at any meeting shall consist of members entitled to cast votes which represent at least one-tenth of the votes of the Association. If such a quorum is not present, those present shall have the power to reschedule the meeting from time to time without notice other than an announcement at the meeting until there is a quorum. At any rescheduled meeting at which a quorum is present, the only business which may be transacted is that which might have been transacted at the original meeting.

E. *Voting.* Each family shall designate in writing to the Secretary the family member who is to cast the family vote. That designee may appoint as a proxy for a specific meeting any other member of the Association. A proxy must be in writing and filed with the Secretary not later than the time that meeting is called to order. Every proxy shall be

revocable and shall be automatically revoked when the person who appointed the proxy attends the meeting or ceases to have voting privileges in the Association. Votes represented by proxy shall be counted in determining the presence or absence of a quorum at any meeting.

F. *Agenda.* An agenda shall be prepared for every meeting.

SEC. 3. *Board of Directors*— A. *Number of directors.* The affairs of the Association shall be managed by a Board of _____ Directors, all of whom shall be members of the Association. The number of Directors may be changed by amendment of the By-Laws of the Association.

B. *Term of Office.* The Board of Directors shall be elected at the annual meeting of the Association. At the first annual meeting, the members shall elect _____[1] Directors for a term of one year, _____[1] Directors for a term of two years, and _____[1] Directors for a term of three years. At each annual meeting thereafter the members shall elect _____[1] Directors for a term of three years.

C. *Removal and other vacancies of Directors.* Any Director may be removed from the Board, for cause, by a majority of the votes of the Association at any annual or quarterly meeting or any special meeting called for such purpose, provided that the Director has been given an opportunity to be heard at such meeting. In the event of death, resignation or removal of a Director, his successor shall be elected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

D. *Chairman of the Board.* At the first regular Board meeting after each annual meeting, the Board of Directors shall elect a Chairman from among their number.

E. *Compensation.* No compensation shall be paid to the Board for its services. However, any Director may be reimbursed for his actual expense incurred in the performance of his duties, as long as such expense receives approval of the Board and is within the approved Association budget.

SEC. 4. *Nomination and election of the board*— A. *Nomination.* Nomination for election to the Board of Directors (other than for filling of vacancies under section 3. C.) shall be made by the Nomination Committee; provided, however, that nominations may also be made from the floor at the annual meeting by motion properly made and seconded, or by a petition which states the name of the person nominated, is signed by members representing at least ten votes, and is filed with the Secretary not later than the day prior to the annual meeting. Persons nominated must be members of the Association.

B. *Election.* Election of the Board of Directors shall be in accordance with Section 2.E., and by secret written ballot. The ballots shall be prepared by the Secretary. Cumulative voting is not permitted (that is, a voter who refrains from voting with respect to one or more vacancies may not on that account cast any extra vote or votes with respect to another vacancy). The persons receiving the largest number of votes shall be elected.

SEC. 5. *Meetings of Directors*— A. *Regular meetings.* Regular meetings of the Board of Directors shall be held monthly at such time and hours as may be fixed from time to time by resolution of the Board. Notice of time and place of the meetings shall be mailed to each Director no later than seven days before the meeting.

B. *Special meetings.* Special meetings of the Board of Directors shall be held when called by the President of the Association, the Chairman of the Board or by any two Directors, after not less than three days notice to each Director.

C. *Quorum.* A simple majority of the Board shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Board present at a duly held meeting shall be regarded as an act of the Board.

D. *Action taken without a meeting.* Any action which could be otherwise taken at a Board meeting may be taken in the absence of a meeting, by obtaining the written approval of all Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board.

SEC. 6. *Power and duties of the Board of Directors*— A. *Power and duties generally.* The Board of Directors shall have and exercise all the powers, duties, and authority necessary for the administration of the affairs and to carry out the purposes of the Association, excepting only those acts and things as are required by law, by the Articles of Incorporation, or by these By-Laws to be exercised and done by the members or their officers.

B. *Powers.* The Board shall have the power to: (1) Adopt and publish such rules and regulations as are appropriate in the exercise of its powers and duties, including but not limited to rules and regulations governing the amount and payment of dues, use of common areas and facilities and the conduct of the members and their guests thereon, and the establishment of penalties for violation of such rules and regulations; (2) appoint or designate officers, agents, and employees, and make such delegations of authority as in its judgment are in the best interest of the Association; (3) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from at least three consecutive regular meetings of the Board of Directors.

[1] Each group shall be one-third of the total number of Directors.

C. *Duties.* It shall be the duty of the Board of Directors to: (1) Cause to be kept a complete record of all its acts and Association affairs, and to present a statement thereof to the members at the annual meeting, or at any special meeting when such statement is requested in writing by members representing at least one-fifth of the votes of the Association; (2) cause to be prepared an annual audit of the Association books to be made at the completion of each fiscal year; (3) cause to be supervised all officers, agents, and employees of the Association, and see that their duties are properly performed; (4) procure and maintain adequate liability and hazard insurance on any property owned by the Association; (5) cause such officers or employees having fiscal responsibilities to be bonded as the Board may deem appropriate; (6) cause to be performed the functions listed in Article V of the Articles of Incorporation.

SEC. 7. *Association officers and their duties*—A. *Election.* The Board of Directors shall elect the following officers of the Association: a President, a Vice President, a Secretary, a Treasurer, and such other special officers as, in the opinion of the Board, the Association may require. The President and Vice President shall be elected from members of the Board. The election of officers shall take place biennially at the first meeting of the Board of Directors following the annual meeting of the members.

B. *Term.* The officers shall hold office for two years unless they shall resign sooner, be removed, or otherwise be disqualified to serve; provided, however, that special officers shall hold office for such period as the Board may determine, but not to exceed one year.

C. *Removal and resignation.* Any officer may be removed from office, for cause, by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

D. *Vacancies.* A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

E. *Multiple Officers.* No person shall simultaneously hold more than one of the offices required by these By-Laws.

F. *Duties.* The duties of the officers are as follows:

(1) *President.* The President shall preside at all Association meetings; shall execute the orders and resolutions of the Board; shall sign all leases, mortgage, deeds, and other written instruments; and shall cosign with the Treasurer all checks and promissory notes.

(2) *Vice President.* The Vice President shall act in place and stead of the President in the event of his absence or disability and shall exercise and discharge such other duties as may be required of him by the Board.

(3) *Secretary.* The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Association; shall keep the corporate seal of the Association and affix it on all papers requiring said seal; shall serve notice of the meetings of the Board and of the Association; shall keep appropriate current records showing the names and addresses of the members of the Association; and shall perform such duties as may be required by the Board.

(4) *Treasurer.* The Treasurer shall receive and deposit in appropriate bank accounts all funds of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall cosign with the President all checks and promissory notes of the Association; shall keep proper books of account; and shall prepare an annual budget and statement of income and expenditures which shall be approved by the Board before presentation to the Association at its regular annual meeting, and furnish a copy to each of the members.

(5) *Special officers.* Special officers shall have such authority and perform such duties as the Board may determine.

(6) *Compensation.* Officers may not be compensated except as may be determined by the Board, in accordance with the approved Association budget.

SEC. 8. *Committees.* A. *Committees to be established.* The Board of Directors shall establish the following committees:

(1) *Representation Committee* which shall represent members, individually and collectively, with respect to: any deficiencies in the Development or the individual Homes therein; fulfillment of the construction contract and related warranties; relationships with the Authority and others in regard to financial matters such as monthly payments, credits to and charges against reserves, settlement upon vacating the home, and acquisition of ownership; matters pertaining to project management; and matters in the Authority's official grievance mechanisms.

(2) *Rules Committee* which shall present to the Board for recommendation to the Authority policies for operation and management and, where appropriate, assist the Board in establishing Association rules in that respect.

(3) *Homeownership Committee* which shall advise and assist members in regard to maintenance and acquisition of ownership of their homes, financial matters and other matters related to homeownership and home management.

(4) *Selection Committee* which shall recommend proposed homebuyers from a list of eligible applicants.

(5) *Nominating Committee* which shall consist of a chairman, who shall be a member of the Board of Directors, and two or more members of the Association, none of whom are Directors. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies to be filled.

B. *Other committees.* The Board may establish other committees, permanent or temporary, which it deems necessary or desirable to carry out the purposes of the Association.

C. *Committee Chairman and Members.* The chairmen of all committees, except the Nominating Committee, shall be appointed by and serve at the pleasure of the President. Committee members shall be appointed by the chairman of the committee on which they are to serve and shall serve until a new chairman is appointed.

D. *Committee Reports.* The chairman of each committee shall make a report to the President in writing of committee meetings and activities prior to each regular monthly meeting of the Board of Directors.

E. *Authority.* Unless specifically authorized in writing by the Board of Directors or the President, a committee chairman or a committee shall have no authority to legally obligate the Association or incur any expenditure on behalf of the Association.

SEC. 9. *Suspension of rights.* The Board may suspend, by a majority vote of the Board, the voting rights and rights to use the recreational facilities, of a member, and his family and guests, during any period in which the member shall be in default in the payment of any dues or assessment imposed by the Association. Such rights may also be suspended, after notice and hearing, for a period not to exceed sixty days, for violation of the Association's rules and regulations.

SEC. 10. *Books and records.* The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member.

SEC. 11. *Amendments.* Amendments to these By-Laws may be introduced and discussed at any annual or special meeting of the Association, provided that copies of any proposed amendment shall be mailed to all the members with the notice of the meeting at which such amendment will be introduced. A vote on adopting such amendment shall be taken at the first Association meeting held at least two weeks subsequent to the meeting at which the amendment was introduced. Amendments shall be adopted by a vote of a majority of the members of the Association.

SEC. 12. *Corporate seal.* The Association shall have a seal which shall appear as follows: [SEAL]

SEC. 13. *Fiscal year.* The first fiscal year of the Association shall begin on the date of incorporation and shall end on the last day of _____ (month, year). Each successive fiscal year shall begin on the first day of _____ (month) and end on the last day of _____ (month).

The foregoing By-Laws were adopted at the first annual meeting of the Association held _____ by the undersigned members of the Association.

APPENDIX II TO SUBPART D OF PART 904—RECOGNITION AGREEMENT BETWEEN LOCAL HOUSING AUTHORITY AND HOMEBUYERS ASSOCIATION

(Subpart D)

WHEREAS, the _____ (''Authority''), a public body corporate and politic, has developed or acquired with the aid of loans and annual contributions from the Department of Housing and Urban Development (''HUD''), the following Development or Developments in its homeownership opportunity program (hereinafter referred to as the ''Development''):[1]

_____

_____

WHEREAS, an organization of residents (''Homebuyers'') is an essential element in such Development for purposes of effective participation of the Homebuyers in the management of the Development and representation of the Homebuyers in their relationships with the Authority, and for other purposes; and

WHEREAS, the _____ Homebuyers Association (''Association'') fully represents the Homebuyers of the Development;

NOW, THEREFORE, this agreement is entered into by and between the Authority and the Association and they do hereby agree as follows:

1. The Association, whose Articles of Incorporation are attached hereto and made a part hereof, is hereby recognized as the established representative of the Homebuyers of the Development and is the sole group entitled to represent them as tenants or Homebuyers before the Authority;

2. For each fiscal year, the Authority shall make available funds to the Association for its normal expenses, in such amounts as may

[1] List here the specific Development or Developments whose Homebuyers are represented by the Homebuyers Association with which this Agreement is entered into.

be available to the Authority for such purposes and subject to whatever applicable HUD regulations;

3. The Association shall be entitled to the use of office space in _____ at the Development without charge by the Authority for such use;

4. The Authority and the officers of the Association shall meet at a location convenient to both parties on the _____ (day) of each month to discuss matters of interest to either party;

5. In the event the parties later agree that the Association should assume management responsibilities now held by the Authority, a contract for such purpose will be negotiated by _____ the Association;

_____ terminate upon dissolution of the Association.

IN WITNESS HEREOF, the parties have executed this Agreement on _____, 19___.

Local Housing Authority
By (Official Title) _____
Homebuyers Association
By (Official Title) _____
WITNESSES: _____

_____

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

Sec.
905.10 Capital Fund formula (CFF).
905.120 Penalties for slow obligation or expenditure of CFP assistance.

AUTHORITY: 42 U.S.C. 1437g and 3535(d).

SOURCE: 65 FR 14426, March 16, 2000, unless otherwise noted.

§ 905.10 Capital Fund formula (CFF).

(a) *General.* This section describes the formula for allocation of capital funds to PHAs. The formula is referred to as the Capital Fund formula (CFF).

(b) *Emergency reserve and use of amounts.* (1) In each Federal fiscal year after Federal Fiscal Year (FFY) 1999, from amounts approved in the appropriation act for funding under this part, HUD:

(i) Shall reserve an amount not to exceed that authorized by 42 U.S.C. 1437g(k) for—

(A) Use for assistance in connection with emergencies and other disasters, and

(B) Housing needs resulting from any settlement of litigation; and

(ii) May reserve such other amounts for other purposes authorized by 42 U.S.C. 1437g(k).

(2) Amounts set aside under paragraph (b) of this section may be used for assistance for any eligible use under the Capital Fund, Operating Fund, or tenant-based assistance in accordance with section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f).

(3) The use of any amounts as provided under paragraph (b) of this section relating to emergencies (other than disasters and housing needs resulting from settlement of litigation) shall be announced subsequently through FEDERAL REGISTER notice.

(c) *Formula allocation based on relative needs.* After determining the amounts to be reserved under paragraph (b) of this section, HUD shall allocate the amount remaining in accordance with the CFF. The CFF measures the existing modernization needs and accrual needs of PHAs.

(d) *Allocation for existing modernization needs under the CFF.* HUD shall allocate one-half of the available Capital Fund amount based on the relative existing modernization needs of PHAs, determined in accordance with this paragraph (d) of this section.

(1) *For PHAs greater than or equal to 250 or more units in FFY 1999, except the New York City and Chicago Housing Authorities,* estimates of the existing modernization need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 4604.7);

(B) The total number of units in a development as of FFY 1999. (Equation co-efficient: 10.17);

(C) The proportion of units, as of FFY 1998, in a development in buildings completed in 1978 or earlier. In the case of acquired developments, HUD will use the Date of Full Availability (DOFA) date unless the PHA provides HUD with the actual date of construction. When provided with the actual date of construction, HUD will use this date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: 4965.4);

(D) The cost index of rehabilitating property in the area as of FFY 1999. (Equation co-efficient: –10608);

(E) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: 2703.9);

(F) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: –269.4);

(G) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: –1709.5);

(H) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: 246.2)

(ii) An equation constant of 13851.

(A) *Newly constructed units.* Units with a DOFA date of October 1, 1991, or thereafter, will be considered to have a zero existing modernization need.

(B) *Acquired developments.* Developments acquired by a PHA with a DOFA date of October 1, 1991, or thereafter, will be considered by HUD to have a zero existing modernization need.

(2) *For New York City and Chicago Housing Authorities, based on a large sample of direct inspections.* For purposes of this formula, prior to the cost calibration in paragraph (d)(4) of this section, the number used for the existing modernization need of family developments is $16,680 in New York, and $24,286 in Chicago, and the number for elderly developments is $14,622 in New York, and $16,912 in Chicago.

(i) *Newly constructed units.* Units with a DOFA date of October 1, 1991, or thereafter, will be considered to have a zero existing modernization need.

(ii) *Acquired developments.* Developments acquired by a PHA with a DOFA date of October 1, 1991, or thereafter, will be considered by HUD to have a zero existing modernization need.

(3) *For PHAs with fewer than 250 units in FFY 1999,* estimates of the existing modernization need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 1427.1);

(B) The total number of units in a development as of FFY 1999. (Equation co-efficient: 24.3);

(C) The proportion of units, as of FFY 1998, in a development in buildings completed in 1978 or earlier. In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction, in which case HUD will use the actual date of construction (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: −1389.7);

(D) The cost index of rehabilitating property in the area, as of FFY 1999. (Equation co-efficient: −20163);

(E) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: 6157.7);

(F) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: 4379.2);

(G) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: 3747.7);

(H) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: −2073.5)

(ii) An equation constant of 24762.

(A) *Newly constructed units.* Units with a DOFA date of October 1, 1991, or thereafter, will be considered to have a zero existing modernization need.

(B) *Acquired developments.* Developments acquired by a PHA with a DOFA date of October 1, 1991, or thereafter, will be considered by HUD to have a zero existing modernization need.

(4) *Calibration of existing modernization need for cost index of rehabilitating property in the area.* The estimated existing modernization need, as determined under paragraphs (d)(1), (d)(2) or (d)(3) of this section, shall be adjusted by the values of the cost index of rehabilitating property in the area.

(e) *Allocation for accrual needs under the CFF.* HUD shall allocate the other half of the remaining Capital Fund

amount based on the relative accrual needs of PHAs, determined in accordance with paragraph (e) of this section.

(1) *For PHAs greater than or equal to 250 or more units, except the New York City and Chicago Housing Authorities,* estimates of the accrual need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 324.0);

(B) The extent to which the buildings in a development average fewer than 5 units. (Equation co-efficient: 93.3);

(C) The age of a development as of FFY 1998, as determined by the DOFA date. In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction, in which case HUD will use the actual date of construction (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: −7.8);

(D) Whether the development is a family development. (Equation co-efficient: 184.5);

(E) The cost index of rehabilitating property in the area, as of FFY 1999. (Equation co-efficient: −252.8);

(F) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: −121.3);

(G) PHA size of 6600 or more units in FFY 1999. (Equation co-efficient: −150.7);

(H) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: 28.4);

(I) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: −116.9);

(J) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: 60.7)

(ii) An equation constant of 1371.9,

(2) *For New York City and Chicago Housing Authorities, based on a large sample of direct inspections.* For purposes of this formula, prior to the cost calibration in paragraph (e)(4) of this section the number used for the accrual need of family developments is $1,395 in New York, and $1,251 in Chicago, and the number for elderly developments is $734 in New York, and $864 in Chicago.

(3) *For PHAs with fewer than 250 units,* estimates of the accrual need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 325.5);

(B) The extent to which the buildings in a development average fewer than 5 units. (Equation co-efficient: 179.8);

(C) The age of a development as of FFY 1998, as determined by the DOFA date. In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction. When provided with the actual date of construction, HUD will use this date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: −9.0);

(D) Whether the development is a family development. (Equation co-efficient: 59.3);

(E) The cost index of rehabilitating property in the area, as of FFY 1999. (Equation co-efficient: −1570.5);

(F) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: −122.9);

(G) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: −564.0);

(H) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: −29.6);

(I) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: −418.3)

(ii) An equation constant of 3193.6.

(4) *Calibration of accrual need for the cost index of rehabilitating property in the area.* The estimated accrual need, as determined under either paragraph

(e)(2) or (e)(3) of this section, shall be adjusted by the values of the cost index of rehabilitation.

(f) *Calculation of number of units.* (1) *General.* For purposes of determining the number of a PHA's public housing units, and the relative modernization needs of PHAs:

(i) HUD shall count as one unit:

(A) Each public housing and section 23 bond-financed unit under the ACC, except that it shall count as one-fourth of a unit each existing unit under Turnkey III program. Units receiving operating subsidy only shall not be counted.

(B) Each existing unit under the Mutual Help program.

(ii) HUD shall add to the overall unit count units that are added to a PHA's inventory so long as the units are under ACC amendment and have reached DOFA by the date that HUD establishes for the Federal Fiscal Year in which the CFF is being run (hereafter called the ''reporting date''). Any such increase in units shall result in an adjustment upwards in the number of units under the CFF. New units reaching DOFA after the reporting date will be counted for CFF purposes as of the following Federal Fiscal Year.

(2) *Replacement units.* Replacement units newly constructed as of and after October 1, 1998 that replace units in a development funded in FFY 1999 by the Comprehensive Grant formula system or the Comprehensive Improvement Assistance Program (CIAP) formula system will be given a new ACC number as a separate development and will be treated as a newly constructed development.

(3) *Conversion of units.* The total estimated need (total units times need per unit) of the development is unchanged by conversion of unit sizes within buildings.

(4) *Reduction of units.* For developments losing units as a result of demolition and disposition, the number of units on which capital funding is based will be the number of units reported as eligible for capital funding as of the reporting date. Units are eligible for funding until they are removed due to demolition and disposition in accordance with a schedule approved by HUD.

(g) *Computation of formula shares under the CFF.* (1) *Total estimated existing modernization need.* The total estimated existing modernization need of a PHA under the CFF is the result of multiplying for each development the PHA's total number of formula units by its estimated existing modernization need per unit, as determined by paragraph (d) of this section, and calculating the sum of these estimated development needs.

(2) *Total accrual need.* The total accrual need of a PHA under the CFF is the result of multiplying for each development the PHA's total number of formula units by its estimated accrual need per unit, as determined by paragraph (e) of this section, and calculating the sum of these estimated accrual needs.

(3) *PHA's formula share of existing modernization need.* A PHA's formula share of existing modernization need under the CFF is the PHA's total estimated existing modernization need divided by the total existing modernization need of all PHAs.

(4) *PHA's formula share of accrual need.* A PHA's formula share of accrual need under the CFF is the PHA's total estimated accrual need divided by the total existing accrual need of all PHAs.

(5) *PHA's formula share of capital need.* A PHA's formula share of capital need under the CFF is the average of the PHA's share of existing modernization need and its share of accrual need (by which method each share is weighted 50%).

(h) *CFF capping.* (1) For units that are eligible for funding under the CFF (including replacement housing units discussed below) a PHA's CFF share will be its share of capital need, as determined under the CFF, subject to the condition that no PHA's CFF share for units funded under CFF can be less than 94% of its formula share had the FFY 1999 formula system been applied to these CFF eligible units. The FFY 1999 formula system is based upon the FFY 1999 Comprehensive Grant formula system for PHAs with 250 or more units in FFY 1999 and upon the FFY 1999 Comprehensive Improvement Assistance Program (CIAP) formula system for PHAs with fewer than 250 units in FFY 1999.

(2) For a Moving to Work PHA whose agreement provides that its capital formula share is to be calculated in accordance with the previously existing formula, the PHA's CFF share, during the term of the agreement, may be approximately the formula share that the PHA would have received had the FFY 1999 formula funding system been applied to the CFF eligible units.

(i) *Replacement housing factor to reflect formula need for developments with demolition and disposition occurring on or after October 1, 1998*—(1) *Replacement housing factor generally*. PHAs that have a reduction in units attributable to demolition and disposition of units during the period (reflected in data maintained by HUD) that lowers the formula unit count for the CFF calculations qualify for application of a replacement housing factor, subject to satisfaction of criteria stated in paragraph (i)(5) of this section.

(2) *When applied*. The replacement housing factor will be added, where applicable:

(i) For the first 5 years after the reduction in units described in paragraph (i)(1) of this section, and

(ii) For an additional 5 years if the planning, leveraging, obligation and expenditure requirements are met. As a prior condition of a PHA's receipt of additional funds for replacement housing provided for the second 5-year period or any portion thereof, a PHA must obtain a firm commitment of substantial additional funds other than public housing funds for replacement housing, as determined by HUD.

(3) *Computation of replacement housing factor*. The replacement housing factor consists of the difference between the CFF share without the CFF share reduction of units attributable to demolition and disposition, and the CFF share that resulted after the reduction of units attributable to demolition and disposition.

(4) *Replacement housing funding in FFY 1998 and 1999*. Units that received replacement housing funding in FFY 1998 will be treated as if they had received two years of replacement housing funding by FFY 2000. Units that received replacement housing funding in FFY 1999 will be treated as if they had received one year of replacement housing funding as of FFY 2000.

(5) *PHA eligibility for replacement housing factor*. A PHA is eligible for application of this factor only if the PHA satisfies the following criteria:

(i) The PHA requests the application of the replacement factor;

(ii) The PHA will use the funding in question only for replacement housing;

(iii) The PHA will use the restored funding that results from the use of the replacement factor to provide replacement housing in accordance with the PHA's five-year PHA plan, as approved by HUD under part 903 of this chapter;

(iv) The PHA has not received funding for public housing units that will replace the lost units under the public housing development, Major Reconstruction of Obsolete Public Housing, HOPE VI programs, or programs that otherwise provide for replacement with public housing units;

(v) The PHA, if designated troubled by HUD and not already under the direction of HUD or a court-appointed receiver, in accordance with part 902 of this chapter, uses an Alternative Management Entity as defined in part 902 of this chapter for development of replacement housing and complies with any applicable provisions of its Memorandum of Agreement executed with HUD under that part; and

(vi) The PHA undertakes any development of replacement housing in accordance with applicable HUD requirements and regulations.

(6) *Failure to provide replacement housing in a timely fashion*. (i) A PHA will be subject to the actions described in paragraph (i)(7)(ii) of this section if the PHA does not:

(A) Use the restored funding that results from the use of the replacement housing factor to provide replacement housing in a timely fashion, as provided in paragraph (i)(7)(i) of this section and in accordance with applicable HUD requirements and regulations; and

(B) Make reasonable progress on such use of the funding, in accordance with HUD requirements and regulations.

(ii) If a PHA fails to act as described in paragraph (i)(6)(i), HUD will require appropriate corrective action under these regulations; may recapture and

reallocate the funds; or may take other appropriate action.

(7) *Requirement to obligate and expend replacement housing factor funds within specified period.* (i) In addition to the requirements otherwise applicable to obligation and expenditure of funds, PHAs are required to obligate assistance received as a result of the replacement housing factor within:

(A) 24 months from the date that funds become available to the PHA; or

(B) With specific HUD approval, 24 months from the date that the PHA accumulates adequate funds to undertake replacement housing.

(ii) To the extent the PHA has not obligated any funds provided as a result of the replacement housing factor within the times required by this paragraph, or expended such funds within a reasonable time, HUD shall reduce the amount of funds to be provided to the PHA as a result of the application of the second 5 years of the replacement housing factor.

(j) *Performance reward factor.* (1) PHAs that are designated high performers under the Public Housing Assessment System (PHAS) for their most recent fiscal year can receive a performance bonus that is:

(i) 3% above their base formula amount in the first five years these awards are given (for any year in this 5-year period in which the performance reward is earned); and

(ii) 5% above their base formula amount in future years (for any year in which the performance reward is earned).

(2) The performance bonus is subject only to the condition that no PHA will lose more than 5% of its base formula amount as a result of the redistribution of funding from non-high performers to high performers.

(k) *Eligible expenses.* (1) Eligible expenses include the following:

(i) Development, financing, and modernization of public housing projects, including the redesign, reconstruction, and reconfiguration of public housing sites and buildings (including accessibility improvements) and the development of mixed-finance projects;

(ii) Vacancy reduction;

(iii) Addressing deferred maintenance needs and the replacement of obsolete utility systems and dwelling equipment;

(iv) Planned code compliance;

(v) Management improvements;

(vi) Demolition and replacement;

(vii) Resident relocation;

(viii) Capital expenditures to facilitate programs to improve the empowerment and economic self-sufficiency of public housing residents and to improve resident participation;

(ix) Capital expenditures to improve the security and safety of residents; and

(x) Homeownership activities, including programs under section 32 of the 1937 Act (42 U.S.C. 1437z–4).

(2) Such assistance may involve the drawdown of funds on a schedule commensurate with construction draws for deposit into an interest earning escrow account to serve as collateral or credit enhancement for bonds issued by a public agency for the construction or rehabilitation of the development.

[65 FR 14426, March 16, 2000, as amended at 65 FR 25446, May 2, 2000]

§ 905.120 Penalties for slow obligation or expenditure of CFP assistance.

In addition to any other statutory, regulatory, or contractual sanctions available to HUD, the penalties for slow obligation or expenditure of CFP assistance will be applied as follows:

(a) *Obligation of amounts.* (1) Except as provided in paragraph (b) of this section, a PHA must obligate any assistance received under this part not later than 24 months after, as applicable:

(i) The date on which the funds become available to the PHA for obligation in the case of modernization; or

(ii) The date on which the PHA accumulates adequate funds to undertake modernization, substantial rehabilitation, or new construction of units.

(2) Notwithstanding paragraph (a)(1) of this section, any funds appropriated to a PHA for Fiscal Year 1997 or prior fiscal years shall be fully obligated by the PHA not later than September 30, 1999.

(b) *Exceptions to obligation requirement*—(1) *Extension before expiration of obligation period.* A PHA may request and HUD may approve a longer timeframe or HUD may, by prior approval granted before the expiration of the

time period in paragraph (a) of this section, extend the time period under paragraph (a) of this section for an additional period not to exceed 12 months, based on:

(i) The size of the PHA;

(ii) The complexity of the capital program of the PHA;

(iii) Any limitation on the ability of the PHA to obligate the amounts allocated for the PHA from the Capital Fund in a timely manner as a result of state or local law; or

(iv) Such other factors as HUD determines to be relevant.

(2) *Extension of obligation period.* HUD may extend the time period under paragraph (a) of this section for a PHA, for such period as HUD determines to be necessary, if HUD determines that the failure of the agency to obligate assistance in a timely manner is attributable to:

(i) Litigation;

(ii) Obtaining approvals of the federal government or a state or local government;

(iii) Complying with environmental assessment and abatement requirements;

(iv) Relocating residents;

(v) An event beyond the control of the PHA; or

(vi) Any other reason established by HUD by notice published in the FEDERAL REGISTER.

(3) *Disregard of minimal unobligated amounts.* HUD will disregard the requirements of paragraph (a) of this section with respect to any unobligated amounts made available to a PHA, to the extent that the total of such amounts does not exceed 10 percent of the original amount made available to the PHA.

(c) *Effect of failure to comply*—(1) *Prohibition of new assistance.* A PHA will not be awarded CFP assistance for any month during any fiscal year in which the PHA has funds unobligated in violation of paragraph (a) or (b) of this section.

(2) *Withholding of assistance.* During any fiscal year described in paragraph (c)(1) of this section, HUD will withhold all assistance that would otherwise be provided to the PHA. If the PHA cures its failure to comply during the year, it shall be provided with the share attributable to the months remaining in the year.

(3) *Redistribution.* The total amount of any funds not provided PHAs by operation of this section shall be allocated for PHAs determined to be high-performing under the Public Housing Assessment System (at 24 CFR part 902) (or the applicable performance evaluation program for public housing).

(d) *Expenditure of amounts*—(1) *In general.* A PHA must spend any assistance received under this part not later than four years (plus the period of any extension approved by HUD under paragraph (b) of this section) after the date on which funds become available to the PHA for obligation.

(2) *Enforcement.* HUD will enforce the requirement of paragraph (d)(1) of this section through default remedies up to and including withdrawal of the CFP funding.

(e) *Right of recapture.* Any obligation entered into by a PHA is subject to the HUD's right to recapture the obligated amounts for violation by the PHA of the requirements of this section.

[68 FR 45731, Aug. 1, 2003]

PART 906—PUBLIC HOUSING HOMEOWNERSHIP PROGRAMS

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AUTHORITY: 42 U.S.C. 1437z–4 and 3535(d).

SOURCE: 68 FR 1172, Mar. 11, 2003, unless otherwise noted.

Subpart A—General

§906.1 Purpose.

(a) This part states the requirements and procedures governing public housing homeownership programs involving sales of individual dwelling units to families or to purchase and resale entities (PREs) for resale to families carried out by public housing agencies (PHAs), as authorized by section 32 of the United States Housing Act of 1937 (42 U.S.C. 1437z–4) (1937 Act). A PHA may only transfer public housing units for homeownership under a homeownership program approved by HUD under this part, except as provided under §906.3. This section does not govern new construction or substantial rehabilitation of units sold under this part. Such construction or rehabilitation is governed by the public housing development and modernization regulations.

(b) Under a public housing homeownership program, a PHA makes available for purchase by low-income families for use as their principal residences public housing dwelling units, public housing developments, and other housing units or developments owned, assisted, or operated, or otherwise acquired by the PHA for sale under a homeownership program in connection with the use of assistance provided under the 1937 Act (1937 Act funds). A PHA may sell all or a portion of a property for purposes of homeownership in accordance with a HUD-approved homeownership program, and in accordance with the PHA's annual plan under part 903 of this title.

§906.2 Definitions.

Annual Contributions Contract (ACC) is defined in 24 CFR 5.403.

Low-income family is defined in the 1937 Act, 42 U.S.C. 1437a(b)(2).

Non-public housing unit means a housing unit that does not receive assistance under the 1937 Act (other than Section 8 assistance).

PHA Plan means the 5-year or annual plan required under section 5A of the 1937 Act, 42 U.S.C. 1437c–1, and its implementing regulations at 24 CFR part 903.

Purchase and Resale Entity (PRE) means an entity that acquires units for resale to low-income families in accordance with this part.

§906.3 Requirements applicable to homeownership programs previously approved by HUD.

(a) Any existing section 5(h) or Turnkey III homeownership program continues to be governed by the requirements of part 906 or part 904 of this title, respectively, contained in the April 1, 2002, edition of 24 CFR, parts 700 to 1699. The use of other program income for homeownership activities

continues to be governed by agreements executed with HUD.

(b) A PHA may convert an existing homeownership program, or a specific number of the units in such a program, to a homeownership program under this part with HUD approval.

Subpart B—Basic Program Requirements

§ 906.5 Dwelling units and types of assistance that a PHA may make available under a homeownership program under this part.

(a) A homeownership program under this part may provide for sale of:

(1) Units that are public housing units; and

(2) Other units owned, operated, assisted, or acquired for homeownership sale and that have received the benefit of 1937 Act funds or are to be sold with the benefit of 1937 Act funds (non-public housing units). In selecting such units to be sold in a homeownership program under this part, the PHA shall not select units such that it could not comply with § 906.7(a).

(b) A homeownership program under this part may provide for financing to eligible families (*see* § 905.15 of this title) purchasing dwelling units eligible under paragraph (a) of this section under the program, or for acquisition of housing units or developments by the PHA for sale under the program.

(1) Under this part, a PHA may use assistance from amounts it receives under the Capital Fund under section 9(d) of the 1937 Act or from other income earned from its 1937 Act programs to provide assistance to public housing residents only to facilitate the purchase of homes (*e.g.,* counseling, closing costs, that portion of the down payment not required to be supplied from the purchaser's funds under the provisions of § 906.15(c), financing, and moving assistance). Public housing residents may use such assistance to purchase the unit in which they reside, another public housing unit, or a residence not located in a public housing development.

(2) A PHA may provide financing assistance for other eligible purchasers from other income, *i.e.,* funds not from 1937 Act programs, such as proceeds from selling public housing units, loan repayments, and public housing debt forgiveness funding not already committed to another purpose.

(3) In accordance with the rules and regulations governing the Section 8(y) Homeownership Option, found in 24 CFR part 982 subpart M, a PHA may make its housing choice voucher funds available to provide assistance to a family purchasing a unit under this part. A family receiving assistance under the Section 8(y) program and participating in a homeownership program under this part must meet the requirements of both programs.

(c) A PHA must not use 1937 Act funds to rehabilitate units that are not public housing units.

§ 906.7 Physical requirements that a property offered for sale under this part must meet.

(a) *Property standards.* A property offered for sale under a homeownership program must meet local code requirements (or, if no local code exists, the housing quality standards established by HUD for the Section 8 Housing Choice Voucher Program, 24 CFR part 982) and the relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and the implementing regulations at 24 CFR part 35, subparts A, B, L, and R of this title. When a prospective purchaser who has known disabilities, or who has a family member with known disabilities requires accessible features, the features must be added as a reasonable accommodation to the disability, in accordance with the requirements of § 8.29 of this title. Further, the property must be in good repair, with the major components having a remaining useful life that is sufficient to justify a reasonable expectation that homeownership will be affordable by the purchasers. These standards must be met as a condition for conveyance of a dwelling to an individual purchaser.

(b) A unit in this program for which the purchasing family is receiving assistance under Section 8(y) must be an

eligible unit for purposes of the Homeownership Option under 24 CFR part 982, subpart M.

§ 906.9 Title restrictions and encumbrances on properties sold under a homeownership program.

(a) If the property is subject to indebtedness under the Annual Contributions Contract (ACC), HUD will continue to make any debt service contributions for which it is obligated under the ACC, and the property sold will not be subject to the encumbrance of that indebtedness.

(b) Upon sale of a public housing unit to a public housing tenant or eligible family, or to a PRE operating the units as non-public housing, in accordance with the HUD-approved homeownership program, HUD will execute a release of the title restrictions prescribed by the ACC. Because the property will no longer be subject to the ACC after sale, it will cease to be eligible for public housing Operating Fund or Capital Fund payments.

Subpart C—Purchaser Requirements

§ 906.11 Eligible purchasers.

Entities that purchase units from the PHA for resale to low-income families (purchase and resale entities or PREs) and low-income families are eligible to purchase properties made available for sale under a PHA homeownership program.

§ 906.13 Right of first refusal.

(a) In selling a public housing unit under a homeownership program, the PHA or PRE must initially offer the unit to the resident occupying the unit, if any, notwithstanding the requirements of §§ 906.15(a) and 906.15(c).

(b) This program does not require the PHA, when selling a unit that is a non-public housing unit, to offer the unit for sale first to the current resident of the unit.

§ 906.15 Requirements applicable to a family purchasing a property under a homeownership program.

(a) *Low-income requirement.* Except in the case of a PHA's offer of first refusal to a resident occupying the unit under § 906.13, a family purchasing a property under a PHA homeownership program must be a low-income family, as defined in section 3 of the 1937 Act (42 U.S.C. 1437a), at the time the contract to purchase the property is executed.

(b) *Principal residence requirement.* The dwelling unit sold to an eligible family must be used as the principal residence of the family.

(c) *Financial capacity requirement.* Eligibility must be limited to families who are capable of assuming the financial obligations of homeownership, under minimum income standards for affordability, taking into account the unavailability of public housing operating subsidies and modernization funds after conveyance of the property by the PHA. A homeownership program may, however, take account of any available subsidy from other sources. Under this affordability standard, an applicant must meet the following requirements:

(1) *Cost/income ratio.* On an average monthly estimate, the amount of the applicant's payments for mortgage principal and interest, plus insurance, real estate taxes, utilities, maintenance, and other regularly recurring homeownership costs (such as condominium, cooperative, or other homeownership association fees) will not exceed the sum of:

(i) 35 percent of the applicant's adjusted income as defined in 24 CFR part 913; and

(ii) Any subsidy that will be available for such payments;

(2) *Down payment requirement.* Each family purchasing housing under a homeownership program must provide a down payment in connection with any loan for acquisition of the housing, in an amount determined by the PHA or PRE, in accordance with an approved homeownership program. Except as provided in paragraph (c)(3) of this section, the PHA or PRE must permit the family to use grant amounts, gifts from relatives, contributions from private sources, and other similar amounts in making the down payment;

(3) The family must use its own resources other than grants, gifts, contributions, or similar amounts, to contribute an amount of the down payment that is not less than one percent

of the purchase price of the housing. The PHA or PRE must maintain records that are verifiable by HUD through audits regarding the source of this one percent contribution.

(d) *Other requirements established by the PHA.* A PHA may establish requirements or limitations for families to purchase housing under a homeownership program, including but not limited to requirements or limitations regarding:

(1) Employment or participation in employment counseling or training activities;

(2) Criminal activity;

(3) Participation in homeownership counseling programs; and

(4) Evidence of regular income.

§ 906.17 PHA handling of homeownership applications.

Families who are interested in purchasing a unit must submit applications to the PHA or PRE for that specific purpose, and those applications must be handled separately from applications for other PHA programs. Application for homeownership must not affect an applicant's place on any other PHA waiting list for rental units.

§ 906.19 Requirements applicable to a purchase and resale entity (PRE).

(a) *In general.* In the case of a purchase of units for resale to low-income families by a PRE, the PHA must have an approved homeownership program that describes the use of a PRE to sell the units to low-income families within 5 years from the date of the PRE's acquisition of the units.

(b) *PRE requirements.* The PHA must demonstrate in its homeownership program that the PRE has the necessary legal capacity and administrative capability to carry out its responsibilities under the program. The PHA's homeownership program also must contain a written agreement (not required to be submitted as part of the homeownership plan) that specifies the respective rights and obligations of the PHA and the PRE, and which includes:

(1) Assurances that the PRE will comply with all provisions of the HUD-approved homeownership program;

(2) Assurances that the PRE will be subject to a title restriction providing that the property must be resold or otherwise transferred only by conveyance of individual dwellings to eligible families, in accordance with the HUD-approved homeownership program, or by reconveyance to the PHA, and that the property will not be encumbered by the PRE without the written consent of the PHA;

(3) Protection against fraud or misuse of funds or other property on the part of the PRE, its employees, and agents;

(4) Assurances that the resale proceeds will be used only for the purposes specified by the HUD-approved homeownership program;

(5) Limitation of the PRE's administrative and overhead costs, and of any compensation or profit that may be realized by the PRE, to amounts that are reasonable in relation to its responsibilities and risks;

(6) Accountability to the PHA and residents for the recordkeeping, reporting, and audit requirements of § 906.33;

(7) Assurances that the PRE will administer its responsibilities under the plan on a nondiscriminatory basis, in accordance with the Fair Housing Act, its implementing regulations, and other applicable civil rights statutes and authorities, including the authorities cited in § 5.105(a) of this title; and

(8) Adequate legal remedies for the PHA and residents, in the event of the PRE's failure to perform in accordance with the agreement.

(c) *Sale to low-income families.* The requirement for a PRE to sell units under a homeownership program only to low-income families must be recorded as a deed restriction at the time of purchase by the PRE.

(d) *Resale within five years.* A PRE must agree that, with respect to any units it acquires under a homeownership program under this part, it will transfer ownership to the PHA if the PRE fails to resell the unit to a low-income family within 5 years of the PRE's acquisition of the unit.

Subpart D—Program Administration

§ 906.23 Protections available to non-purchasing public housing residents.

(a) If a public housing resident does not exercise the right of first refusal under § 906.13, and the PHA determines to move the tenant for the purpose of transferring possession of the unit, the PHA must provide the notice stated in this section 90 days before the date the resident is displaced, and may not displace the resident, except as stated in paragraph (a)(1) of this section, for the full 90-day period. The PHA:

(1) Must notify the resident residing in the unit 90 days prior to the displacement date, except in cases of imminent threat to health or safety, that:

(i) The public housing unit will be sold;

(ii) The transfer of possession of the unit will not occur until the resident is relocated; and

(iii) Each resident displaced by such action will be offered comparable housing (as defined in paragraph (b) of this section);

(2) Must provide for the payment of the actual costs and reasonable relocation expenses of the resident to be displaced;

(3) Must ensure that the resident is offered comparable housing under paragraph (a)(1)(iii) of this section;

(4) Must provide counseling for displaced residents regarding their rights to comparable housing, including their rights under the Fair Housing Act to choice of a unit on a nondiscriminatory basis, without regard to race, color, religion, national origin, disability, age, sex, or familial status; and

(5) Must not transfer possession of the unit until the resident is relocated.

(b) For purposes of this section, the term ''comparable housing'' means housing:

(1) That meets housing quality standards;

(2) That is located in an area that is generally not less desirable than the displaced resident's original development; and

(3) Which may include:

(i) Tenant-based assistance (tenant-based assistance must only be provided upon the relocation of the resident to the comparable housing);

(ii) Project-based assistance; or

(iii) Occupancy in a unit owned, operated, or assisted by the PHA at a rental rate paid by the resident that is comparable to the rental rate applicable to the unit from which the resident is vacating.

§ 906.24 Protections available to non-purchasing residents of housing other than public housing.

Residents of non-public housing that would be displaced by a homeownership program are eligible for assistance under the Uniform Relocation Act and part 42 of this title. For purposes of this part, a family that was over-income (*i.e.,* an individual or family that is not a low-income family) at the time of initial occupancy of public housing and was admitted in accordance with section 3(a)(5) of the 1937 Act, is treated as a non-purchasing resident of non-public housing.

§ 906.25 Ownership interests that may be conveyed to a purchaser.

A homeownership program may provide for sale to the purchasing family of any ownership interest that the PHA considers appropriate under the homeownership program, including but not limited to:

(a) Ownership in fee simple;

(b) A condominium interest;

(c) An interest in a limited dividend cooperative;

(d) A shared appreciation interest with a PHA providing financing; or

(e) A leasehold under a bona fide lease-purchase arrangement.

§ 906.27 Limitations applicable to net proceeds on the sale of a property acquired through a homeownership program.

(a) Where the family has owned a unit under this part, the following rules apply:

(1) In this section, the term *gain from appreciation* means the financial gain on resale attributable solely to the home's appreciation in value over time, and not attributable to government-provided assistance or any below-market financing provided under § 906.29.

(2) In this section, the term *net proceeds* means the financial gain on resale received by the seller after satisfying all amounts owing under mortgages, paying closing costs, and receiving an amount equal to the down payment (made from the seller's own funds) and principal payments on the mortgage(s).

(3) A PHA must have a policy that provides for the recapture of net proceeds in an amount that the PHA considers appropriate under the guidelines in this section.

(4) A PHA must have a policy that provides the recapture of the following amounts, if a family resells a homeownership unit it purchased under this part during the 5-year period beginning upon purchase of the dwelling unit:

(i) All or a portion of the gain from appreciation; and

(ii) All or a portion of the assistance provided (which includes below-market financing, but which does not include Section 8(y) assistance used for mortgage payments under this part) under the homeownership program to the family to the extent there are net proceeds, considering the factors the PHA establishes under paragraphs (b)(1)–(7) of this section.

(b) The PHA's program under this part may provide for consideration of any factors the PHA considers appropriate in determining how much of the gain from appreciation and assistance to recapture, including but not limited to the following:

(1) The aggregate amount of assistance provided under the homeownership program to the family;

(2) The contribution of equity by the purchasing family;

(3) The period of time elapsed between purchase by the homebuyer under the homeownership program and resale by the homebuyer;

(4) The reason for resale;

(5) Any improvements made by the family purchasing under the homeownership program;

(6) Any appreciation in the value of the property; and

(7) Any other factors that the PHA considers appropriate in making the recapture determination under this section.

(c) After the expiration of the 5-year period in paragraph (a)(4) of this section, the PHA must recapture all or a portion of the assistance provided under the homeownership program to the family to the extent there are net proceeds.

(d) The PHA must enforce its recapture policy through an appropriate form of title restriction.

§ 906.29 Below-Market sales and financing.

A homeownership plan may provide for below-market purchase prices or below-market financing to enable below-market purchases, or a combination of the two. Discounted purchase prices may be determined on a unit-by-unit basis, based on the particular purchaser's ability to pay, or may be determined by any other fair and reasonable method (*e.g.*, uniform prices for a group of comparable dwellings, within a range of affordability by potential purchases). Below-market financing may include any lawful type of public or private financing, including but not limited to purchase-money mortgages, non-cash second mortgages, promissory notes, guarantees of mortgage loans from other lenders, shared equity, or lease-purchase arrangements.

§ 906.31 Requirements applicable to net proceeds resulting from sale.

(a) *PHA use of net proceeds.* The PHA must use any net proceeds of any sales under a homeownership program remaining after payment of all costs of the sale for purposes relating to low-income housing and in accordance with its PHA plan.

(b) *PRE use of resale net proceeds.* The PHA may require the PRE to return the net proceeds from the resale of the units to the PHA. If the PHA permits the PRE to retain the net proceeds, the PRE must use these proceeds for low-income housing purposes.

(c) *Transfer of unsold unit to PHA.* In a situation where the PRE fails to sell a unit to an eligible family within 5 years, and the provision of § 906.19(d) requiring that the unit be transferred to the PHA applies:

(1) If the unit has not been operated by the PRE as a public housing unit at any time during the 5-year period, the

PHA may resell the unit in accordance with this part or any successor homeownership program of the department, or apply to have the unit included in its public housing program, if it meets all statutory and regulatory requirements of the public housing program; or

(2) If the unit has been operated by the PRE as a public housing unit within such a 5-year period, the PHA must return the unit to operation in its regular public housing program.

(d) *Transfer of unsold unit operated as public housing to PHA.* Where the PRE operates the unit as public housing during the 5-year interim period under § 960.40, and fails to sell the unit to an eligible family within such 5-year period and the provision of § 906.19(d) applies, the PHA must return the unit to operation in its regular public housing program.

§ 906.33 Reporting and recordkeeping requirements.

The PHA is responsible for the maintenance of records (including sale and financial records) for all activities incident to implementation of the HUD-approved homeownership program. Where a PRE is responsible for the sale of units, the PHA must ensure that the PRE's responsibilities include proper recordkeeping and accountability to the PHA, sufficient to enable the PHA to monitor compliance with the approved homeownership program and to meet its audit responsibilities. All books and records must be subject to inspection and audit by HUD and the General Accounting Office (GAO). The PHA must report annually to HUD on the progress of each program approved under this part. The PHA must report as part of the Annual Plan process under § 903.7(k) of this title, except for those PHAs under §§ 903.11(c)(1) and (2) of this title who are not required to include information on their public housing homeownership programs in their Annual Plan. Those PHAs must report by providing a description of the homeownership program to HUD, including the cumulative number of units sold.

§ 906.35 Inapplicability of section 18 of the United States Housing Act of 1937.

The provisions of section 18 of the 1937 Act (42 U.S.C. 1437p) do not apply to disposition of public housing dwelling units under a homeownership program approved by HUD under this part, or to the sale of a unit to a PRE to operate as public housing and sell to a low-income family within 5 years, under the requirements of § 906.19.

§ 906.37 Davis-Bacon and HUD wage rate requirements.

(a) *Wage rates applicable to laborers and mechanics.* Wage rate requirements in accordance with § 968.110(e) of this title apply to the following activities:

(1) Rehabilitation, repairs, and accessibility modifications performed under an agreement or contract with the PHA or by the PHA, pursuant to § 906.7. Davis-Bacon or HUD-determined wage rates apply as follows:

(i) Existing public housing units that will be sold under a homeownership program: Davis-Bacon rates apply, except that HUD rates apply to nonroutine maintenance as defined in § 968.105 of this title;

(ii) Non-public housing units acquired by a PHA using Capital Funds that will be sold under a homeownership program: Davis-Bacon rates apply; and

(iii) Non-public housing units owned or acquired by a PHA with the intent to use 1937 Act funds to finance the sale of the units, or otherwise provide assistance to purchasers of the units: Davis-Bacon rates apply;

(2) New construction of non-public housing units pursuant to a contract for acquisition by a PHA for the purpose of sale under a homeownership program: Davis-Bacon rates apply;

(3) Operation, rehabilitation, and repair of units operated as public housing units by a PRE: HUD rates apply to nonroutine maintenance, as defined in § 968.105 of this title, and routine maintenance. Davis-Bacon rates apply to rehabilitation and repair that does not qualify as nonroutine maintenance.

(b) *Technical wage rates.* All architects, technical engineers, draftsmen,

and technicians employed in the development of units under a homeownership program shall be paid not less than the HUD-determined wage rates in accordance with § 968.100(f) of this title.

Subpart E—Program Submission and Approval

§ 906.38 Requirement of HUD approval to implement a homeownership program under this part.

A PHA must obtain HUD approval before implementing a homeownership program under this part. A homeownership program under this part must be carried out in accordance with the requirements of this part and the PHA Plan submitted under part 903 of this title.

§ 906.39 Contents of a homeownership program.

A homeownership program must include the following matters, as applicable to the particular factual situation:

(a) *Method of Sale:* The PHA should indicate how units will be sold, including a description of the exact method of sale, such as, for example, fee simple conveyance, lease-purchase, or sale of a cooperative share. PHAs may sell units directly to a tenant or eligible family directly or via a *bona fide* lease-purchase arrangement. The PHA must indicate whether it, or a PRE will sell units to families directly or via such lease-purchase method. If the PHA or PRE will use a lease-purchase method the proposal should indicate the terms of the lease-purchase arrangement. The terms of the lease-purchase arrangement shall include, but are not limited to the periodic documentation to be provided to the family regarding the amount they have accrued toward the down payment, and the length of the lease period (with regard to PREs the sales must be completed within the statutory 5-year period.);

(b) *Property description.* (1) If the program involves only financing assistance to the family purchasing the unit, the PHA need not specify property addresses, but it must describe the area(s) in which the assistance is to be used;

(2) If the PHA is selling existing public housing, it must describe the property, including identification of the property by project number, or street address if there is no project number, and the specific dwellings to be sold, with bedroom distribution by size and type broken down by development;

(3) If the PHA is acquiring units with 1937 Act funds to sell under the program, it must comply with the provisions of § 906.40 concerning this element of the program;

(c) *Repair or rehabilitation.* If applicable, a plan for any repair or rehabilitation needed to meet the requirements of § 906.7, based on the assessment of the physical condition of the property that is included in the supporting documentation. The restriction in 906.5(c) of this part applies to such repair or rehabilitation;

(d) *Purchaser eligibility and selection.* The standards and procedures to be used for homeownership applications and the eligibility and selection of purchasers, consistent with the requirements of § 906.15. If the homeownership program allows application for purchase of units by families who are not presently public housing or Section 8 residents and not already on the PHA's waiting lists for those programs, the program must include an affirmative fair housing marketing strategy for such families, including specific steps to inform them of their eligibility to apply, and to solicit applications from those in the housing market who are least likely to apply for the program without special outreach, including persons with disabilities;

(e) *Sale and financing.* Terms and conditions of sale and financing, including any below-market financing under § 906.29;

(f) *Consultation with residents and purchasers.* A description of resident input obtained during the resident consultation process required by the PHA Plan under part 903 of this title. If the PHA is one whose Plan does not require information regarding homeownership under § 903.11(b)(1) of this title, the PHA must consult with the Resident Advisory Board or Boards regarding the homeownership plan, and provide the information required in this paragraph;

(g) *Counseling.* Counseling, training, and technical assistance to be provided to purchasers;

(h) *Sale via PRE.* If the program contemplates sale to residents by an entity other than the PHA, a description of that entity's responsibilities and information demonstrating that the requirements of § 906.19 have been met or will be met in a timely fashion;

(i) *Non-purchasing residents.* If applicable, a plan for non-purchasing residents, in accordance with § 906.23;

(j) *Sale proceeds.* An estimate of the sale proceeds and an explanation of how they will be used, in accordance with § 906.31;

(k) *Records, accounts, and reports.* A description of the recordkeeping, accounting, and reporting procedures to be used, including those required by § 906.33;

(l) *Budget.* A budget estimate, showing any rehabilitation or repair cost, any financing assistance, and the costs of implementing the program, and the sources of the funds that will be used;

(m) *Timetable.* An estimated timetable for the major steps required to carry out the program;

(n) *Deed restrictions.* A deed restriction or covenant running with the land that will assure to HUD's satisfaction that the requirements of §§ 906.27 and 906.15(b) are met.

§ 906.40 Supporting documentation.

The following supporting documentation must be submitted to HUD with the proposed homeownership program, as appropriate for the particular program:

(a) *Supporting documentation—PREs.* In approving homeownership programs in which the PHA contemplates selling public housing units to a PRE for operation as public housing during the 5 year interim period the department will require evidentiary materials including but not limited to:

(1) Organizational documents of the PRE;

(2) Regulatory and operating agreement between the PHA and PRE regarding the provision of operating subsidy and the operation of the public housing units in accordance with all applicable public housing requirements;

(3) Management agreement and plan;

(4) Financing documents, if any;

(5) A description of the use of operating subsidy during the PRE's period of ownership, in the form of an operating pro forma;

(6) A mixed-finance ACC amendment governing these units;

(7) A deed restriction or covenant running with the land that will assure to HUD's satisfaction that the PRE will operate the units in accordance with public housing laws and regulations, including § 906.19.

(8) A bond for repairs or proof of insurance to cover any damage to the property during the period of PRE ownership and operation;

(9) Such other materials as may be required by HUD.

(b) *Physical assessment.* An assessment of the physical condition of the properties, based on the standards specified in § 906.7;

(c) *Feasibility.* A statement demonstrating the practical feasibility of the program, based on analysis of data on such elements as purchase prices, costs of repair or rehabilitation, accessibility costs, if applicable, homeownership costs, family incomes, availability of financing, and the extent to which there are eligible residents who are expected to be interested in purchase (*See* § 906.45(a));

(d) *PHA performance in homeownership.* A statement of the commitment and capability of the PHA (and any other entity with substantial responsibility for implementing the homeownership program) to successfully carry out the homeownership program. The statement must describe the PHA's (and other entity's) past experience in carrying out homeownership programs for low-income families, and (if applicable) its reasons for considering such programs to have been successful. A PHA that has not previously implemented a homeownership program for low-income families instead must submit a statement describing its experience in carrying out public housing modernization and development projects under part 905 of this title, respectively;

(e) *Nondiscrimination certification.* The PHA's or PRE's certification that it

will administer the plan on a nondiscriminatory basis, in accordance with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Executive Order 11063, other authorities cited in § 5.105(a) of this title, and the implementing regulations, and will assure compliance with those requirements by any other entity that may assume substantial responsibilities for implementing the program;

(f) *Legal opinion.* An opinion by legal counsel to the PHA, stating that counsel has reviewed the program and finds it consistent with all applicable requirements of federal, state, and local law, including regulations as well as statutes. At a minimum, the attorney must certify that the documents to be used will ensure sales only to eligible families under § 906.15, compliance with the 5-year PRE sale guarantee in § 906.19(d), and compliance with the restriction of use of resale proceeds of § 906.27;

(g) *Board resolution.* A resolution by the PHA's Board of Commissioners, evidencing its approval of the program;

(h) *Section 8(y).* In any case where the PHA plans to provide families with assistance under the Section 8(y) homeownership option in connection with homeownership under this part, a certification that the PHA will comply with the requirements of the Section 8(y) statute and implementing regulations;

(i) *Other information.* Any other information that may reasonably be required for HUD review of the program. Except for the PHA-HUD implementing agreement under § 906.49 and the deed restriction required by § 906.39(n), HUD approval is not required for documents to be prepared and used by the PHA in implementing the program (such as contracts, applications, deeds, mortgages, promissory notes, and cooperative or condominium documents), if their essential terms and conditions are described in the program. Consequently, those documents need not be submitted as part of the program or the supporting documentation.

§ 906.41 Additional supporting documentation for acquisition of non-public housing for homeownership.

(a) *Proposal contents.* The PHA must submit an acquisition proposal to the HUD field office for review and approval before its homeownership plan containing acquisition of non-public housing can be approved. This proposal must contain the following:

(1) *Property description.* A description of the properties, including the number of housing units, unit types, and number of bedrooms, and any non-dwelling facilities on the properties to be acquired;

(2) *Certification.* If the housing units were constructed under a contract or an agreement that they be sold to the PHA, a certification that the developer/owner complied with all Davis-Bacon wage rate requirements under § 906.37, including all required contractual provisions and compliance measures, and that the PHA received all applicable HUD environmental approvals and all applicable HUD releases of funds before executing the contract or agreement, in accordance with § 906.47(d).

(3) *Site information.* A description of the proposed general location of the properties to be acquired, or where specific properties have been identified, street addresses of the properties;

(4) *Property costs.* The detailed budget of costs for acquiring the properties, including relocation and closing costs, and an identification of the sources of funding;

(5) *Appraisal.* An appraisal of the proposed properties by an independent, state-certified appraiser (when the sites have been identified);

(6) *Property acquisition schedule.* A copy of the PHA acquisition schedule;

(7) *Environmental information.* (i) The environmental information required by § 906.47(f), where HUD will perform the environmental review under 24 CFR part 50, or a statement identifying the responsible entity that has performed or will perform the review under 24 CFR part 58. This paragraph (a)(7)(i) does not apply to a property where a contract or agreement for sale to the PHA has already been executed and HUD has already given prior approval

of the property following environmental review under 24 CFR part 50.

(ii) Where the PHA's homeownership program is submitted for approval to HUD and contemplates acquisition of properties not identified at the time of submission or approval, the procedures at § 906.47(e) apply.

(8) *Market analysis.* An analysis of the potential market of eligible purchasers for the homeownership units.

(9) *Additional HUD-requested information.* Any additional information that may be needed for HUD to determine whether it can approve the proposal.

(b) *Cost limit.* The acquisition cost of each property is limited by the housing cost cap limit, as determined by HUD.

§ 906.43 Where a PHA is to submit a homeownership program for HUD approval.

A PHA must submit its proposed homeownership program together with supporting documentation, in a format prescribed by HUD, to the Special Applications Center with a copy to the appropriate HUD field office.

§ 906.45 HUD criteria for reviewing a proposed homeownership program.

HUD will use the following criteria in reviewing a homeownership program:

(a) *Feasibility.* The program must be practically feasible, with sound potential for long-term success. Financial viability, including the capability of purchasers to meet the financial obligations of homeownership, is a critical requirement.

(b) *Legality.* Counsel for the PHA shall certify that the homeownership program is consistent with applicable law, including the requirements of this part and any other applicable federal, state, and local statutes and regulations, including existing contracts, and HUD shall accept such certification unless HUD has information indicating that the certification is incorrect.

(c) *Documentation.* The program must be clear and complete enough to serve as a working document for implementation, as well as a basis for HUD review.

(d) *PHA performance in homeownership.* The PHA (and any other entity with substantial responsibility for implementing the homeownership program) must have demonstrated the commitment and capability to successfully implement the homeownership program based upon the criteria stated in § 906.41(d).

§ 906.47 Environmental requirements.

(a) *General.* HUD environmental regulations at 24 CFR part 58 apply to this part, unless, under § 58.11 of this title, HUD itself performs the environmental review under 24 CFR part 50. The PHA conducting a homeownership program under this part must comply with this section and part 50 or 58, as applicable.

(b) *Assistance to facilitate the purchase of homes.* Where the PHA's homeownership program involves assistance provided under the 1937 Act solely to assist homebuyers to purchase existing dwelling units or dwelling units under construction, an environmental review is not required under part 58 or part 50 of this title. However, the requirements of § 58.6 or § 50.19(b)(15) of this title are still applicable.

(c) *Public housing units in the PHA's inventory.* Before the PHA rehabilitates or repairs units in its inventory for use for homeownership, or expends or commits HUD or local funds for such activities, the responsible entity must comply with part 58 and the PHA, where required, must submit and receive HUD approval of its request for release of funds, or HUD must have completed any part 50 environmental review and notified the PHA of its approval of the property. HUD may not release funds under this part before the appropriate approval is obtained.

(d) *Units to be acquired with federal funds and used for public housing homeownership.* A PHA may not enter into any contract for acquisition of real property to be used in a homeownership program unless the required environmental reviews have been performed and approvals have been obtained.

(e) *Specific units unidentified.* Where the PHA's homeownership program contemplates acquisition of properties not identified at the time of submission, the PHA must certify that it will comply with this section, including paragraph (f) of this section, prior to such acquisition or construction. HUD may conditionally approve such a

homeownership program; however, HUD will not give final approval of any site or unit until the required environmental review has been completed.

(f) *Information.* The PHA shall supply all relevant information necessary for the responsible entity, or HUD, if applicable, to perform the environmental review for each property included in the homeownership program, and, if necessary, shall carry out mitigating measures or select alternate eligible properties. Where HUD performs the environmental review, the PHA shall comply with 24 CFR 50.3(h).

(g) *Non-exclusivity.* Nothing in this section relieves the participating PHA, and its partners and contractors, from complying with all requirements of 24 CFR part 50 or part 58, as applicable.

§ 906.49 HUD approval; implementing agreement.

HUD may approve a homeownership program as submitted, conditionally approve it under § 906.47(e), or return it to the PHA for revision and resubmission. Where such conditional approval is given, the PHA, partners, and contractors remain subject to the restrictions in § 906.47. Upon HUD notification to the PHA that the homeownership program is approvable (in final form that satisfies all applicable requirements of this part), the PHA and HUD will execute a written implementing agreement, in a form prescribed by HUD, to evidence HUD approval and authorization for implementation. The program itself, as approved by HUD, must be incorporated in the implementing agreement. Any of the items of supporting documentation may also be incorporated, if agreeable to the PHA and HUD. The PHA is obligated to carry out the approved homeownership program and other provisions of the implementing agreement without modification, except with written approval by HUD.

PART 908—ELECTRONIC TRANSMISSION OF REQUIRED FAMILY DATA FOR PUBLIC HOUSING, INDIAN HOUSING, AND THE SECTION 8 RENTAL CERTIFICATE, RENTAL VOUCHER, AND MODERATE REHABILITATION PROGRAMS

Sec.
908.101 Purpose.
908.104 Requirements.
908.108 Cost.
908.112 Extension of time.

AUTHORITY: 42 U.S.C. 1437f, 3535(d), 3543, 3544, and 3608a.

SOURCE: 60 FR 11628, Mar. 2, 1995, unless otherwise noted.

§ 908.101 Purpose.

The purpose of this part is to require Housing Agencies (HAs) that operate public housing, Indian housing, or Section 8 Rental Certificate, Rental Voucher and Moderate Rehabilitation programs to electronically submit certain data to HUD for those programs. This electronically submitted data is required for HUD Forms HUD–50058, Family Report, and HUD–50058–FSS, Family Self-Sufficiency Addendum.

§ 908.104 Requirements.

(a) *Automated HAs.* Housing agencies that currently use automated software packages to transmit Forms HUD–50058 and HUD–50058–FSS information by tape or diskette to the Department's data processing contractor must convert to telephonic electronic transmission of that data in a HUD specified format by June 30, 1995.

(b) *Nonautomated HAs.* Housing agencies that currently prepare and transmit the HUD–50058 and HUD–50058–FSS information to HUD paper must:

(1) Complete a vendor search and obtain either:

(i) The necessary hardware and software required to develop and maintain an in-house automated data processing system (ADP) used to generate electronic submission of the data for these forms via telephonic network; or

(ii) A service contract for the operation of an automated system to generate electronic submission of the data for these forms via telephonic network;

(2) Complete their data loading; and

(3) Begin electronic transmission by March 2, 1996.

(c) *Electronic transmission of data.* Electronic transmission of data consists of submission of all required data fields (correctly formatted) from the forms HUD–050058 and HUD–50058–FSS telephonically, in accordance with HUD instructions. Regardless of whether an HA obtains the ADP system itself or contracts with a service bureau to provide the system, the software must be periodically updated to incorporate changes or revisions in legislation, regulations, handbooks, notices, or HUD electronic transmission data format requirements.

(d) *Service contract.* HAs that determine that the purchase of hardware and/or software is not cost effective may contract out the electronic data transmission function to organizations that provide such services, including, but not limited to the following organizations: local management associations and management agents with centralized facilities. HAs that contract out the electronic transmission function must retain the ability to monitor the day-to-day operations of the project at the HA site and be able to demonstrate the ability to the relevant HUD Field Office.

(e) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the Department may approve transmission of the data by tape or diskette if it determines that the cost of telephonic transmission would be excessive.

(Approved by the Office of Management and Budget under control number 2577–0083)

§ 908.108 Cost.

(a) *General.* The costs of the electronic transmission of the correctly formatted data, including either the purchase and maintenance of computer hardware or software, or both, the cost of contracting for those services, or the cost of centralizing the electronic transmission function, shall be considered Section 8 Administrative expenses, or eligible public and Indian housing operating expenses that can be included in the public and Indian housing operating budget. At the HA's option, the cost of the computer software may include service contracts to provide maintenance or training, or both.

(b) *Sources of funding.* For public and Indian housing, costs may be covered from operating subsidy for which the HA is already eligible, or the initial cost may be covered by funds received by the HA under HUD's Comprehensive Improvement Assistance Program (CIAP) or Comprehensive Grant Program (CGP). For Section 8 programs, the costs may be covered from ongoing administrative fees or the Section 8 operating reserve.

§ 908.112 Extension of time.

The HUD Field Office may grant an HA an extension of time, of a reasonable period, for implementation of the requirements of § 908.104, if it determines that such electronic submission is infeasible because of one of the following:

(a) Lack of staff resources;

(b) Insufficient financial resources to purchase the required hardware, software or contractual services; or

(c) Lack of adequate infrastructure, including, but not limited to, the inability to obtain telephone service to transmit the required data.

PART 941—PUBLIC HOUSING DEVELOPMENT

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AUTHORITY: 42 U.S.C. 1437b, 1437c, 1437g, and 3535(d).

SOURCE: 45 FR 60838, Sept. 12, 1980, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

Subpart A—General

§ 941.101 Purpose and scope.

(a) *Purpose.* The U.S. Housing Act of 1937 (Act), 42 U.S.C. 1437, authorizes HUD to assist public housing agencies (PHAs) with the development and operation of low-income housing projects and financial assistance in the form of grants (42 U.S.C. 1437c, 1437g, and 1437l). The purpose of the program is to develop units which serve the needs of public housing residents over the long term and have the lowest possible life cycle costs, taking into account future operating and replacement costs, as well as original capital investments.

(b) *Scope.* This part is the regulation under which a PHA develops low-income housing (excluding Indian housing), herein called public housing.

(c) *Approved information collections.* The following sections of this part have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (42 U.S.C. 3501–3520) and assigned the OMB approval numbers indicated:

Approval No.	Sections
2577–0033	941.207, 941.301, 941.303, 941.304, 941.606, 941.610.
2577–0036	941.205, 941.404.
2577–0039	941.402.

[61 FR 38016, July 22, 1996, as amended at 64 FR 13511, Mar. 19, 1999]

EFFECTIVE DATE NOTE: At 61 FR 38016, July 22, 1996, § 941.101 was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 941.102 Development methods and funding.

(a) *Methods.* A PHA may use any generally accepted method of development including, but not limited to, conventional, turnkey, acquisition with or without rehabilitation, mixed-finance, and force account.

(1) *Conventional.* Under this method, the PHA is responsible for selecting a site or property and designing the project. The PHA advertises for competitive bids to build or rehabilitate the development on the PHA-owned site. The PHA awards a construction contract in accordance with 24 CFR part 85. The contractor receives progress payments from the PHA during construction or rehabilitation and a final payment upon completion of the project in accordance with the construction contract. The conventional method may be used for either new construction or rehabilitation.

(2) *Turnkey.* The turnkey method involves the advertisement and selection of a turnkey developer by the PHA, based on the best housing package for a site or property owned or to be purchased by the developer. Following HUD approval of the PHA's full proposal, the developer prepares the design and construction documents. The PHA and the developer execute the contract of sale to implement the PHA's full proposal. The developer is responsible for providing a completed

housing project, which includes obtaining construction financing. Upon completion of project construction or rehabilitation in accordance with the contract of sale, the PHA purchases the development from the developer. This method may be used for either new construction or rehabilitation.

(3) *Acquisition.* The acquisition method involves a purchase of existing property that requires little or no repair work. Any needed repair work is completed after acquisition, either by the PHA contracting to have the work done or by having the staff of the PHA perform the work.

(4) *Mixed-finance.* This method involves financing from both public and private sources and may involve ownership of the public housing units by an entity other than the PHA. This method of development may be carried out by a PHA only in accordance with the requirements set forth in subpart F.

(5) *Force account.* The force account method involves use of PHA staff to carry out new construction or rehabilitation. A PHA may only develop a full proposal based on the force account method if HUD has determined that the PHA has the capability to develop successfully the public housing units using this method.

(b) *Funding.* A PHA may develop public housing with:

(1) Development funds reserved by HUD for that purpose;

(2) Modernization funds under section 14 of the Act (42 U.S.C. 1437l), to the extent authorized by law and under procedures approved by HUD; and/or

(3) Funds available to it from any other source, consistent with §941.306(e), or as may be otherwise approved by HUD.

(c) *Limit on number of units.* (1) *General.* A PHA may not develop public housing pursuant to this part beyond the lesser of the number of units that the PHA had under ACC on August 21, 1996, or the number of units for which it was receiving operating subsidy on that date, unless authorized by HUD. HUD may condition such authorization on the PHA's agreement that such incremental units, once developed, will be ineligible for capital and/or operating subsidies from HUD.

(2) *Replacement housing units.* With respect to units constructed to replace public housing units that were demolished or disposed of, a PHA may use (in whole or in part) funding from non-HUD sources or from HUD funding not provided under the Act. However, development of such units must be approved by HUD in advance for them to be eligible for inclusion under the ACC.

[61 FR 38016, July 22, 1996, as amended at 67 FR 76101, Dec. 10, 2002]

§941.103 Definitions.

The terms *HUD* and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

Act. The U.S. Housing Act of 1937 (42 U.S.C. 1437).

Additional Project Costs (APC) means the sum of the following HUD-approved costs related to the development of a public housing project, which costs are not subject to the Total Development Cost limit but are included in the maximum project cost, as described in §941.306:

(1) Demolition of, or remediation of environmental hazards associated with, public housing units that will not be replaced on the site; and

(2) Extraordinary site costs that have been verified by an independent registered engineer (*e.g.,* removal of underground utility systems, and replacement of off-site underground utility systems, extensive rock and/or soil removal and replacement, and amelioration of unusual site conditions such as unusual slopes, terraces, water catchments, lakes, etc.)

Annual Contributions Contract (ACC). A contract (in the form prescribed by HUD) for loans and contributions, which may be in the form of grants, whereby HUD agrees to provide financial assistance and the PHA agrees to comply with HUD requirements for the development and operation of a public housing project.

Community Renewal Cost (CRC) means the sum of the following HUD-approved costs related to the development of a public housing project: planning (including proposal preparation), administration, site acquisition, relocation, demolition of, and site remediation of environmental hazards associated with,

public housing units that will be replaced on the project site, interest and carrying charges, off-site facilities, community buildings and non-dwelling facilities, contingency allowance, insurance premiums, any initial operating deficit, on-site streets, on-site utilities, and other costs necessary to develop the project that are not covered under APC or Housing Construction Cost.

Construction Contract. A contract between the PHA and a contractor to build or rehabilitate a project using the conventional development method.

Construction documents. The working drawings and construction specifications and the rehabilitation work write-ups, where applicable, that set forth the work to be done under a construction contract or contract of sale.

Contract of sale. A contract between the PHA and a developer whereby the PHA agrees to purchase a completed project after construction or rehabilitation by a developer using the turnkey development method.

Cooperation Agreement. An agreement between a PHA and the applicable local governing body or bodies which assures exemption from real and personal property taxes, provides for local support and services for the development and operation of a public housing project, and provides for PHA payments in lieu of taxes.

Design documents. The preliminary drawings and specifications and the preliminary rehabilitation work write-ups, where applicable, in sufficient detail to define the extent of construction or rehabilitation and demonstrate compliance with HUD design and construction standards.

Housing Construction Cost (HCC) means the sum of the following HUD-approved costs related to the development of a public housing project: dwelling unit hard costs (including construction and equipment); builder's overhead and profit; the cost of extending utilities from the street to the public housing project; finish landscaping; and the payment of Davis-Bacon wage rates.

Proposal. A document submitted by a PHA to HUD, in accordance with subpart C of this part, for approval of the development of a public housing project. As used in this part, ''proposal'' refers to both the ''site acquisition proposal'' (§ 941.303), and the ''full proposal'' (§ 941.304), unless specifically indicated otherwise.

Public housing capital assistance means assistance provided by HUD under the Act or the HOPE VI program in connection with the development of public housing under this part, including: Capital Fund assistance provided under section 9(d) of the Act, public housing development assistance provided under section 5 of the Act, Operating Fund assistance used for capital purposes under section 9(g)(1) or (g)(2) of the Act, and HOPE VI grant assistance.

Reformulation. The procedure by which HUD approves division of a project (including units and related funds) into two or more projects, or combining two or more projects into one, or redistributing units and related funds in a project among two or more projects, in order to provide PHAs with the flexibility to adapt to site availability, to resolve development problems, to acquire buildings ready for development (before acquisition of other buildings), and to save on interest and initial operating costs.

Total Development Cost (TDC) limit. The maximum amount of public housing capital assistance that can be used to pay for Housing Construction Costs and Community Renewal Costs in connection with the development of a public housing project, as determined under § 941.306(b)(2). The TDC limit does not apply to Additional Project Costs.

[45 FR 60838, Sept. 12, 1980, as amended at 56 FR 13282, Apr. 1, 1991; 58 FR 62524, Nov. 29, 1993; 61 FR 5214, Feb. 9, 1996; 61 FR 38017, July 22, 1996; 62 FR 27125, May 16, 1997; 67 FR 76101, Dec. 10, 2002]

Subpart B—PHA Eligibility and Program Requirements

§ 941.201 PHA eligibility.

(a) *General.* In order to participate in the public housing program, a PHA must be approved as an eligible PHA. HUD will determine eligibility based on a showing that the PHA has the legal authority and local cooperation required by this part.

(b) *Legal authority*. The PHA must demonstrate that it has the legal authority to develop, own, and operate a public housing project under the Act.

(c) *Troubled PHAs*. Unless HUD determines that a PHA that has been classified as troubled or modernization-troubled, in accordance with 24 CFR part 901, has adequate capacity to develop public housing units, the PHA so classified shall engage a HUD-approved program manager to develop and implement the PHA's proposal. HUD shall review the solicitation and the selection before award of a contract is made by such a PHA.

(d) *Local cooperation*. The PHA must provide a cooperation agreement between the PHA and the applicable local governing body for the area in which the public housing project is to be located as evidence that the local governing body will provide the local cooperation required by HUD pursuant to the Act. This local cooperation shall include exemption from real and personal property taxes, acceptance of PHA payments in lieu of taxes, and the provision at no cost or at no greater cost by the local governing body of the same public services and facilities normally furnished to others in the community.

[45 FR 60838, Sept. 12, 1980. Redesignated at 49 FR 6714, Feb. 23, 1984, as amended at 61 FR 38017, July 22, 1996]

§ 941.202 Site and neighborhood standards.

Proposed sites for public housing projects to be newly constructed or rehabilitated must be approved by the field office as meeting the following standards:

(a) The site must be adequate in size, exposure and contour to accommodate the number and type of units proposed, and adequate utilities (e.g., water, sewer, gas and electricity) and streets must be available to service the site.

(b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, E.O. 11063, and HUD regulations issued pursuant thereto.

(c)(1)The site for new construction projects must not be located in:

(i) An area of minority concentration unless (A) sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration, or (B) the project is necessary to meet overriding housing needs which cannot otherwise feasibly be met in that housing market area. An ''overriding need'' may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise feasibly be met is that discrimination on the basis of race, color, religion, creed, sex, or national origin renders sites outside areas of minority concentration unavailable; or

(ii) A racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(2) Notwithstanding any other provision of this paragraph (c), public housing units constructed after demolition of public housing units may be built on the original public housing site, or in the same neighborhood, if one of the following criteria is satisfied:

(i) The number of public housing units being constructed is no more than 50 percent of the number of units in the original project;

(ii) In the case of replacement of a currently occupied project, the number of public housing units being constructed is the minimum number needed to house current residents who want to remain at the site; or

(iii) The public housing units being constructed constitute no more than twenty-five units.

(d) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(e) The site must be free from adverse environmental conditions, natural or manmade, such as instability, flooding, septic tank back-ups, sewage hazards or mudslides; harmful air pollution, smoke or dust; excessive noise vibration, vehicular traffic, rodent or vermin infestation; or fire hazards. The neighborhood must not be one which is seriously detrimental to family life or

in which substandard dwellings or other undesirable elements predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(f) The site must comply with any applicable conditions in the local plan approved by HUD.

(g) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of similar unassisted standard housing.

(h) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for low-income workers, must not be excessive. (While it is important that elderly housing not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.)

(i) The project may not be built on a site that has occupants unless the relocation requirements referred to in § 941.207 are met.

(j) The project may not be built in an area that has been identified by HUD as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the project is covered by flood insurance as required by the Flood Disaster Protection Act of 1973, and it meets any relevant HUD standards and local requirements.

[45 FR 60838, Sept. 12, 1980. Redesignated at 49 FR 6714, Feb. 23, 1984, as amended at 61 FR 38017, July 22, 1996]

§ 941.203 Design and construction standards.

(a) Physical structures shall be designed, constructed and equipped so as to improve or harmonize with the neighborhoods they occupy, meet contemporary standards of modest comfort and liveability, promote security, and be attractive and marketable to the people they are intended to serve. Building design and construction shall strive to encourage in residents a proprietary sense, whether or not homeownership is intended or contemplated.

(b) Projects must comply with:

(1) A national building code, such as Uniform Building Code, Council of American Building Officials Code, or Building Officials Conference of America Code;

(2) Applicable State and local laws, codes, ordinances, and regulations; and

(3) Other Federal requirements, including any Federal fire-safety requirements and HUD minimum property standards (e.g., 24 CFR part 200, subpart S, and § 941.208).

(c) Projects for families with children shall consist to the maximum extent practicable of low-density housing (e.g., non-elevator structures, scattered sites or other types of low-density developments appropriate in the community).

(d) High-rise elevator structures shall not be provided for families with children regardless of density, unless the PHA demonstrates and HUD determines that there is no practical alternative. High-rise buildings for the elderly may be used if the PHA demonstrates and HUD determines that such construction is appropriate, taking into consideration land costs, the safety and security of the prospective occupants, and the availability of community services.

[61 FR 38017, July 22, 1996]

§ 941.205 PHA contracts.

(a) *ACC requirements.* In order to be considered as eligible project expenses, all development related contracts entered into by the PHA shall provide for compliance with the provisions of the ACC.

(b) *Contract forms.* HUD may prescribe the form of any development related contracts, and the PHA shall use such forms. If a form is not prescribed, the PHA may develop its own form; however, it must contain all applicable federal requirements.

(c) *When HUD approval is required.* The PHA is authorized to execute all development-related contracts without prior HUD review or approval with the exception of:

(1) All forms of site or property acquisition contracts regardless of development method; and

(2) Contracts whose amount exceeds a contract approval threshold established by HUD for that PHA; and

(3) A contract for the selection of a program manager to develop and implement the PHA's proposal (see § 941.201(c)).

(d) Each PHA shall certify before executing any contract with a contractor that the contractor is not suspended, debarred, or otherwise ineligible under 24 CFR part 24. The PHA also shall ensure that all subgrantees, contractors, and subcontractors select only contractors who are not listed as suspended, debarred, or otherwise ineligible under 24 CFR part 24.

[61 FR 38018, July 22, 1996]

EFFECTIVE DATE NOTE: At 61 FR 38018, July 22, 1996, § 941.205 was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 941.207 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the PHA shall assure that it has taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* Only residential tenants who are eligible under 24 CFR 913.103 and who meet the PHA standards for tenancy established pursuant to 24 CFR 960.204 will be permitted to continue in occupancy. Any residential tenant who (though not required to move permanently) must relocate temporarily (e.g., to permit rehabilitation or major reconstruction) shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs and incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary housing to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the project; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A ''displaced person'' (defined in paragraph (h) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. A ''displaced person'' shall be advised of his/her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements in 49 CFR part 24, subpart B. With respect to the Turnkey method of development (see 24 CFR 941.102(b)), 49 CFR 24.101(a) (1) and (2) apply to the PHA/developer and developer/owner transactions, respectively.

(e) *Notices.* (1) As soon as possible after the date described in paragraph (h)(1)(i) of this section, the PHA shall issue a general information notice (described in 49 CFR 24.203(a)) to each occupant of the property.

(2) At the time of the initiation of negotiations (defined in paragraph (i) of this section), the PHA shall issue an appropriate written notice to each person occupying the property. Those to be displaced shall be issued a notice of eligibility for relocation assistance. (This notice may be combined with the 90-day notice under 49 CFR 24.203(c).) Tenants (eligible under 24 CFR 913.103

and the standards for tenancy established in accordance with 24 CFR 960.204) who will not be displaced shall be issued a notice offering the tenant the opportunity to enter into a lease to continue in occupancy of the property under reasonable terms and conditions. (Also, see paragraph (h)(1)(iii) of this section.)

(f) *Appeals.* A person who disagrees with the PHA's determination concerning whether the person qualifies as a ''displaced person,'' or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(g) *Responsibility of PHA.* (1) The PHA shall certify (i.e., provide assurance of compliance, as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the PHA to comply. The certification in the PHA's ''Resolution in Support of Public Housing Project'' that the PHA will comply with all the requirements of 24 CFR part 941 shall constitute the PHA's certification of compliance with the URA, the implementing regulations at 49 CFR part 24, and this section.

(2) The cost of required assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs may also be paid from funds available from other sources.

(3) The PHA must maintain records in sufficient detail to demonstrate compliance with this section, including data indicating the race, ethnic, gender and disability status of displaced persons.

(h) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term ''displaced person'' includes, but may not be limited to:

(i) A person who moves permanently from the real property after receiving a notice from the PHA or property owner that requires such move, if the move occurs on or after:

(A) For conventional or acquisition projects, the date of approval by HUD of the PHA proposal incorporating the site, or for scattered sites, the date HUD approves the applicable site;

(B) For turnkey projects, the date the PHA proposal is submitted to HUD; or

(C) For major reconstruction of obsolete public housing projects, the date the PHA issues the invitation for bids for the project;

(ii) Any person, including a person who moves before the date described in paragraph (h)(1)(i) of this section, that the PHA or HUD determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project; or

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the ''initiation of negotiations,'' (defined in paragraph (i) of this section), if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the amount determined in accordance with 24 CFR 913.107; or

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provisions of paragraph (h)(1) of this section, a person does not qualify as a ''displaced person'' (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the PHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the date described in paragraph (h)(1)(i) of this section, but before commencing occupancy, received written notice of the project, its possible impact on the person (e.g., that the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that he or she would not qualify as a ''displaced person'' (or for assistance under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The PHA may, at any time, ask HUD to determine whether a displacement is or would be covered by this section.

(i) *Definition of initiation of negotiations.* For purposes of this section, the term ''initiation of negotiations'' means:

(1) For conventional or acquisition projects:

(i) Where the PHA purchases the real property through an arm's-length transaction (as described in 49 CFR 24.101(a)(1)), the seller's acceptance of the PHA's written offer to purchase the property (i.e., the seller's execution of form HUD–51971–II), provided the PHA later purchases the property; or such other date, as may be determined by the PHA with the approval of the HUD Field Office; or

(ii) Where the PHA's purchase of the real property does not qualify as an arm's-length transaction under 49 CFR 24.101(a)(1), the delivery of the initial written purchase offer from the PHA to the Owner of the property (i.e., the PHA executed form HUD–51971–II). However, if the PHA issues a notice of intent to acquire the property, and a person moves after that notice, but before the initial written purchase offer, the ''initiation of negotiations'' is the actual move of the person from the property;

(2) For turnkey projects, HUD Field Office approval of the PHA's proposal incorporating the developer's proposal, provided the contract of sale is later executed; or

(3) For major reconstruction of obsolete projects, the PHA's issuance of the invitation for bids for the project.

(Approved by Office of Management and Budget under OMB Control Number 2506–0121)

[59 FR 29344, June 6, 1994]

§ 941.208 Other Federal requirements.

(a) *General.* The PHA shall be subject to all statutory, regulatory, and executive order requirements applicable to public housing development (see, e.g., 24 CFR parts 5, 8, 35, 50, and 965), as may be more fully described by HUD in notices, handbooks, or other guidance.

(b) *Lead-based paint.* The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, L, and R of this title apply to the program.

[61 FR 38018, July 22, 1996, as amended at 64 FR 50228, Sept. 15, 1999]

§ 941.209 Audit.

All PHAs that receive funds under this part for the development of low-income housing shall comply with audit requirements in 24 CFR part 44.

[50 FR 39092, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986]

Subpart C—Application and Proposal

SOURCE: 61 FR 38018, July 22, 1996, unless otherwise noted.

§ 941.301 Application.

If funding is made available for public housing development, HUD will provide information about fund allocation, application deadline, and selection criteria and procedures through a Notice of Funding Availability (NOFA).

EFFECTIVE DATE NOTE: At 61 FR 38018, July 22, 1996, § 941.301 was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 941.302 Annual contributions contract; drawdowns and advances.

(a) A PHA wishing to develop public housing shall execute an ACC or ACC amendment covering the entire amount of reserved development funds or the amount of modernization funds (under section 14 of the Act, 42 U.S.C. 1437l) it proposes to use in accordance with this part. This ACC or ACC amendment must be executed by both the PHA and HUD before funds can be provided to the PHA.

(b) Until HUD has approved a PHA's full proposal, a PHA may only draw down funds under the ACC for pre-development costs for materials and services related to proposal preparation and submission. Expenditures for pre-development costs shall not exceed three percent of the total development cost stated in the executed ACC.

(c) HUD may approve the following in writing:

(1) Amounts in excess of three percent of TDC for pre-development costs; and/or

(2) Drawdown of funds to enable a PHA to acquire a site after approval by HUD of the PHA's site acquisition proposal, in accordance with § 941.303.

(d) After HUD approval of the full proposal, the PHA may draw down additional funds under the ACC to develop the public housing units in accordance with the approved full proposal.

§ 941.303 Site acquisition proposal.

When a PHA determines that it is necessary to acquire land for development through new construction, it may spend funds authorized under this part to acquire development sites. HUD must approve a PHA's proposed use of funds before it may acquire sites in this manner. A PHA must submit the following documents for HUD review and approval, in accordance with the standards set forth in § 941.305:

(a) *Justification.* A justification for acquiring land prior to PHA proposal approval;

(b) *Site information.* An identification and description of the proposed site, site plan, neighborhood, and evidence of PHA control of the site for at least sixty (60) days after proposal submission.

(c) *Zoning.* Evidence that construction or rehabilitation is permitted by current zoning ordinances or regulations or evidence to indicate that needed rezoning is likely and will not delay the project.

(d) *Development schedule.* A copy of the PHA development schedule, including the PHA architect estimates of the time required to complete each major development stage.

(e) *Environmental assessment.* All available environmental information on the proposed development (to expedite the HUD environmental review).

(f) *Appraisal.* An appraisal of the proposed site by an independent, state-certified appraiser.

EFFECTIVE DATE NOTE: At 61 FR 38018, July 22, 1996, § 941.303 was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 941.304 Full proposal content.

Each full proposal shall include at a minimum the following:

(a) *Project description.* A description of the housing, including the number of units, schematic drawings of the proposed building and unit plans, outline specifications or rehabilitation work write-ups, and the types and amounts of non-dwelling space to be provided;

(b) *Description of development method.* A description of the PHA's proposed development method, and a demonstration by the PHA that it will be able to use this method successfully to develop the public housing units. If the PHA proposes to use the turnkey method, it must submit a Board-approved certification that the developer was selected as the result of a public solicitation for proposals and that the selection was based on an objective rating system, using such factors as site location, project design, price, and developer experience. If the PHA proposes to use the acquisition method, the PHA must submit a certification by the PHA and owner that the property was not constructed with the intent that it would be sold to the PHA. If the PHA proposes to use the mixed-finance method, it should have consulted with HUD on its plans. If the PHA proposes to use the force account method to develop the public housing units, it must have already received approval from HUD of its capability to carry out the development successfully in this manner;

(c) *Site information.* An identification and description of the proposed site, site plan, neighborhood, and evidence of PHA or turnkey developer control of the site for at least sixty (60) days after proposal submission;

(d) *Project costs.* (1) *Categories of cost.* The detailed budget of the costs of developing the project, in accordance with the form prescribed by HUD. With respect to costs of demolition and relocation, the description must distinguish between costs related to existing public housing property and costs related to acquisition of a new public housing site;

(2) *Budget and payment schedule.* A budget that identifies the sources of funding for relocation benefits, and a payment schedule anticipated to be provided under a construction contract;

(e) *Appraisal.* An appraisal of the proposed site or property by an independent, state-certified appraiser;

(f) *Financial feasibility.* Identification of funds sufficient to complete the development, including a reasonable contingency;

(g) *Zoning.* Evidence that construction or rehabilitation is permitted by current zoning ordinances or regulations or evidence to indicate that needed rezoning is likely and will not delay the project;

(h) *Facilities.* A statement addressing the adequacy of existing facilities and services for the prospective occupants of the project, a description of public improvements needed to ensure the viability of the proposed project with a description of the sources of funds available to carry out such improvements, and, if applicable, a statement addressing the minority enrollment and capacity of the school system to absorb the number of school-aged children expected to reside in the project;

(i) *Relocation.* A certification by the PHA that it will comply with all applicable Federal relocation requirements;

(j) *Life-cycle analysis.* For new construction and substantial rehabilitation, the criteria to be used in equipping the proposed project(s) with heating and cooling systems, and which shall include a life-cycle cost analysis of the installation, maintenance and operating costs of such systems pursuant to section 13 of the Act (42 U.S.C. 1437k);

(k) *Project development schedule.* A copy of the PHA development schedule, including the PHA architect or turnkey developer estimates of the time required to complete each major development stage;

(l) *Environmental assessment.* All available environmental information on the proposed development (to expedite the HUD environmental review);

(m) *Occupancy and operation policies.* Statement of all PHA policies and practices that will be used in occupancy and operation that contribute to an overall objective of ending the social and economic isolation of low income people and promoting their economic independence;

(n) *New construction certification.* If a PHA's proposal involves new construction, evidence of compliance with section 6(h) of the Act in one of the following two ways:

(1) Submission of a PHA comparison of the cost of new construction in the neighborhood where the PHA proposes to construct the housing and the cost of acquisition of existing housing (with or without rehabilitation) in the same neighborhood; or

(2) Certification by the PHA, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop public housing through acquisition; and

(o) *Additional HUD-requested information.* Any additional information that may be needed for HUD to determine whether it can approve the proposal pursuant to § 941.305.

EFFECTIVE DATE NOTE: At 61 FR 38018, July 22, 1996, § 941.304 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 941.305 Technical processing and approval.

(a) *Standards.* HUD shall review the full proposal, submitted in accordance with § 941.304, and the site acquisition proposal, submitted in accordance with § 941.303, to determine whether each proposal complies with all statutory, executive order, and regulatory requirements applicable to public housing development including, if applicable, the comments received as a result of Intergovernmental Review. In addition, HUD shall carry out any necessary statutory and executive order reviews with respect to the proposal under review. If HUD determines that the proposal under review is acceptable, it shall notify the PHA in writing and shall forward to it for execution an ACC (or ACC amendment). If the PHA already has executed an ACC (or ACC amendment) for the entire reserved amount, HUD shall notify the PHA that it is authorized to draw down funds in accordance with § 941.302.

(b) *Approved proposal.* Units developed under this part shall be developed only in accordance with an approved proposal.

(c) *Approved amendments.* Material changes in the approved proposal, including any increase in the budget or any change in the payment schedule, require an amendment to the proposal, which must be approved by HUD. The determination of what constitutes a material change will be made by HUD.

§ 941.306 Maximum project cost.

(a) *Calculation of maximum project cost.* The maximum project cost represents the total amount of public housing capital assistance used in connection with the development of a public housing project, and includes: (1) project costs that are subject to the TDC limit (*i.e.,* Housing Construction Costs and Community Renewal Costs); and (2) project costs that are not subject to the TDC limit (*i.e.,* Additional Project Costs). The total project cost to be funded with public housing capital assistance, as set forth in the proposal and as approved by HUD, becomes the maximum project cost stated in the ACC. Upon completion of the project, the actual project cost is determined based upon the amount of public housing capital assistance expended for the project, and this becomes the maximum project cost for purposes of the ACC.

(b) *TDC limit.* (1) Public housing capital assistance may not be used to pay for Housing Construction Costs and Community Renewal Costs in excess of the TDC limit, as determined under paragraph (b)(2) of this section. However, HOPE VI grantees will be eligible to request a TDC exception for public housing and HOPE VI funds awarded in Fiscal Year 1996 and prior years. No exceptions to HCC limits will be granted within the TDC limit.

(2) *Determination of TDC limit.* HUD will determine the TDC for a public housing project as follows:

(i) *Step 1: Unit construction cost guideline.* HUD will first determine the applicable ''construction cost guideline'' averaging the current construction costs as listed in two nationally recognized residential construction cost indices for publicly bid construction of a good and sound quality for specific bedroom sizes and structure types. The two indices HUD will use for this purpose are the R.S. Means cost index for

construction of ''average'' quality and the Marshal & Swift cost index for construction of ''good'' quality. HUD has the discretion to change the cost indices to other such indices that reflect comparable housing construction quality through a notice published in the FEDERAL REGISTER.

(ii) *Step 2: Bedroom size and structure types.* The construction cost guideline is then multiplied by the number of units for each bedroom size and structure type.

(iii) *Step 3: Elevator and non-elevator type structures.* HUD will then multiply the resulting amounts from step 2 by 1.6 for elevator type structures and by 1.75 for non-elevator type structures.

(iv) *Step 4: TDC limit.* The TDC limit for a project is calculated by adding the resulting amounts from step 3 for all the public housing units in the project.

(3) *Costs not subject to the TDC limit.* Additional Project Costs are not subject to the TDC limit described in paragraph (b)(2) of this section.

(4) *Funds not subject to the TDC limit.* A PHA may use funding sources not subject to the TDC limit (*e.g.*, CDBG funds, HOME funds, low-income tax credits, private donations, private financing, etc.) to cover project costs that exceed the TDC limit or the Housing Construction Cost limit described in paragraph (c) of this section. Such funds, however, may not be used for items that would result in substantially increased operating, maintenance or replacement costs, and must meet the requirements of section 102 of the HUD Reform Act (42 U.S.C. 3545). These funds must be included in the project development cost budget and legally acceptable written commitments for such funds must be provided by the PHA for HUD approval.

(c) *Housing Construction Costs.* (1) *General.* A PHA may not use public housing capital assistance to pay for Housing Construction Costs in excess of the amount determined under paragraph (c)(2) of this section.

(2) *Determination of Housing Construction Cost limit.* HUD will determine the Housing Construction Cost limit as listed in at least two nationally recognized residential construction cost indices for publicly bid construction of a good and sound quality for specific bedroom sizes and structure types. The two indices HUD will use for this purpose are the R.S. Means cost index for construction of ''average'' quality and the Marshal & Swift cost index for construction of ''good'' quality. HUD has the discretion to change the cost indices to other such indices that reflect comparable housing construction quality through a notice published in the FEDERAL REGISTER. The resulting construction cost guideline is then multiplied by the number of public housing units in the project based upon bedroom size and structure type. The Housing Construction Cost limit for a project is calculated by adding the resulting amounts for all public housing units in the project.

(3) The Housing Construction Cost limit is not applicable to the acquisition of existing housing, whether or not such housing will be rehabilitated. The Total Development Cost limit is applicable to such acquisition.

(d) *Community Renewal Costs.* Public housing capital assistance may be used to pay for Community Renewal Costs in an amount equivalent to the difference between the Housing Construction Costs paid for with public housing capital assistance and the TDC limit.

(e) *Rehabilitation of existing public housing projects.* The HCC limit is not applicable and the TDC limit for modernization of existing public housing is 90% of the TDC limit as determined under §941.306(b)(2). This limitation does not apply to the rehabilitation of any property acquired pursuant to §941.102.

[67 FR 76102, Dec. 10, 2002]

Subpart D—Project Development

SOURCE: 61 FR 38020, July 22, 1996, unless otherwise noted.

§941.401 Site and property acquisition.

(a) *Applicability.* The provisions of this section apply to projects being developed under the conventional, acquisition, and force account methods, and may apply to other development methods, as deemed appropriate by HUD.

(b) *Purchase agreement.* The purchase agreement shall reflect any conditions established by HUD, such as the site engineering studies that must be completed to determine whether the site is suitable for development of the project.

(c) *Title.*—(1) *General.* After HUD approves the site or property acquisition contract and notifies the PHA that it is authorized to take title, the PHA shall obtain title in accordance with the following certification. The PHA shall certify to HUD that it obtained a title insurance policy that guaranteed that the title was good and marketable before taking title and that it promptly recorded the deed and declaration of trust in the form prescribed by HUD.

(2) *Limitation.* After HUD notifies a PHA that has been determined to be troubled or modernization troubled in accordance with part 901 of this chapter, or a PHA that has for other reasons been notified in writing that it may not use the procedure specified in paragraph (c)(1) of this section, that the site or property acquisition contract has been approved, the PHA shall submit to HUD evidence that title to the site or property is good and marketable. If HUD approves the title evidence, it will inform the PHA that it is authorized to acquire title to the site or property. The PHA shall record promptly the deed and declaration of trust in the form prescribed by HUD, and HUD may require the PHA to submit evidence of such recordation.

§ 941.402 Project design and construction.

(a) *Compliance with HUD construction standards and Federal procurement requirements.*

(1) *General.* A PHA may certify that its proposed design and construction plans for the development are in accordance with HUD's design and construction standards at § 941.203, and that its bidding procedures are in accordance with Federal procurement requirements.

(2) *Limitation.* In the case of a PHA determined to be troubled or modernization troubled in accordance with part 901 of this chapter or a PHA that has for other reasons been notified in writing that it may not use the procedure specified in paragraph (a)(1) of this section, the PHA must submit the proposed design and construction plans and its bidding procedures (unless HUD notifies the PHA that it *may* use the certification procedure specified in paragraph (a)(1) of this section).

(b) *Contract administration.* The PHA shall be responsible for contract administration and shall contract for the services of an architect, or other person licensed under State law, to assist and advise the PHA in contract administration and inspections to assure that the work is done in accordance with HUD requirements. A HUD representative may periodically visit the project site to monitor PHA contract administration.

(c) *Prevailing wage rates.* See § 965.101 of this chapter.

§ 941.403 Acceptance of work and contract settlement.

(a) *Notification of completion.* The contractor or developer shall notify the PHA in writing when the contract work, including any approved off-site work, will be completed and ready for inspection.

(b) *Acceptance.* (1) *General.* A PHA may carry out the final inspection of the work and may accept the completed work. If, upon inspection, the PHA determines that the work is complete and satisfactory, except for work that is appropriate for delayed completion, the work shall be accepted by the PHA. The PHA shall certify to HUD before it pays the contractor or developer that it has inspected the work and determined that it is acceptable and in compliance with the construction contract or contract of sale and HUD requirements. The PHA shall determine any hold-back for items of delayed completion, and the amount due and payable for the work that has been accepted including any conditions precedent to payment that are stated in the construction contract or contract of sale. The contractor or developer shall be paid for items of delayed construction only after inspection and acceptance of this work by the PHA.

(2) *Limitation.* In the case of a PHA determined to be troubled or modernization troubled in accordance with part 901 of this chapter or a PHA that has for other reasons been notified in

writing that it may not use the procedure specified in paragraph (b)(1) of this section, the procedure described in paragraph (b)(1) of this section will be followed, except that HUD must concur in the necessary PHA determinations and approvals.

(c) *Guarantees and warranties.* The construction contract or contract of sale shall specify the project guaranty period and amounts to be withheld and shall provide for assignment to the PHA of all manufacturer and supplier warranties required by the construction documents. The PHA shall inspect each dwelling unit and the overall project approximately three months after the beginning of the project guaranty period and three months before its expiration and also as may be necessary to exercise its rights before expiration of any warranties. The PHA shall require repair or replacement, prior to the expiration of the guaranty or warranty periods, of any defective items.

(d) *Title to turnkey projects.* (1) *General.* When the work has been inspected and accepted on a turnkey project, in accordance with paragraph (b) of this section, the PHA is authorized to take title to the completed project in accordance with the following certification. The PHA shall certify to HUD that it obtained a title insurance policy that guaranteed that the title was good and marketable before taking title and that it promptly recorded the deed and declaration of trust in the form prescribed by HUD.

(2) *Limitation.* After inspection and acceptance of the work in accordance with paragraph (b) of this section, a PHA that has been determined to be troubled or modernization troubled in accordance with part 901 of this chapter, or a PHA that has for other reasons been notified in writing that it may not use the procedure specified in paragraph (d)(1) of this section shall submit to HUD evidence that title to the completed project is good and marketable. If HUD approves the title evidence, it will inform the PHA that it is authorized to acquire title to the completed project. The PHA shall record promptly the deed and declaration of trust in the form prescribed by HUD, and HUD may require submission of evidence of such recordation.

§941.404 Completion of development.

(a) When all development has been completed and paid for, but not later than 12 months after the end of the initial operating period unless a longer period is approved by HUD, the PHA shall submit a statement of the actual development cost. For this purpose, the initial operating period with respect to each project is the period commencing with the date of initiation of the project and ending with the earliest of the following three dates: the end of the calendar quarter in which ninety-five percent of the dwelling units in the project are occupied; the end of the calendar quarter that is six, seven, or eight months after the date of full availability of the project; or the end of the calendar quarter next preceding the date of physical completion of the project.

(b) HUD shall review the statement and establish the actual development cost of the project, which becomes the maximum total development cost for purposes of the ACC.

EFFECTIVE DATE NOTE: At 61 FR 38021, July 22, 1996, §941.404 was revised. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

Subpart E—Performance Review

§941.501 HUD review of PHA performance; sanctions.

(a) *HUD determination.* HUD shall carry out such reviews of the performance of each PHA as may be necessary or appropriate to make the determinations required by this paragraph (a), taking into consideration all available evidence.

(1) *Conformity with PHA proposal.* HUD shall determine whether the PHA has carried out its activities under this subpart in a timely manner and in accordance with its approved proposal.

(i) In making this determination, HUD shall review the PHA's performance under previous inspections, audit findings and other sources to determine whether the development activities undertaken during the period

under review conform substantially to the activities specified in the approved PHA proposal. HUD also shall review a PHA's development schedule to determine whether the PHA has carried out its development activities in a timely manner;

(ii) HUD shall review a PHA's performance to determine whether the activities carried out comply with the requirements of the Act, and other applicable laws and regulations.

(2) *Continuing capacity*. HUD shall determine whether the PHA has a continuing capacity to carry out its development plan in a timely manner. The primary factors to be considered in arriving at a determination that a PHA has a continuing capacity are those described in paragraph (a)(1) of this section (''conformity with PHA proposal''). HUD shall give particular attention to PHA efforts to accelerate the progress of the program and to prevent the recurrence of past deficiencies or noncompliance with applicable laws and regulations.

(b) *Notice of deficiency*. Based on HUD reviews of PHA performance and findings of any of the deficiencies in paragraph (d) of this section, HUD may issue to the PHA a notice of deficiency stating the specific program requirements that the PHA has violated and requesting the PHA to take any of the actions specified in paragraph (e) of this section.

(c) *Corrective action order.* (1) Based on HUD reviews of PHA performance and findings of any of the deficiencies in paragraph (d) of this section, HUD may issue to the PHA a corrective action order, whether or not a notice of deficiency has been issued previously with respect to the specific deficiency on which the corrective action order is based. HUD may order corrective action at any time by notifying the PHA of the specific program requirements that the PHA has violated, and specifying that any of the corrective actions listed in paragraph (e) of this section must be taken. HUD shall design corrective action to prevent a continuation of the deficiency, mitigate any adverse effects of the deficiency to the extent possible, or prevent a recurrence of the same or similar deficiencies;

(2) Before ordering corrective action, HUD shall notify the PHA and give it an opportunity to consult with HUD regarding the proposed action;

(3) Any corrective action ordered by HUD shall become a condition of the grant agreement (ACC);

(d) *Basis for corrective action*. HUD may order a PHA to take corrective action only if it determines:

(1) The PHA has not carried out its activities under the development program in a timely manner and in accordance with its approved proposal, or HUD requirements, as determined in paragraph (a)(l) of this section;

(2) The PHA does not have a continuing capacity to carry out its proposal in a timely manner or in accordance with its proposal or HUD requirements, as determined in paragraph (a)(2) of this section;

(3) The PHA has failed to repay HUD for amounts awarded under the development programs that were improperly expended;

(e) *Types of corrective action*. HUD may direct a PHA to take one or more of the following corrective actions:

(1) Submit additional information:

(i) Concerning the PHA's administrative, planning, budgeting, accounting, management, and evaluation functions to determine the cause for a PHA not meeting the standards in paragraphs (a)(1) or (a)(2) of this section;

(ii) Explaining any steps the PHA is taking to correct the deficiencies;

(iii) Documenting that PHA activities were not inconsistent with the PHA's proposal or other applicable laws, regulations or program requirements; and

(iv) Demonstrating that the PHA has a continuing capacity to carry out the proposal in a timely manner;

(2) Submit schedules for completing the work identified in its proposal and report periodically on its progress in meeting the schedules;

(3) Notwithstanding 24 CFR 941.205(c), 24 CFR 941.402(a) and 24 CFR 85.36(g), submit to HUD documents for prior approval, which may include, but are not limited to:

(i) Complete design, construction and bid documents (prior to soliciting bids);

(ii) Complete rehabilitation drawings/specifications or work write-ups;

(iii) Development budgets, including modifications;

(iv) Proposed award of contracts, including construction contracts, turnkey contracts of sale, letters of commitment, and contracts with the architect/engineer (prior to execution);

(4) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the PHA proposal, or periodic performance report;

(5) Not incur financial obligations, or to suspend payments for one or more activities;

(6) Reimburse, from non-HUD sources, one or more program accounts for any amounts improperly expended;

(f) *Failure to take corrective action.* In cases where HUD has ordered corrective action and the PHA has failed to take the required actions within a reasonable time, as specified by HUD, HUD may take one or more of the following steps:

(1) Terminate future draw downs and/or advances to the PHA. In such case, the amount of advances made to the PHA shall be repaid by the PHA from any funds or assets available for that purpose;

(2) Require alternative management of development functions by an entity other than the PHA;

(3) Cancel the fund reservation if the PHA fails to start (begin construction or rehabilitation), or complete (acquisition) within 30 months from the date of the fund reservation pursuant to section 5(k) of the Act;

(4) Recapture for good cause any grant amounts previously provided to a PHA, based upon a determination that the PHA has failed to comply with the requirements of the development program.

(g) *Right to appeal.* Before taking any of the actions described in paragraph (f) of this section, HUD shall notify the PHA and give it an opportunity, within a prescribed period of time, to present any arguments or additional facts and data concerning the proposed action.

[61 FR 38021, July 22, 1996]

Subpart F—Public/Private Partnerships for the Mixed Finance Development of Public Housing Units

SOURCE: 61 FR 19714, May 2, 1996, unless otherwise noted.

§ 941.600 Purpose.

(a)(1) This subpart authorizes a PHA to use a combination of private financing and public housing development funds to develop public housing units, and is designed to enable PHAs and their partners to structure transactions that make use of private and/or public sources of financing. Many potential scenarios for ownership and transaction structures exist, ranging from the PHA or its partner(s) holding no ownership interest, a partial ownership interest, or 100 percent of the ownership interest of the public housing units that are to be developed. PHAs and/or their partner(s) may choose to enter into a partnership or other contractual arrangement with a third-party entity for the mixed-finance development and/or ownership of public housing units. If this entity has primary responsibility along with the PHA for the development of these units, it is referred to for purposes of this subpart as the PHA's ''partner.'' The entity that ultimately owns the public housing units, whether or not the PHA retains an ownership interest, is referred to as the ''owner entity.'' The resulting ''mixed-finance'' developments may consist of 100 percent public housing units, or may consist of public housing and non-public housing units.

(2) This subpart sets forth the requirements that must be met by the PHA and its partner(s) before HUD can approve a proposal for mixed-finance development, and also sets forth continuing requirements that apply throughout the development and operation of the development by the owner entity.

(b) Under this subpart, public housing units that are built in a mixed-finance development must be comparable in size, location, external appearance, and distribution to the non-public housing units within the development.

§ 941.602 Applicability of other requirements.

(a) *Relationship of this subpart to other requirements in 24 CFR part 941.* The requirements contained in this subpart apply only to the development of public housing units using mixed-finance development methods under this subpart and to the operation of public housing units that are owned, or that will be owned, by an owner entity under this subpart. Other requirements for the development of public housing, as set forth in subparts A through E of this part, shall not apply to the development of public housing units pursuant to this subpart, except as may be required by HUD. Applicable requirements include, but shall not be limited to, the following:

(1) Section 941.103 (''Definitions'') (definitions of the following terms only shall apply to this subpart: ''Annual Contributions Contract (ACC),'' ''cooperation agreement,'' ''design documents,'' ''reformulation,'' and ''Total Development Cost (TDC).''

(2) Section 941.201 (''PHA eligibility'') (except that specific requirements governing the cooperation agreement, as set forth in § 941.201(c), shall be determined in accordance with this subpart);

(3) Section 941.202 (''Site and neighborhood standards'');

(4) Section 941.203 (''Design and construction standards'');

(5) Section 941.205 (''PHA contracts'') (except that the reference to ''development related contracts entered into by the PHA'' shall be construed to mean ''development related contracts entered into by the PHA or the owner entity'');

(6) Section 941.207 (''Relocation and acquisition'');

(7) Section 941.208 (''Other Federal requirements'');

(8) Section 941.209 (''Audit'');

(9) Section 941.306 (''Maximum development cost'');

(10) Section 941.402 (''Project design and construction'');

(11) Section 941.403 (''Acceptance of work and contract settlement'');

(12) Section 941.404 (''Completion of development''); and

(13) Section 941.501 (''HUD review of PHA performance; sanctions'').

(b) *Procedure in the event of a conflict between requirements.* In the event of a conflict between a requirement contained in this subpart and an applicable requirement set forth in subparts A through E of this part, the requirements of this subpart shall apply, unless HUD otherwise so determines in writing.

(c) *HUD approval.* For purposes of this subpart only, any action or approval that is required to be taken or provided by HUD or by the HUD field office, pursuant to a requirement set forth in subparts A through F of this part, shall be construed to mean that HUD Headquarters shall take such action or provide such approval, unless the field office is authorized in writing by Headquarters to carry out a specific function under this subpart.

(d) *Applicability of requirements pursuant to 24 CFR part 85.* The requirements of 24 CFR part 85 are applicable to this subpart, subject to the following two provisos:

(1) A PHA may select a partner using competitive proposal procedures for qualifications-based procurement (subject to negotiation of fair and reasonable compensation, including TDC and other applicable cost limitations);

(2) An owner entity (which, as a private entity, would normally not be subject to part 24 CFR part 85) shall be required to comply with 24 CFR part 85 if HUD determines that the PHA or PHA instrumentality exercises significant functions within the owner entity with respect to managing the development of the proposed units. HUD may, on a case-by-case basis, exempt such an owner entity from the need to comply with 24 CFR part 85 if it determines that the owner entity has developed an acceptable alternative procurement plan.

[61 FR 19714, May 2, 1996, as amended at 61 FR 38022, July 22, 1996]

§ 941.604 Definitions.

In addition to the definitions set forth in § 941.602(a)(1), the following definitions are applicable to this subpart:

Development. A housing facility consisting of public housing units, and that may also consist of non-public housing units, that has been developed,

or that will be developed, using mixed-finance strategies under this subpart.

Mixed-finance. The combined use of publicly and privately financed sources of funds for the development of public housing units under this subpart.

Owner Entity. The entity that will own the public housing units, if the PHA holds less than one hundred percent of the ownership interest; or the lessee under a ground lease from the PHA. The owner entity may be a partnership that includes the PHA.

Participating party. Any person, firm, corporation, or public or private entity that:

(1) Agrees to provide financial or other resources to carry out the approved proposal, or specified activities contained in the proposal; or

(2) Otherwise participates in the development and/or operation of the public housing units and will receive funds derived from HUD with respect to such participation. The term ''participating party'' includes an owner entity or partner.

Partner. A third party entity with whom the PHA has entered into a partnership or other contractual arrangement to provide for the mixed-finance development of public housing units pursuant to this subpart, and that has primary responsibility with the PHA for the development of the housing units under the terms of the approved proposal.

Proposal. For purposes of this subpart only, the term ''proposal'' means a detailed PHA submission of information under §941.606.

Public Housing Agency (PHA). Any State, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing under this part. For purposes of this subpart, the term ''PHA'' also encompasses any agency or instrumentality of the PHA.

Public housing unit. A unit that is eligible to receive operating subsidy pursuant to section 9 of the Act (42 U.S.C. 1437g).

§941.606 Proposal.

Each proposal shall be prepared in the form prescribed by HUD and shall include some or all of the following documentation, as deemed necessary by HUD. In determining the amount of information to be submitted by the PHA under this section, HUD shall consider whether the documentation is required for HUD to carry out mandatory statutory or executive order reviews, the quality of the PHA's past performance in implementing development projects under this part, and the PHA's demonstrated administrative capability, as demonstrated by its overall score on the PHMAP. The proposal includes:

(a) *Activities; relationship of participating parties.* An identification of the participating parties and a description of the activities to be undertaken by each of the participating parties and the PHA, and the legal and business relationships between the PHA and each of the participating parties.

(b) *Financing.* A detailed description of all financing (including public housing development funds) necessary for the implementation of the proposal, specifying the sources (with respect to each of the proposed categorical uses of all such financing), together with a ten-year operating pro forma for the development (including all underlying assumptions). In addition, the PHA may be required to submit to HUD, for such review and approval as HUD deems necessary, all documents (including applications for financing) relating to the financing of the proposal, including, but not limited to, any loan agreements, notes, mortgages or deeds of trust, use restrictions, operating pro formas relating to the viability of the development, and other agreements or documents pertaining to the financing of the proposal.

(c) *Methodology.* If the PHA proposes to provide public housing operating subsidy for the public housing units, it must submit a methodology acceptable to HUD for the distribution of a portion of its operating subsidy to such units;

(d) *Development description.* A description of the housing, including the number and type (with bedroom count) of public housing units and, if applicable, the number and type of non-public housing units (with bedroom count) to be developed; schematic drawings and

designs of the proposed building and unit plans; outline specifications; and the types and amounts of non-dwelling space to be provided.

(e) *Site information.* An identification and description of the proposed site, site plan, and neighborhood.

(f) *Market analysis.* An analysis of the projected market for the proposed development.

(g) *Development construction cost estimate.* A preliminary development construction cost estimate based on the schematic drawings and outline specifications and current construction costs prevailing in the area. In addition, a copy of the PHA development schedule, including the architect or contractor estimate of the time required to complete each major development stage.

(h) *Facilities.* A statement addressing the adequacy of existing or proposed facilities and services for the prospective occupants of the development.

(i) *Relocation.* Information concerning any displacement of site occupants, including identification of each displacee, the distribution plan for notices, and the anticipated cost and source of funding for relocation benefits.

(j) *Operating feasibility.* A demonstration of the operating feasibility of the development, which shall be accomplished by the PHA's showing that the estimated operating expenses of the development will not exceed its estimated operating income.

(k) *Life cycle analysis.* For new construction and substantial rehabilitation, the criteria to be used in equipping the proposed development with heating and cooling systems, which shall include a life-cycle cost analysis of the installation, maintenance and operating costs of such systems pursuant to section 13 of the Act (42 U.S.C. 1437k).

(l) *Section 213 clearance.* To expedite processing of the proposal, a PHA may solicit, on behalf of HUD, comments under section 213 (24 CFR part 791, subpart C) from the chief executive officer (CEO) (or his or her designee) of the unit of general local government. In such case, the solicitation letter must state that comments should be sent directly to HUD within 30 calendar days of HUD's estimated date of receipt of the PHA's proposal. The local government's response must state that the comments are to be considered its only response under 24 CFR part 791, subpart C. A copy of the solicitation letter must be included in the PHA's proposal.

(m) *New construction.* If a proposal involves new construction, the PHA must comply with section 6(h) of the Act (42 U.S.C. 1437d). This may be accomplished by the PHA's submission of a comparison of the cost of new construction in the neighborhood where the housing is proposed to be constructed and the cost of acquisition of existing housing (with or without rehabilitation) in the same neighborhood (including estimated costs of lead-based paint activities). Alternatively, the PHA may submit a certification, accompanied by supporting documentation, that there is insufficient existing housing in the neighborhood to develop public housing through acquisition.

(n)(1) *Certifications and assurances.* The PHA shall submit, as part of its proposal, certifications and assurances warranting that it:

(i) Has the legal authority under State and local law to develop public housing units through the establishment or selection of an owner entity, and to enter into all agreements and provide all assurances required under this subpart. In addition, the PHA shall warrant that it has the legal authority necessary to enter into any proposed partnership and to fulfill its obligations as a partner thereunder, and that it has obtained all necessary approvals for this purpose;

(ii) Will use an open and competitive process to select the partner and/or the owner entity and shall ensure that there is no conflict of interest involved in the PHA's selection of the partner and/or owner entity to develop and operate the proposed public housing units. In addition, the PHA shall ensure that:

(A) Any selected partner and/or owner entity complies with all applicable State and local procurement and conflict of interest requirements with respect to its selection of entities to assist in the development, and uses a

competitive process consistent with the requirements set forth in this subpart; and

(B) If the partner and/or owner entity (or any other entity with an identity of interests with such parties) wants to serve as the general contractor for the project or development, it may award itself the construction contract only if it can demonstrate to HUD's satisfaction that its bid is the lowest bid submitted in response to a public request for bids;

(iii) Will be responsible to HUD for ensuring that the public housing units are developed and operated in accordance with all applicable public housing requirements, including the ACC, and all pertinent statutory, regulatory, and executive order requirements, as those requirements may be amended from time to time. The PHA must also warrant that it will provide for a mechanism to assure, to HUD's satisfaction, that the public housing units will remain available for use by low-income families for the maximum period required by law. In addition, the PHA must warrant that any agreement providing for the management of the public housing units by an entity other than the PHA shall require that the units be operated in accordance with all applicable requirements under this subpart for the full term of any low-income use restrictions.

(2) The PHA shall submit a certification of previous participation in accordance with procedures set forth in 24 CFR part 200, subpart H, and shall ensure that a similar certification is submitted to HUD by the participating parties.

[61 FR 19714, May 2, 1996, as amended at 64 FR 50228, Sept. 15, 1999]

EFFECTIVE DATE NOTE: At 61 FR 19715, May 2, 1996, §941.606 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§941.608 Technical processing and approval.

(a) *Initial screening.* HUD shall perform an initial screening to determine that all documentation required as part of the proposal under §941.606 has been submitted. HUD will advise the PHA of any deficiencies in the proposal and indicate that additional information will be accepted if it is received by a specified date.

(b) *Technical processing.* Upon determining that a proposal is acceptable for technical processing, HUD will evaluate the proposal to determine:

(1) Whether the PHA has the legal authority necessary to develop public housing units through the establishment of an owner entity and the use of mixed-finance strategies in accordance with this subpart;

(2) Whether the proposed sources and uses of funds set forth in the proposal are eligible and reasonable, and whether HUD's preliminary assessment of the financing and other documentation establishes to HUD's satisfaction that the mixed-finance development is viable and is structured so as to adequately protect the Federal investment of funds in the development. For this purpose, HUD will consider (among other factors) the PHA's proposed methodology for allocating operating subsidies on behalf of the public housing units; the projected revenues to be generated by any non-public housing units in a mixed-finance development; and the 10-year operating pro forma and other information contained in the proposal;

(3) If applicable, whether the public housing units in the proposed development will be comparable in size, location, external appearance and distribution within the development to the non-public housing units;

(4) If public housing development funds are to be used to pay for more than the pro rata cost of common area improvements, whether the proposal ensures that:

(i) On a per unit basis (taking into consideration the number of public housing units for which funds have been reserved) the PHA will not exceed TDC limits; and

(ii) Any common area improvements will benefit all residents of the development;

(5) Whether the proposal complies with all program requirements including, if applicable, any comments received from the unit of general local government pursuant to section 213 of

the Housing and Community Development Act of 1974 (42 U.S.C. 1439) (see 24 CFR part 791, subpart C); and

(6) Whether the proposal is approvable following completion by HUD of an environmental review in accordance with the requirements of 24 CFR part 50.

(c) *Proposal approval.* HUD shall send a notification letter to the PHA stating that the proposal has been approved or disapproved. For approved proposals, the letter shall indicate the approved total development cost of the public housing units in the development. HUD will also send to the PHA for execution an ACC amendment and/or a grant agreement. If the PHA has already executed a front-end ACC amendment, HUD will send to the PHA for execution a special ACC amendment for the mixed-finance development (and/or a grant agreement). The PHA shall execute these documents and return them to HUD for execution.

§ 941.610 Evidentiary materials and other documents.

(a) *Submission of documents.* As a condition of the release of grant funds under § 941.612, the PHA shall submit to HUD, within the timeframe prescribed by HUD, evidentiary materials and other documentation, as more fully set forth in the special mixed-finance amendment to the ACC (and/or grant agreement). Such materials and documentation shall include, but shall not be limited to:

(1) A copy of executed development-related contracts entered into by the PHA or owner entity with respect to the development, and the PHA-executed ACC amendment or special mixed-finance amendment to the ACC (and/or grant agreement);

(2) Agreements that are necessary to implement the proposal and to ensure that all requirements of this subpart are satisfied. Such agreements must be submitted to HUD for review and approval and shall include, but shall not be limited to:

(i) A deed restriction, covenant running with the land, ground lease, or other arrangement of public record, that will assure to HUD's satisfaction that the public housing units will be available for use by eligible low-income families in accordance with all applicable public housing requirements for the maximum period required by law;

(ii) A regulatory or operating agreement between the PHA and the owner entity that provides binding assurances that the operation of the public housing units will be in accordance with all applicable public housing requirements;

(iii) An agreement between the PHA and the owner entity with respect to the provision of operating subsidy by the PHA in accordance with this subpart;

(iv) A partnership agreement, development agreement, or other agreement entered into between the PHA and its partner, or any other participating party, that establishes the relationships between the parties with respect to the implementation of the proposal, including all rights and liabilities (financial and otherwise) of the parties, a development schedule, and the respective commitments of the parties with respect to the development of the public housing units. For developments involving public and non-public housing units only, the PHA shall also provide for an allocation with the owner entity of expenses and risks (e.g., fire, exhaustion of, or failure to receive, syndication funds, etc.) associated with the development and operation of the development. The allocation of expenses and risks shall be based upon a ratio that reflects the proposed bedroom mix of the public housing units as compared to the bedroom mix and unit count of the non-public housing units in the development, or as otherwise approved by HUD;

(v) Any agreement relating to the management of the public housing units by an entity other than the PHA;

(vi) For developments consisting of public housing and non-public housing units, and in lieu of the standard cooperation agreement required under § 941.201(c), the PHA shall submit a cooperation agreement with the applicable locality concerning PILOT payments, local tax exemption and local government services on behalf of the proposed public housing units. Such payments, exemption and services must be based upon a ratio reflecting the proposed bedroom mix of the public

housing units as compared to the bedroom mix of the non-public housing units in the development, or as otherwise approved by HUD. For developments consisting only of public housing units, the PHA shall submit the standard cooperation agreement required under §941.201(c);

(3) All private or public financing documents evidencing the availability of the participating party(ies)'s financing, the amount and source of financing committed to the proposal by the participating party(ies), and the irrevocability of those funds. HUD may require in lieu of, or in addition to the submission of these documents, an opinion of the PHA's and the owner entity's counsel (or other party designated by HUD) attesting that counsel has examined the availability of the participating party(ies)'s financing, and the amount and source of financing committed to the proposal by the participating party(ies), and has determined that such financing has been irrevocably committed by the participating party(ies) for use in carrying out the proposal, and that such commitment is in the amount required under the terms of the proposal;

(4) The organizational documents of the owner entity, which shall be reviewed by HUD (together with all financing documents) to ensure that they do not provide equity investors, creditors, and any other parties, with rights that would be inconsistent with, or that could interfere with, HUD's interest in the proposed development;

(5) Evidence that all necessary actions have been taken by the PHA and other participating parties to confer such legally enforceable rights as will enable HUD to protect its investment in the property and to ensure the availability of the public housing units for low-income persons for the maximum permissible period;

(6) Evidence of control of the site by the PHA, partner, or owner entity following proposal submission, for such period of time as may be required by HUD;

(7) Evidence that construction or rehabilitation is permitted by current zoning ordinances or regulations, or evidence to indicate that needed rezoning is likely and will not delay construction of the development;

(8) In addition, the PHA shall submit the following certifications warranting that:

(i) For PHAs receiving operating assistance, that:

(A) There shall be no disposition of the public housing units without the prior written approval of HUD during and for ten years after the end of the period in which the public housing units receiving operating subsidy from the PHA; and

(B) During a 40-year period (which may be extended for 10 years after the end of the period in which the public housing units receive operating subsidy from the PHA, or as may be otherwise required by law), the public housing units shall be maintained and operated in accordance with all applicable public housing requirements (including the ACC), as those requirements may be amended from time to time;

(ii) The PHA will develop at least the same number of public housing units as were approved by HUD as part of the PHA's proposal. Where the PHA proposes to pay for more than its pro rata share of the cost of common area improvements, the PHA must also certify that:

(A) It will develop the same number of public housing units as were approved by HUD as part of the PHA's proposal, and will do so within the TDC limits; and

(B) The common area improvements will benefit all residents of the development. If the PHA's proposal provides that public housing units within a development will not be specifically designated as public housing units, but shall instead constitute a fixed percentage of the housing units and number of bedrooms developed under the proposal, the PHA must provide additional binding assurances that the percentage of public housing units and number of bedrooms, as approved by HUD, will be maintained as public housing by the owner entity, and that all of the requirements of this subpart will be satisfied with respect to those units;

(iii) It will ensure that the requirements of this subpart are binding upon the owner entity and any partner of

the PHA and, to the extent determined necessary by HUD, upon any other participating party. In addition, in the event of any noncompliance with the requirements of this subpart by any participating party, the PHA agrees to take all necessary enforcement action to ensure such compliance or, alternatively, to pursue any legal or equitable remedies that HUD deems appropriate;

(iv) It will include in all agreements or contracts with the partner, owner entity, or any other participating parties receiving development funds under this subpart, an acknowledgement that a transfer of the development funds by the PHA to the partner, the owner entity, or other participating party, shall not be deemed to be an assignment of development grant funds and that, accordingly, the partner, the owner entity or other participating party shall not succeed to any rights to benefits of the PHA under the ACC, or ACC amendment, nor shall it attain any privileges, authorities, interests, or rights in or under the ACC or ACC amendment;

(v) It will include, or cause to be included, in all its agreements or contracts with the partner, the owner entity, or other participating parties, and in all contracts with any other party involving the use of development grant funds under this subpart, a provision stating that nothing in the ACC or ACC amendments providing such funds, nor any agreement or contract between the party(ies) shall be deemed to create a relationship of third-party beneficiary, principal and agent, limited or general partnership, joint venture, or any association or relationship involving HUD;

(vi) It will ensure that the development of the public housing units will be in compliance with labor standards applicable to the development of public housing including, but not limited to, wage rates under the Davis-Bacon Act (40 U.S.C. 276a *et seq.*). If the proposed development will include public housing units that are not specifically designated units, the PHA shall ensure that such labor requirements are met with respect to the development of all units that may, at any time, be used as the public housing units;

(vii) It will take all steps necessary to ensure that, in the event of a foreclosure or other adverse action brought against the owner entity with respect to the housing units (including, but not limited to, the public housing units), the operation of the public housing units developed under this subpart shall not be adversely affected.

(9) Such additional documentation as may be required by HUD.

(b) *Subsidy layering analysis.* After the PHA submits the documentation required under paragraph (a) of this section, HUD (or its designee) shall carry out a subsidy layering analysis pursuant to section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (see 24 CFR part 4) to determine whether the amount of assistance being provided for the development is more than necessary to make the assisted activity feasible after taking into account the other governmental assistance.

EFFECTIVE DATE NOTE: At 61 FR 19716, May 2, 1996, § 941.610 was added. This section contains information collection and recordkeeping requirements and will not become effective until approval has been given by the Office of Management and Budget.

§ 941.612 Disbursement of grant funds.

(a) *Front-end drawdowns.* A PHA may request front-end assistance for both scattered or non-scattered site development in accordance with the following requirements:

(1) Front-end assistance may be used to pay for materials and services related to proposal development, and may also be used to pay for costs related to the demolition of existing units on a proposed site or for preliminary development work;

(2) HUD shall determine on a case-by-case basis the maximum amount that may be drawn down by a PHA to pay for preliminary development costs, based upon a consideration of the nature and scope of activities proposed to be carried out by the PHA;

(3) Before a request for front-end assistance may be approved, the PHA must provide HUD with such information and documentation as HUD deems appropriate from the list set forth at § 941.606. In determining the extent of

the PHA's submissions under this paragraph (a), HUD shall ensure that it has adequate information or documentation to enable it to carry out any statutory, executive order, or other mandatory upfront reviews under this subpart. These reviews shall include, but shall not be limited to, environmental reviews (including NEPA and historic preservation), intergovernmental review, section 213 clearance (24 CFR part 791, subpart C), and subsidy layering. If, upon completing these reviews, HUD determines that the proposed development is approvable, it may execute with the PHA a front-end ACC amendment and the special mixed-finance amendment to the ACC (and/or grant agreement) to provide advances for the purposes, and in the amounts, approved by HUD.

(b) *Standard drawdown requirements.* HUD will review the evidentiary materials and other documents submitted pursuant to §941.610, and, upon determining that such documents are satisfactory, may approve a drawdown of development funds, consistent with the following requirements:

(1) A PHA may only draw down public housing development funds in an approved ratio to other public and private funds, in accordance with a draw schedule prepared by the PHA and approved by HUD. The PHA and its partner shall certify, in a form prescribed by HUD, prior to the initial drawdown of public housing development funds that the PHA will not draw down and the partner will not request more public housing grant funds than necessary to meet the PHA's pro rata share of the development costs. The PHA shall draw down public housing development funds only when payment is due and *after* inspection and acceptance of work covered by the draw. The PHA shall release funds to its partner promptly, normally within two working days of receipt of the funds from HUD, and only in accordance with the ratio approved by HUD. The PHA's partner shall take prompt action to distribute the funds, normally within two working days of receipt of the funds from the PHA;

(2) Each drawdown of public housing development funds constitutes a certification by the PHA that:

(i) All the representations and warranties of the PHA, as submitted in accordance with this subpart, continue to be valid, true, and in full force and effect;

(ii) The PHA is in full compliance with all of the PHA's obligations pursuant to this part which, by their terms, are applicable at the time of the drawdown of the public housing development funds, and that to the best of the PHA's knowledge, it is not in default under the ACC, as amended;

(iii) All conditions precedent to the PHA's authority to draw down the public housing grant funds have been satisfied;

(iv) The public housing grant funds to be drawn down will be used for eligible costs actually incurred or to be incurred in accordance with the provisions of this subpart and the approved proposal; and

(v) The ratio for the draw down of funds is satisfied.

(c) The standard drawdown requirements set forth in paragraph (b) of this section (including the requirement that public housing development funds must be drawn down in an approved ratio to other public and private funds) do not apply to front-end assistance approved by HUD pursuant to paragraph (a) of this section.

§941.614 HUD monitoring and review.

HUD shall monitor and review the implementation of the PHA's approved proposal in accordance with requirements prescribed by HUD in a special mixed-finance amendment to the ACC (and/or grant agreement).

§941.616 Sanctions.

In the event the public housing units that are proposed to be developed under this subpart are not developed in accordance with the projected development schedule, the approved proposal, and all applicable Federal requirements, or if the units are not operated in accordance with applicable requirements, HUD may impose sanctions on the PHA, and/or seek legal and equitable relief, in accordance with requirements prescribed by HUD in the special mixed-finance amendment to the ACC (and/or grant agreement).

PART 943—PUBLIC HOUSING AGENCY CONSORTIA AND JOINT VENTURES

Subpart A—General

Sec.
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Subpart B—Consortia

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Subpart C—Subsidiaries, Affiliates, Joint Ventures in Public Housing

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AUTHORITY: 42 U.S.C. 1437k and 3535(d).

SOURCE: 65 FR 71207, Nov. 29, 2000, unless otherwise noted.

Subpart A—General

§ 943.100 What is the purpose of this part?

This part authorizes public housing agencies (PHAs) to form consortia, joint ventures, affiliates, subsidiaries, partnerships, and other business arrangements under section 13 of the United States Housing Act of 1937 (42 U.S.C. 1437k). Under this authority, PHAs participating in a consortium enter into a consortium agreement, submit joint PHA Plans to HUD, and may combine all or part of their funding and program administration. This part does not preclude a PHA from entering cooperative arrangements to operate its programs under other authority, as long as they are consistent with other program regulations and requirements.

Subpart B—Consortia

§ 943.115 What programs are covered under this subpart?

(a) Except as provided in paragraph (b) of this section, this subpart applies to the following:

(1) PHA administration of public housing or Section 8 programs under an Annual Contributions Contract (ACC) with HUD; and

(2) PHA administration of grants to the PHA in connection with its public housing or Section 8 programs.

(b) This subpart does not apply to the following:

(1) PHA administration of Section 8 projects assigned to a PHA for contract administration pursuant to an ACC entered under the Request for Proposals (RFP) published May 19, 1999 (64 FR 27358);

(2) Section 8 contract administration of a restructured subsidized multifamily project by a Participating Administrative Entity in accordance with part 401 of this title; or

(3) A PHA in its capacity as owner of a Section 8 project.

§ 943.118 What is a consortium?

A consortium consists of two or more PHAs that join together to perform planning, reporting, and other administrative or management functions for participating PHAs, as specified in a consortium agreement. A consortium also submits a joint PHA Plan. The lead agency collects the assistance funds from HUD that would be paid to the participating PHAs for the elements of their operations that are administered by the consortium and allocates them according to the consortium agreement. The participating PHAs must adopt the same fiscal year so that the applicable periods for submission and review of the joint PHA

Plan are the same. Notwithstanding any other regulation, PHAs proposing to form consortia may request and HUD may approve changes in PHA fiscal years to make this possible.

§ 943.120 What programs of a PHA are included in a consortium's functions?

(a) A PHA may enter a consortium under this subpart for administration of any of the following program categories:

(1) The PHA's public housing program (which may include either the operating fund or the capital fund, or both);

(2) The PHA's Section 8 voucher and certificate program (including the project-based certificate and voucher programs and special housing types);

(3) The PHA's Section 8 Moderate Rehabilitation program, including Single Room Occupancy program;

(4) All other project-based Section 8 programs administered by the PHA under an ACC with HUD; and

(5) Any grant programs of the PHA in connection with its Section 8 or public housing programs, such as the Drug Elimination program or the Resident Opportunities and Self-Sufficiency program, to the extent not inconsistent with the terms of the governing documents for the grant program's funding source.

(b) If a PHA elects to enter a consortium with respect to a category specified in paragraph (a) of this section, the consortium must cover the PHA's whole program under the ACC with HUD for that category, including all dwelling units and all funding for that program under the ACC with HUD.

§ 943.122 How is a consortium organized?

(a) PHAs that elect to form a consortium enter into a consortium agreement among the participating PHAs, specifying a lead agency (see § 943.124), and submit a joint PHA Plan (§ 943.118). HUD enters into any necessary payment agreements with the lead agency and the other participating PHAs (see § 943.126) to provide that HUD funding to the participating PHAs for program categories covered by the consortium will be paid to the lead agency.

(b) The lead agency must not be a PHA that is designated as a ''troubled PHA'' by HUD, that has been determined by HUD to fail the civil rights compliance threshold for new funding, or that has had a PHAS designation withheld for civil rights or other reasons. The lead agency is designated to receive HUD program payments on behalf of participating PHAs, to administer HUD requirements for administration of the funds, and to apply the funds in accordance with the consortium agreement and HUD regulations and requirements.

§ 943.124 What elements must a consortium agreement contain?

(a) The consortium agreement among the participating PHAs governs the formation and operation of the consortium. The consortium agreement must be consistent with any payment agreements between the participating PHAs and HUD and must specify the following:

(1) The names of the participating PHAs and the program categories each PHA is including under the consortium agreement;

(2) The name of the lead agency;

(3) The functions to be performed by the lead agency and the other participating PHAs during the term of the consortium;

(4) The allocation of funds among participating PHAs and responsibility for administration of funds paid to the consortium; and

(5) The period of existence of the consortium and the terms under which a PHA may join or withdraw from the consortium before the end of that period. To provide for orderly transition, addition or withdrawal of a PHA and termination of the consortium must take effect on the anniversary of the consortium's fiscal year.

(b) The agreement must acknowledge that the participating PHAs are subject to the joint PHA Plan submitted by the lead agency.

(c) The agreement must be signed by an authorized representative of each participating PHA.

§ 943.126 What is the relationship between HUD and a consortium?

HUD has a direct relationship with the consortium through the PHA Plan process and through one or more payment agreements, executed in a form prescribed by HUD, under which HUD and the participating PHAs agree that program funds will be paid to the lead agency on behalf of the participating PHAs. Such funds must be used in accordance with the consortium agreement, the joint PHA Plan and HUD regulations and requirements.

§ 943.128 How does a consortium carry out planning and reporting functions?

(a) During the term of the consortium agreement, the consortium must submit joint five-year Plans and joint Annual Plans for all participating PHAs, in accordance with part 903 of this chapter. HUD may prescribe methods of submission for consortia generally and where the consortium does not cover all program categories.

(b) The consortium must maintain records and submit reports to HUD, in accordance with HUD regulations and requirements, for all of the participating PHAs. All PHAs will be bound by Plans and reports submitted to HUD by the consortium for programs covered by the consortium.

(c) Each PHA must keep a copy of the consortium agreement on file for inspection. The consortium agreement must also be a supporting document to the joint PHA Plan.

§ 943.130 What are the responsibilities of participating PHAs?

(a) *Responsibilities, generally.* Despite participation in a consortium, each participating PHA remains responsible for its own obligations under its ACC with HUD. This means that the PHA has an obligation to assure that all program funds, including funds paid to the lead agency for administration by the consortium, are used in accordance with HUD regulations and requirements, and that the PHA program is administered in accordance with HUD regulations and requirements. Any breach of program requirements with respect to a program covered by the consortium agreement is a breach of the ACC with each of the participating PHAs, so each PHA is responsible for the performance of the consortium.

(b) *Applicability of independent audit and performance assessment system requirements to consortia.* Where the lead agency will manage substantially all program and activities of the consortium, HUD interprets financial accountability to rest with the consortium and thus HUD will apply independent audit and performance assessment requirements on a consortium-wide basis. Where the lead agency will not manage substantially all programs and activities of a consortium, the consortium shall indicate in its PHA Plan submission which PHAs have financial accountability for the programs. The determination of financial accountability shall be made in accordance with generally accepted accounting principles, as determined in consultation with an independent public accountant. In such situations, HUD will apply independent audit and performance assessment requirements consistent with that determination. With respect to any consortium, however, HUD may determine (based on a request from the consortium or other circumstances) to apply independent audit and performance requirements on a different basis where this would promote sound management.

Subpart C—Subsidiaries, Affiliates, Joint Ventures in Public Housing

§ 943.140 What programs and activities are covered by this subpart?

(a) This subpart applies to the provision of a PHA's public housing administrative and management functions, and to the provision (or arranging for the provision) of supportive and social services in connection with public housing. This subpart does not apply to activities of a PHA that are subject to the requirements of part 941, subpart F, of this title.

(b) For purposes of this subpart, the term ''joint venture partner'' means a participant (other than a PHA) in a joint venture, partnership, or other business arrangement or contract for services with a PHA.

(c) This part does not affect a PHA's authority to use joint ventures, as may

be permitted under State law, when using non-1937 Act funds.

§ 943.142 In what types of operating organizations may a PHA participate?

(a) A PHA may create and operate a wholly owned or controlled subsidiary or other affiliate; may enter into joint ventures, partnerships, or other business arrangements with individuals, organizations, entities, or governmental units. A subsidiary or affiliate may be a nonprofit corporation. A subsidiary or affiliate may be an organization controlled by the same persons who serve on the governing board of the PHA or who are employees of the PHA.

(b) The purpose of any of these operating organizations would be to administer programs of the PHA.

§ 943.144 What financial impact do operations of a subsidiary, affiliate, or joint venture have on a PHA?

Income generated by subsidiaries, affiliates, or joint ventures formed under the authority of this subpart is to be used for low-income housing or to benefit the residents assisted by the PHA. This income will not cause a decrease in funding provided under the public housing program, except as otherwise provided under the Operating Fund and Capital Fund formulas.

§ 943.146 What impact does the use of a subsidiary, affiliate, or joint venture have on financial accountability to HUD and the Federal government?

None; the subsidiary, affiliate, or joint venture is subject to the same authority of HUD, HUD's Inspector General, and the Comptroller General to audit its conduct.

§ 943.148 What procurement standards apply to PHAs selecting partners for a joint venture?

(a) The requirements of part 85 of this title are applicable to this part, subject to paragraph (b) of this section, in connection with the PHA's public housing program.

(b) A PHA may use competitive proposal procedures for qualifications-based procurement (request for qualifications or ''RFQ''), or may solicit a proposal from only one source (''sole source'') to select a joint venture partner to perform an administrative or management function of its public housing program or to provide or arrange to provide supportive or social services covered under this part, under the following circumstances:

(1) The proposed joint venture partner has under its control and will make available to the partnership substantial, unique and tangible resources or other benefits that would not otherwise be available to the PHA on the open market (*e.g.,* planning expertise, program experience, or financial or other resources). In this case, the PHA must maintain documentation to substantiate both the cost reasonableness of its selection of the proposed partner and the unique qualifications of the partner: or

(2) A resident group or a PHA subsidiary is willing and able to act as the PHA's partner in performing administrative and management functions or to provide supportive or social services. This entity must comply with the requirements of part 84 of this title (if the entity is a nonprofit) or part 85 of this title (if the entity is a State or local government) with respect to its selection of the members of the team and the members must be paid on a cost-reimbursement basis only. The PHA must maintain documentation that indicates both the cost reasonableness of its selection of a resident group or PHA subsidiary and the ability of that group or subsidiary to act as the PHA's partner under this provision.

§ 943.150 What procurement standards apply to a PHA's joint venture partner?

(a) *General.* A joint venture partner is not a grantee or subgrantee and, accordingly, is not required to comply with part 84 or part 85 of this title in its procurement of goods and services under this part. The partner must comply with all applicable State and local procurement and conflict of interest requirements with respect to its selection of entities to assist in PHA program administration.

(b) *Exception.* If the joint venture partner is a subsidiary, affiliate, or identity of interest party of the PHA, it is subject to the requirements of

part 85 of this title. HUD may, on a case-by-case basis, exempt such a joint venture partner from the need to comply with requirements under part 85 of this title if HUD determines that the joint venture has developed an acceptable alternative procurement plan.

(c) *Contracting with identity-of-interest parties.* A joint venture partner may contract with an identity-of-interest party for goods or services, or a party specified in the selected bidder's response to a RFP or RFQ (as applicable), without the need for further procurement if:

(1) The PHA can demonstrate that its original competitive selection of the partner clearly anticipated the later provision of such goods or services;

(2) Compensation of all identity-of-interest parties is structured to ensure there is no duplication of profit or expenses; and

(3) The PHA can demonstrate that its selection is reasonable based upon prevailing market costs and standards, and that the quality and timeliness of the goods or services is comparable to that available in the open market. For purposes of this paragraph (c), an ''identity-of-interest party'' means a party that is wholly owned or controlled by, or that is otherwise affiliated with, the partner or the PHA. The PHA may use an independent organization experienced in cost valuation to determine the cost reasonableness of the proposed contracts.

§ 943.151 What procurement standards apply to a joint venture itself?

(a) When the joint venture as a whole is controlled by the PHA or an identity of interest party of the PHA, the joint venture is subject to the requirements of part 85 of this title.

(b) If a joint venture is not controlled by the PHA or an identity of interest party of the PHA, then the rules that apply to the other partners apply. See § 943.150.

PART 945—DESIGNATED HOUSING—PUBLIC HOUSING DESIGNATED FOR OCCUPANCY BY DISABLED, ELDERLY, OR DISABLED AND ELDERLY FAMILIES

Subpart A—General

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945.103 General policies.
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Subpart C—Operating Designated Housing

945.301 General requirements.
945.303 Requirements governing occupancy in designated housing.

AUTHORITY: 42 U.S.C. 1473e and 3535(d).

SOURCE: 59 FR 17662, Apr. 13, 1994, unless otherwise noted.

Subpart A—General

§ 945.101 Purpose.

The purpose of this part is to provide for designated housing as authorized by section 7 of the U.S. Housing Act of 1937 (42 U.S.C. 1437e). Section 7 provides public housing agencies with the option, subject to the requirements and procedures of this part, to designate public housing projects, or portions of public housing projects, for occupancy by disabled families, elderly families, or mixed populations of disabled families and elderly families.

§ 945.103 General policies.

(a) *Agency participation.* Participation in this program is limited to public housing agencies (PHAs) (as this term is defined in 24 CFR 913.102) that elect to designate public housing projects for occupancy by disabled families, elderly families, or disabled families and elderly families, as provided by this part.

(b) *Eligible housing*—(1) *Designation of public housing.* Projects eligible for designation under this part are public housing projects as described in the definition of ''project'' in § 945.105.

(2) *Additional housing resources.* To meet the housing and supportive service needs of elderly families, and disabled families, including non-elderly disabled families, who will not be housed in a designated project, PHAs shall utilize housing resources that they own, control, or have received preliminary notification that they will obtain (e.g., section 8 certificates and vouchers). They also may utilize housing resources for which they plan to apply during the period covered by the allocation plan, and that they have a reasonable expectation of obtaining. PHAs also may utilize, to the extent practicable, any housing facilities that they own or control in which supportive services are already provided, facilitated or coordinated, such as mixed housing, shared housing, family housing, group homes, and congregate housing.

(3) *Exemption of mixed population projects.* A PHA with a public housing project with a mixed population of elderly families and disabled families that plans to house them in such project in accordance with the requirements of 24 CFR part 960, subpart D, is not required to meet the designation requirements of this part.

(c) *Family Participation in designated housing*—(1) *Voluntary participation.* The election to reside in designated housing is voluntary on the part of a family. No disabled family or elderly family may be required to reside in designated housing, nor shall a decision not to reside in designated housing adversely affect the family with respect to occupancy of another appropriate project.

(2) *Meeting stated eligibility requirements.* Nothing in this part shall be construed to require or permit a PHA to accept for admission to a designated project a disabled family or elderly family who does not meet the stated eligibility requirements for occupancy in the project (for example, income), as set forth in HUD's regulations in 24 CFR parts 912 and 913, and in the PHA's admission policies.

§945.105 Definitions.

The terms *Department, Elderly person, HUD, NAHA, Public Housing Agency (PHA),* and *Secretary* are defined in 24 CFR part 5.

Act means the United States Housing Act of 1937 (42 U.S.C. 1437–1440).

Accessible units means units that meet the requirement of accessibility with respect to dwellings as set forth in the second definition of ''accessible'' in 24 CFR 8.3.

Allocation plan. See §945.201.

CHAS means the comprehensive housing affordability strategy required by section 105 of the National Affordable Housing Act (42 U.S.C. 12705) or any successor plan prescribed by HUD.

Designated family means the category of family for whom the project is designated (e. g., elderly family in a project designated for elderly families).

Designated housing or *designated project* means a project (or projects), or a portion of a project (or projects) (as these terms are defined in this section), that has been designated in accordance with the requirements of this part.

Disabled family means a family whose head or spouse or sole member is a person with disabilities. The term ''disabled family'' may include two or more persons with disabilities living together, and one or more persons with disabilities living with one or more persons who are determined to be essential to the care or well-being of the person or persons with disabilities. A disabled family may include persons with disabilities who are elderly.

Elderly family means a family whose head, spouse, or sole member is an elderly person. The term ''elderly family'' includes an elderly person, two or more elderly persons living together, and one or more elderly persons living with one or more persons who are determined to be essential to the care or well-being of the elderly person or persons. An elderly family may include elderly persons with disabilities and other family members who are not elderly.

Family includes but is not limited to a single person as defined in this part, a displaced person (as defined in 24 CFR part 912), a remaining member of a tenant family, a disabled family, an elderly family, a near-elderly family, and a family with children. It also includes an elderly family or a disabled family

composed of one or more elderly persons living with one or more disabled persons.

Housing has the same meaning as ''project,'' which is defined in this section.

Mixed population project means a public housing project reserved for elderly families and disabled families. This is the project type referred to in NAHA as being designated for elderly and disabled families. A PHA that has a mixed population project or intends to develop one need not submit an allocation plan or request a designation. However, the project must meet the requirements of 24 CFR part 960 subpart D.

Near-elderly family means a family whose head, spouse, or sole member is a near-elderly person. The term ''near-elderly family'' includes two or more near-elderly persons living together, and one or more near-elderly persons living with one or more persons who are determined to be essential to the care or well-being of the near-elderly person or persons. A near-elderly family may include other family members who are not near-elderly.

Near-elderly person means a person who is at least 50 years of age but below the age of 62, who may be a person with a disability.

Non-elderly disabled person means a person with a disability who is less than 62 years of age.

Person with disabilities means a person who—

(a) Has disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or

(b) Is determined to have a physical, mental, or emotional impairment that—

(1) Is expected to be of long-continued and indefinite duration,

(2) Substantially impedes his or her ability to live independently, and

(3) Is of such a nature that such ability could be improved by more suitable housing conditions, or

(c) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5)).

The term ''person with disabilities'' does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome.

Portion of project includes: One or more buildings in a multi-building project; one or more floors of a project or projects; a certain number of dwelling units in a project or projects. (Designation of a portion of a project does not require that the buildings, floors or units be contiguous.)

Project means low-income housing developed, acquired, or assisted by a PHA under the U.S. Housing Act of 1937 (other than section 8) for which there is an Annual Contributions Contract (ACC) between HUD and the PHA. For purposes of this part, the terms *housing* and *public housing* mean the same as project. Additionally, as used in this part, and unless the context indicates otherwise, the term *project* when used in the singular includes the plural, and when used in the plural, includes the singular, and also includes a ''portion of a project,'' as defined in this section.

Public housing or *public housing project.* See definition of ''project'' in this section.

Service provider means a person or organization qualified and experienced in the provision of supportive services, and that is in compliance with any licensing requirements imposed by State or local law for the type of service or services to be provided. The service provider may provide the service on either a for-profit or not-for-profit basis.

Single person means a person who lives alone or intends to live alone, who is not an elderly person, a person with disabilities, a displaced person, or the remaining member of a tenant family.

Supportive service plan. See § 945.205.

Supportive services means services available to persons residing in a development, requested by disabled families and for which there is a need, and may include, but are not limited to, meal services, health-related services, mental health services, services for non-medical counseling, meals, transportation, personal care, bathing, toileting, housekeeping, chore assistance, safety, group and socialization activities, assistance with medications (in accordance with any applicable

State laws), case management, personal emergency response, and other appropriate services.

[59 FR 17662, Apr. 13, 1994, as amended at 61 FR 5214, Feb. 9, 1996]

Subpart B—Application and Approval Procedures

§ 945.201 Approval to designate housing.

(a) *Designated housing for elderly families.* To designate a project for occupancy by elderly families, a PHA must have a HUD-approved allocation plan that meets the requirements of § 945.203.

(b) *Designated housing for disabled families.* To designate a project for occupancy by disabled families, a PHA must have a HUD-approved allocation plan that meets the requirements of § 945.203, and a HUD-approved supportive service plan that meets the requirements of § 945.205.

(c) *Designated housing for elderly families and disabled families.* (1) A PHA that provides or intends to provide a mixed population project (a project for both elderly families *and* disabled families) is not required to meet the requirements of this part. The PHA is required to meet the requirements of 24 CFR part 960, subpart D.

(2) A PHA that intends to provide designated housing for elderly families or for disabled families must identify any existing or planned mixed population projects, reserved under 24 CFR part 960, subpart B, as additional housing resources, in its allocation plan, in accordance with § 945.203(c)(6).

§ 945.203 Allocation plan.

(a) *Applicable terminology.* (1) As used in this section, the terms ''initial allocation plan'' refers to the PHA's first submission of an allocation plan, and ''updated allocation plan'' refers to the biennial update (once every two years) of this plan, which is described in paragraph (f) of this section.

(2) As provided in § 945.105, the term ''project'' includes the plural (''projects'') and includes a portion of a project.

(b) *Consultation in plan development.* These consultation requirements apply to the development of an initial allocation plan as provided in paragraph (c) of this section, or any update of the allocation plan as provided in paragraph (f) of this section.

(1) In preparing the draft plan, the PHA shall consult with:

(i) The State or unit of general local government where the project is located;

(ii) Public and private service providers;

(iii) Representative advocacy groups for each of these family types: disabled families, elderly families, and families with children, where such advocacy groups exist;

(iv) Representatives of the residents of the PHA's projects proposed for designation, including representatives from resident councils or resident management corporations where they exist; and

(v) Other parties that the PHA determines would be interested in the plan, or other parties that have contacted the PHA and expressed an interest in the plan.

(2) Following the completion of the draft plan, the PHA shall:

(i) Issue public notices regarding its intention to designate housing and the availability of the draft plan for review;

(ii) Contact directly those individuals, agencies and other interested parties specified in paragraph (b)(1) of this section, and advise of the availability of the draft plan for review;

(iii) Allow not less than 30 days for public comment on the draft allocation plan;

(iv) Make free copies of the draft plan available upon request, and in accessible format, when appropriate;

(v) Conduct at least one public meeting on the draft allocation plan;

(vi) Give fair consideration to all comments received; and

(vii) Retain any records of public meetings held on the allocation plan (or updated plan) and any written comments received on the plan for a period of five years commencing from the date of submission of the allocation plan to HUD. These records must be available for review by HUD.

(c) *Contents of initial plan.* The initial allocation plan shall contain, at a minimum, the information set forth in this paragraph (c).

(1) *Identification of the project to be designated and type of designation to be made.* The PHA must:

(i) Identify the type of designation to be made (i.e., housing for disabled families or housing for elderly families);

(ii) Identify the building(s), floor(s), or unit(s) to be designated and their location, or if specific units are not designated, the number to be designated; and

(iii) State the reasons the building(s), floor(s), or unit(s) were selected for designation.

(2) *Identification of groups and persons consulted and comments submitted.* The PHA must:

(i) Identify the groups and persons with whom the PHA has consulted in the development of the allocation plan;

(ii) Include a summary of comments received on the plan from the groups and persons consulted; and

(iii) Describe how the plan addresses these comments.

(3) *Profile of proposed designated project in pre-designation state.* This component of the plan must include, for the projects, buildings, or portions of buildings to be designated:

(i) The total number of families currently occupying the project, and

(A) The number of families who are members of the group for whom the project is to be designated, and

(B) The number of families who are not members of the group for whom the project is to be designated;

(ii) An estimate of the total number of elderly families and disabled families who are potential tenants of the project (i.e., as the project now exists), based on information provided by:

(A) The waiting list from which vacancies in the project are filled; and

(B) A local housing needs survey, if available, such as the CHAS, for the jurisdiction within which the area served by the PHA is located;

(iii) An estimate of the number of potential tenants who will need accessible units based on information provided by:

(A) The needs assessment prepared in accordance with 24 CFR 8.25, and

(B) A housing needs survey, if available, such as the CHAS or HUD-prescribed successor survey;

(iv) The number of units in the project that became vacant and available for occupancy during the year preceding the date of submission of the allocation plan to HUD;

(v) The average length of vacancy for dwelling units in the project for the year preceding the date of submission of the allocation plan to HUD;

(vi) An estimate of the number of units in the project that the PHA expects to become vacant and available for occupancy during the two-year period following the date of submission of the allocation plan to HUD (i.e., if the project were not to be designated);

(vii) An estimate of the average length of time elderly families and non-elderly persons with disabilities currently have to wait for a dwelling unit.

(4) *Projected profile of project in designated state.* This component of the plan must:

(i) Identify the source of the families for the designated project (e.g., current residents of the project, families currently on the waiting list, residents of other projects, and potential tenants based on information from the local housing needs survey);

(ii) For projects proposed to be designated for occupancy by elderly families an estimate of the number of:

(A) Units in the project that are anticipated to become vacant and available for occupancy during the two-year period following the date of submission of the allocation plan to HUD;

(B) Near-elderly families who may be needed to fill units in the designated project for elderly families, as provided in § 945.303(c);

(iii) Describe any impact the designation may have on the average length of time applicants in the group for which the project is designated and other applicants will have to wait for a dwelling unit.

(5) *PHA occupancy policies and procedures.* This component of the plan must describe any changes the PHA intends to make in its admission policies to accommodate the designation, including:

(i) How the waiting list will be maintained;

(ii) How dwelling units will be assigned; and

(iii) How records will be maintained to document the effect on all families who would have resided in the designated project if it had not been designated.

(6) *Strategy for addressing the current and future housing needs of the families in the PHA's jurisdiction.* The PHA must:

(i) Identify the housing resources currently owned or controlled by the PHA, including any mixed population projects, in existence, as provided in 24 CFR part 960, subpart D, that will be available to these families;

(ii) Describe the steps to be taken by the PHA to respond to any need for accessible units that will no longer be available for applicants who need them. The PHA has a continuing obligation under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) to provide accessible dwellings even if the project designation removes accessible dwellings from the inventory of possible dwellings for non-elderly persons with disabilities;

(iii) If a project is being designated for elderly families, describe the steps the PHA will take to facilitate access to supportive services by non-elderly disabled families. The services should be equivalent to those available in the designated project and requested by non-elderly disabled families. If the PHA funds supportive services for the designated project for elderly families, the PHA must provide the same level of services, upon the request of non-elderly disabled families.

(iv) If a project is being designated for elderly families, identify the additional housing resources that the PHA determines will be sufficient to provide assistance to not less than the number of non-elderly disabled families that would have been housed by the PHA if occupancy in units in the designated project were not restricted to elderly families (one-for-one replacement is not required). Among these resources may be:

(A) Normal turnover in existing projects;

(B) Existing housing stock that previously was not available to or considered for non-elderly disabled families. Examples are dwellings in general occupancy (family) projects that are reconfigured to meet the dwelling size needs of the non-elderly disabled families, or were previously occupied by elderly families who will relocate to the designated project for elderly families, or were previously vacant because there had not been a demand for dwellings of that size in that location;

(C) Housing for which the PHA has received preliminary notification that it will obtain; and

(D) Housing for which the PHA plans to apply during the period covered by the allocation plan, and which it has a reasonable expectation of obtaining.

(v) Where a project is being designated for elderly families, explain how the PHA plans to secure the required additional housing resources. In the case of housing for which the PHA plans to apply, the PHA must provide sufficient information about the housing resource and its application to establish that the PHA can reasonably expect to obtain the housing.

(vi) Describe incentives, if any, that the PHA intends to offer to:

(A) Families who are members of the group for whom a project was designated to achieve voluntary transfers *to* the designated project; and

(B) Families who are not members of the group for whom a project was designated to achieve voluntary transfers *from* the project proposed to be designated;

(d) *Criteria for allocation plan approval.* HUD shall approve an initial allocation plan, or updated allocation plan, if HUD determines that:

(1) The information contained in the plan is complete and accurate (a plan that is incomplete, i.e., missing required statements or items, will be disapproved), and the projections are reasonable;

(2) Implementation of the plan will not result in a substantial increase in the vacancy rates in the designated project;

(3) Implementation of the plan will not result in a substantial increase in delaying or denying housing assistance to families on the PHA's waiting list because of designating projects;

(4) The plan for securing sufficient additional housing resources for non-

elderly disabled persons can reasonably be achieved; and

(5) The plan conforms to the requirements of this part.

(e) *Allocation plan approval or disapproval.*—(1) *Written notification.* HUD shall notify each PHA, in writing, of approval or disapproval of the initial or updated allocation plan.

(2) *Timing of notification.* An allocation plan shall be considered to be approved by HUD if HUD fails to provide the PHA with notification of approval or disapproval of the plan, as required by paragraph (e)(1) of this section, within:

(i) 90 days after the date of submission of an allocation plan that contains comments, as provided in paragraph (c)(2) of this section; or

(ii) 45 days after the date of submission of all other plans, including

(A) Initial plans for which no comments were received;

(B) Updated plans, as provided in paragraph (f) of this section; and

(C) Revised initial plans or revised updated plans, as provided in paragraph (e)(4) of this section.

(3) *Approval limited solely to approval of designated housing.* HUD's approval of an initial plan or updated allocation plan under this section may not be construed to constitute approval of any request for assistance for major reconstruction of obsolete projects, assistance for development or acquisition of public housing, or assistance under 24 CFR part 890 (supportive housing for persons with disabilities).

(4) *Resubmission following disapproval.* If HUD disapproves an initial allocation plan, a PHA shall have a period of not less than 45 days or more than 90 days following notification of disapproval as provided in paragraph (e)(2) of this section, to submit amendments to the plan, or to submit a revised plan.

(f) *Biennial update of plan*—(1) *General.* Each PHA that owns or operates a public housing project that is designated for occupancy under this part shall update its allocation plan not less than once every two years, from the date of HUD approval of the initial allocation plan. A PHA that wishes to amend or revise its plan later than 90 days after HUD disapproval must begin the hearing and consultation process again.

(2) *Failure to submit updated plan.* If the PHA fails to submit the updated plan as required by this paragraph (f), the Secretary may revoke the designation in accordance with the provisions of paragraph (f)(4)(ii) of this section.

(3) *Contents of updated plan.* The updated allocation plan shall contain, at a minimum, the following information:

(i) The most recent update of the allocation plan data, and projections for the next two years;

(ii) An assessment of the accuracy of the projections contained in previous plans and in the updated allocation plan;

(iii) The number of times a vacancy was filled in accordance with § 945.303(c);

(iv) A discussion of the impact of the designation on the designated project and the other public housing projects operated by the PHA, using the data obtained from the system developed in § 945.203(c), including

(A) The number of times there was a substantial increase in delaying housing assistance to families on the PHA's waiting list because projects were designated; and

(B) The number of times there was a substantial increase in denying housing assistance to families on the PHA's waiting list because projects were designated;

(v) A plan for adjusting the allocation of designated units, if necessary.

(4) *Criteria for approval of updated plan.* (i) HUD shall approve an updated allocation plan based on HUD's review and assessment of the updated plan, using the criteria in (d) of this section. If HUD considers it appropriate, the review and assessment shall include any on-site review and monitoring of PHA performance in the administration of its designated housing and in the allocation of the PHA's housing resources. Notification of approval or disapproval of the updated allocation plan shall be provided in accordance with paragraph (e) of this section;

(ii) If a PHA's updated plan is not approved, HUD may require PHAs to change the designation of existing or planned projects to other categories,

such as general occupancy or mixed population projects.

(5) *Notification of approval or disapproval of updated plan.* HUD shall notify each PHA submitting an updated plan of approval or disapproval of the updated plan, in accordance with the form of notification and within the time periods required by paragraph (e) of this section.

(Approved by the Office of Management and Budget under control number 2577–0192)

§ 945.205 Designated housing for disabled families.

(a) *General.* (1) In general, HUD will approve designated projects for disabled families only if there is a clear demonstration that there is both a need and a demand by disabled families for such designation. In the absence of such demonstrated need and demand, PHAs should provide for the housing needs of disabled families in the most integrated setting possible.

(2) To designate a project for disabled families, a PHA must submit the allocation plan required by § 945.203 and the supportive service plan described in paragraph (b) of this section.

(3) In its allocation plan,

(i) The PHA may not designate a project for persons with a specific disability;

(ii) The designated project does not have to be made up of contiguous units. PHAs are encouraged to place the units in the project, whether contiguous or not, in the most integrated setting possible.

(4) The consultation process for the allocation plan provided in § 945.203(b) and consultation process for the supportive service plan provided in this section may occur concurrently.

(5) If the PHA conducts surveys to determine the need or demand for a designated project for disabled families or for supportive services in such project, the PHA must protect the confidentiality of the survey responses.

(b) *Supportive Service Plan.* The plan shall describe how the PHA will provide or arrange for the provision of the appropriate supportive services requested by the disabled families who will occupy the designated housing and who have expressed a need for these services.

(1) *Contents of plan.* The supportive service plan, at a minimum, must:

(i) Identify the number of disabled families who need the supportive services and who have expressed an interest in receiving them;

(ii) Describe the types of supportive services that will be provided, and, if known, the length of time the supportive services will be available;

(iii) Identify each service provider to be utilized, and describe the experience of the service provider in delivering supportive services;

(iv) Describe how the supportive services will be provided to the disabled families that the designated housing is expected to serve (how the services will be provided depends upon the type of service offered; e.g., if the package includes transportation assistance, how transportation assistance will be provided to disabled families);

(v) Identify all sources of funding upon which the PHA is relying to deliver supportive services to residents of the designated housing for disabled families, or the supportive service resources to be provided in lieu of funding;

(vi) Submit evidence of a specific contractual commitment or commitments provided to the PHA by the sources identified in paragraph (b)(1)(v) of this section to make funds available for supportive services, or the delivery of supportive services available to the PHA for at least two calendar years;

(vii) Identify any public and private service providers, advocates for the interests of designated housing families, and other interested parties with whom the PHA consulted in the development of this supportive service plan, and summarize the comments and recommendations made by these parties. (These comments must be maintained for a period of five years, and be available for review by HUD as provided in paragraph (b)(2)(vii) of this section.);

(viii) If applicable, address the need for residential supervision of disabled families (on-site supervision within the designated housing) and how this supervision is to be provided;

(ix) Include any other information that the PHA determines would assist HUD in assessing the suitability of the PHA's supportive service plan; and

(x) Include any additional information that HUD may request, and which is appropriate to a determination of the suitability of the supportive service plan.

(2) *Public review and comment on the supportive service plan.* In preparing the initial supportive service plan, or any update of the supportive service plan, the PHA shall:

(i) Issue public notices regarding its intention to provide supportive services to designated housing for disabled families and the availability of the draft supportive service plan;

(ii) Send notices directly to interested individuals and agencies that have contacted the PHA and have expressed an interest in the supportive service plan, and to parties specified in paragraph (b)(1)(vii) of this section;

(iii) Allow not less than 30 days for public comment on the supportive service plan;

(iv) Make free copies of the draft plan available upon request, and in accessible format, when appropriate;

(v) Conduct at least one public meeting regarding the supportive service plan;

(vi) Give fair consideration to all comments received; and

(vii) Retain any records of the public meetings held on the supportive service plan, and any written comments received on the supportive service plan for a period of five years, from the date of submission of the supportive service plan. These records must be available for review by HUD.

(c) *Approval.* HUD shall approve designated housing for disabled families if the allocation plan meets the requirements of § 945.203, including demonstrating both a need and a demand for designated housing for disabled families, and if HUD determines on the basis of the information provided in the supportive service plan that:

(1) There is a sufficient number of persons with disabilities who have expressed an interest in occupying a designated project for disabled families, and who have expressed a need and demand for the supportive services that will be provided;

(2) The supportive services are adequately designed to meet the needs of the disabled families who have indicated a desire for them;

(3) The service provider has current or past experience administering an effective supportive service delivery program for persons with disabilities;

(4) If residential supervision is required, a written commitment to provide this supervision in the designated housing.

(Approved by the Office of Management and Budget under control number 2577–0192)

Subpart C—Operating Designated Housing

§ 945.301 General requirements.

The application procedures and operation of designated projects shall be in conformity with the regulations of this part, and the regulations applicable to PHAs in 24 CFR Chapter IX, including 24 CFR parts 913, 960 and 966, and, in particular, the nondiscrimination requirements of 24 CFR 960.211(b)(3), that include but are not limited to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Fair Housing Act (42 U.S.C. 3601–3619), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), the Age Discrimination Act (42 U.S.C. 6101–6107), Executive Order 11246 (3 CFR 1964–1965 Comp., p. 339), Executive Order 11063, as amended by Executive Order 12259 (3 CFR 1958–1963 Comp., p. 652 and 3 CFR 1980 Comp., p. 307), the Americans with Disabilities Act (42 U.S.C. 12101–12213) (to the extent the Americans with Disabilities Act is applicable) and the implementing regulations of these statutes and authorities; and other applicable Federal, State, and local laws prohibiting discrimination and promoting equal opportunity.

§ 945.303 Requirements governing occupancy in designated housing.

(a) *Priority for occupancy.* Except as provided in paragraph (c) of this section, in determining priority for admission to designated housing, the PHA shall make units in the designated housing available only to designated families.

(b) *Compliance with preference regulations.* Among the designated families,

the PHA shall give preference in accordance with the preferences in 24 CFR part 960, subpart B.

(c) *Eligibility of other families for housing designated for elderly families*—(1) *Insufficient elderly families.* If there are an insufficient number of elderly families for the units in a project designated for elderly families, the PHA may make dwelling units available to near-elderly families, who qualify for preferences under 24 CFR part 960, subpart B. The election to make dwelling units available to near-elderly families if there are an insufficient number of elderly families should be explained in the PHA's allocation plan.

(2) *Insufficient elderly families and near-elderly families.* If there are an insufficient number of elderly families and near-elderly families for the units in a project designated for elderly families, the PHA shall make available to all other families any dwelling unit that is:

(i) Ready for re-rental and for a new lease to take effect; and

(ii) Vacant for more than 60 consecutive days.

(d) *Tenant choice of housing.* (1) Subject to paragraph (d)(2) of this section, the decision of any disabled family or elderly family not to occupy or accept occupancy in designated housing shall not have an adverse affect on:

(i) The family's admission to or continued occupancy in public housing; or

(ii) The family's position on or placement on a public housing waiting list.

(2) The protection provided by paragraph (d)(1) of this section shall not apply to any family who refuses to occupy or accept occupancy in designated housing because of the race, color, religion, sex, disability, familial status, or national origin of the occupants of the designated housing or the surrounding area.

(3) The protection provided by paragraph (d)(1) of this section shall apply to an elderly family or disabled family that declines to accept occupancy, respectively, in a designated project for elderly families or for disabled families, and requests occupancy in a general occupancy project or in a mixed population project.

(e) *Appropriateness of dwelling unit to family size.* This part may not be construed to require a PHA to offer a dwelling in a designated project to any family who is not of appropriate family size for the dwelling unit. The temporary absence of a child from the home due to placement in foster care is not considered in determining family composition and family size.

(f) *Prohibition of evictions.* Any tenant who is lawfully residing in a dwelling unit in a public housing project may not be evicted or otherwise required to vacate the unit because of the designation of the project, or because of any action taken by HUD or the PHA in accordance with this part.

(g) *Prohibition of coercion to accept supportive services.* As with other HUD-assisted housing, no disabled family or elderly family residing in designated housing may be required to accept supportive services made available by the PHA under this part.

(h) *Availability of grievance procedures in 24 CFR part 966.* The grievance procedures in 24 CFR part 966, subpart B, which applies to public housing tenants, is applicable to this part.

PART 954—INDIAN HOME PROGRAM

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Subpart A—General Provisions

§ 954.1 Overview.

This part implements the Indian HOME Investment Partnerships Program. In general, under the Indian HOME Investment Partnerships Program, HUD awards funds competitively to eligible applicants to provide more affordable housing. Grantees may use HOME funds to carry out projects through acquisition, rehabilitation, and new construction of housing, and tenant-based rental assistance. Grantees are able to provide assistance in a number of eligible forms, including loans, advances, equity investments, interest subsidies and other forms of investment that HUD approves.

§ 954.2 Definitions.

Adjusted income. See 24 CFR part 950.

Annual income. See 24 CFR part 950.

Area Office of Native American Programs (ONAP). See 24 CFR part 950.

Certification means a written assertion, based on supporting evidence, which must be kept available for inspection by HUD, the Inspector General and the public, which assertion is deemed to be accurate for purposes of this part, unless HUD determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

Community-wide exception rents are maximum gross rents approved by HUD for the Rental Certificate program under § 882.106(a)(3) of this title for a designated municipality, county, or similar locality, which apply to the whole IHA jurisdiction.

Family. See 24 CFR part 950.

HOME funds means funds made available under this part through grants, plus all repayments and interest or other return on the investment of these funds.

Homeownership means ownership in fee simple title or a leasehold interest of not less than 50 years (including 25 years, automatically renewable for an additional term of 25 years) in a one-to-four unit dwelling or in a condominium unit, ownership or membership in a cooperative, or equivalent form of ownership approved by HUD. The ownership interest may be subject only to the restrictions on resale required under § 954.307(a); mortgages, deeds of trust, or other liens or instruments securing debt on the property as approved by the tribe; or any other restrictions or encumbrances that do not impair the good and marketable nature of title to the ownership interest.

Household means one or more persons occupying a housing unit.

Housing includes site constructed, modular, manufactured housing and housing lots.

HUD. See 24 CFR part 950.

Indian housing authority (IHA). See 24 CFR part 950.

Low-income family See 24 CFR part 950.

Monthly adjusted income. See 24 CFR part 950.

Monthly income. See 24 CFR part 950.

NOFA means notice of funding availability.

Project means housing developed, acquired, or assisted with HOME funds, and the improvement of this housing.

It includes the site on which the housing is located and all of the HOME-assisted activities associated with the building and the site.

Project completion means that all necessary title transfer requirements and construction work have been performed and the project complies with the requirements of this part (including the property standards adopted under § 954.401); the final drawdown has been disbursed for the project; a Project Completion Report has been submitted and a final accounting of project expenses is provided by the grantee as prescribed by HUD. For tenant-based rental assistance, it also means the final drawdown has been disbursed for the project and the final payment certification has been submitted and processed as prescribed by HUD.

Secretary means the Secretary of Housing and Urban Development.

Single room occupancy (SRO) housing means housing consisting of single room dwelling units that is the primary residence of its occupant or occupants. The unit may contain either food preparation facilities or sanitary facilities, or both. Alternatively, sanitary facilities may be located outside the unit and be shared by tenants in the project. SRO does not include facilities for students.

Subgrantee means a public agency or nonprofit organization retained by the grantee under a written agreement to administer all or a portion of the grantee's program for its HOME grant. A public agency or nonprofit organization that receives HOME funds solely as a developer or owner of housing is not a subgrantee. The grantee's selection of a subgrantee is not subject to the procurement procedures and requirements.

Tenant-based rental assistance is a form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance.

Transitional housing means housing that—

(1) Is designed to provide housing and supportive services to persons, including (but not limited to) deinstitutionalized individuals with disabilities, homeless individuals with disabilities, and homeless families with children; and

(2) Has as its purpose facilitating the movement of individuals and families to independent living within a time period that is set by the grantee before occupancy.

Very low-income family. See 24 CFR part 950.

§ 954.3 Waivers.

Upon determination of good cause, HUD may waive any provision of this part not required by statute. Each waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.

§ 954.4 Other Federal requirements.

(a) *Equal opportunity*. (1) *Section 282*. Pursuant to the requirements of Section 282 of the Cranston-Gonzales National Affordable Housing Act (42 U.S.C. 12832), no person in the United States shall on the grounds of race, color, national origin, religion, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with HOME funds. In addition, HOME funds must be made available in accordance with the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and implementing regulations at 24 CFR part 146, and the prohibitions against discrimination against handicapped individuals under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8.

(2) *Civil Rights Act*. Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), which prohibits discrimination on the basis of race, color or national origin in federally assisted programs, the Fair Housing Act (42 U.S.C. 3601–3620), which prohibits discrimination based on race, color, religion, sex, or national origin in the sale or rental of housing, and Executive Order 11063 (27 FR 11527, 3 CFR 1959–1963 Comp., p. 652), which provides for equal opportunity in housing, do not apply to grantees exercising recognized powers of self-government. Indian tribes and tribal organizations applying on behalf of Indian tribes that do not exercise

recognized powers of self-government must make HOME funds available in accordance with Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Executive Order 11063.

(b) *Indian Civil Rights Act.* The Indian Civil Rights Act (title II of the Civil Rights Act of 1968, 25 U.S.C. 1301–1303) provides, among other things, that ''no Indian tribe in exercising powers of self-government shall. . . deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law.'' The Indian Civil Rights Act (ICRA) applies to any tribe, band, or other group of Indians subject to the jurisdiction of the United States in the exercise of recognized powers of self-government.

(c) *Indian preference requirements.* (1) *Applicability.* HUD has determined that grants under this part are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 7(b) provides that any contract, subcontract, grant or subgrant pursuant to an act authorizing grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(i) Preference and opportunities for training and employment shall be given to Indians; and

(ii) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

(2) *Definitions.* (i) The Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) defines ''Indian'' to mean a person who is a member of an Indian tribe and defines ''Indian tribe'' to mean any Indian tribe, band, nation, or other organized group or community including any Alaska native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(ii) In section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452) ''economic enterprise'' is defined as any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51 percent of the enterprise. This act defines ''Indian organization'' to mean the governing body of any Indian tribe or entity established or recognized by such governing body.

(3) *Preference in administration of grant.* To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this part shall be given to Indians.

(4) *Preference in contracting.* To the greatest extent feasible, grantees shall give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises.

(i) Each grantee shall:

(A) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(B) Use a two-stage preference procedure, as follows:

(*1*) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid or proposal announcement limited to Indian-owned firms.

(*2*) *Stage 2.* If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises; or

(C) Develop, subject to area ONAP one-time approval, the grantee's own method of providing preference.

(ii) If the grantee selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or a proposal to perform the contract at a reasonable cost, then the grantee shall:

(A) Re-bid the contract, using any of the methods described in paragraph (d)(1) of this section; or

(B) Re-bid the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(C) If one approvable bid is received, request area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder.

(iii) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a grantee's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(iv) All preferences shall be publicly announced in the advertisement and bidding or proposal solicitation and the bidding or proposal documents.

(v) A grantee, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises. Grantees may require prospective contractors to include the following information prior to submitting a bid or proposal, or at the time of submission:

(A) Evidence showing fully the extent of Indian ownership and interest;

(B) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(C) Evidence sufficient to demonstrate to the satisfaction of the grantee that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(vi) The grantee shall incorporate the following clause (referred to as the Section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(A) The work to be performed under this contract is on a project subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (Indian Act). Section 7(b) requires that to the greatest extent feasible preferences and opportunities for training and employment shall be given to Indians, and preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(B) The parties to this contract shall comply with the provisions of Section 7(b) of the Indian Act.

(C) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.

(D) The contractor shall include this Section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the grantee, take appropriate action pursuant to the subcontract upon a finding by the grantee or HUD that the subcontractor has violated the Section 7(b) clause of the Indian Act.

(5) *Complaint procedures.* The following complaint procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this part, including alternate methods enacted and approved in a manner described in this section.

(i) Each complaint shall be in writing, signed, and filed with the grantee.

(ii) A complaint must be filed with the grantee no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.

(iii) Upon receipt of a complaint, the grantee shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.

(iv) Within 20 calendar days of receipt of a complaint, the grantee shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The grantee shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to

the grantee. The decision of the grantee shall constitute final administrative action on the complaint.

(d) *Environmental review.* The Indian tribe must assume responsibility for environmental review, decisionmaking, and action for each activity that it carries out with HOME funds, in accordance with the requirements imposed on a recipient under 24 CFR part 58. The grantee shall also be responsible for compliance with flood insurance, coastal barrier resource and airport clear zone requirements under 24 CFR 58.6.

(e) *Displacement, relocation, and acquisition.* (1) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the grantee must ensure that it has taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted with HOME funds. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the building/complex upon completion of the project.

(2) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(i) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly rent/utility costs.

(ii) Appropriate advisory services, including reasonable advance written notice of—

(A) The date and approximate duration of the temporary relocation;

(B) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(C) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and

(D) The provisions of paragraph (e)(2)(i) of this section.

(3) *Relocation assistance for displaced persons.* (i) *General.* A displaced person (defined in paragraph (e)(3)(ii) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4201–4655) and 49 CFR part 24.

(ii) *Displaced Person.* (A) For purposes of paragraph (c) of this section, the term *displaced person* means a person (family individual, business, private nonprofit organization, or farm, including any corporation, partnership or association) that moves from real property or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:

(*1*) After notice by the owner to move permanently from the property, if the move occurs on or after:

(*i*) The date of the submission of an application to the grantee or HUD, if the applicant has site control and the application is later approved; or

(*ii*) The date the grantee approves the applicable site, if the applicant does not have site control at the time of the application; or

(*2*) Before the date described in paragraph (e)(3)(ii)(A)(*1*) of this section, if the grantee or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(*3*) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:

(*i*) The tenant moves after execution of the agreement covering the acquisition, rehabilitation, or demolition and the move occurs before the tenant is provided written notice offering the tenant the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions must include a term of at

least one year at a monthly rent and estimated average monthly utility costs that do not exceed the greater of: the tenant's monthly rent before such agreement and estimated average monthly utility costs; or the total tenant payment, as determined under 24 CFR part 5, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(*ii*) The tenant is required to relocate temporarily, does not return to the building/complex, and either: the tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or other conditions of the temporary relocation are not reasonable; or

(*iii*) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.

(B) Notwithstanding paragraph (e)(3)(ii)(A) of this section, a person does not qualify as a *displaced person* if:

(*1*) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal or tribal law (or state law, which may apply if the grantee is not exercising recognized powers of self-government), or other good cause, and the grantee determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance. The effective date of any termination or refusal to renew must be preceded by at least 30 days advance written notice to the tenant specifying the grounds for the action.

(*2*) The person moved into the property after the submission of the application but, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, incur a rent increase), and the fact that the person would not qualify as a ''displaced person'' (or for any assistance under this section) as a result of the project;

(*3*) The person is ineligible under 49 CFR 24.2(g)(2); or

(*4*) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(C) The grantee may, at any time, ask HUD to determine whether a displacement is or would be covered by this part.

(iii) *Initiation of negotiations.* For purposes of determining the formula for computing replacement housing assistance to be provided under paragraph (e)(3) of this section to a tenant displaced from a dwelling as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the execution of the agreement covering the acquisition, rehabilitation, or demolition.

(4) *Optional relocation assistance.* The grantee may provide relocation payments and other relocation assistance to families, individuals, businesses, nonprofit organizations, and farms displaced by a project assisted with HOME funds where the displacement is not subject to paragraph (e)(3) of this section. The grantee may also provide relocation assistance to persons covered under paragraph (e)(3) of this section beyond that required. For any such assistance that is not required by tribal law (or state law, which may apply if the grantee is not exercising recognized powers of self-government), the grantee must adopt a written policy available to the public that describes the optional relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

(5) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(6) *Appeals.* A person who disagrees with the grantee's determination concerning whether the person qualifies as a displaced person, or the amount of relocation assistance for which the person may be eligible, may file a written appeal of that determination with the grantee.

(7) *Responsibility of grantee.* (i) The grantee must certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the grantee to comply.

(ii) The cost of required relocation assistance is an eligible project cost. This cost also may be paid from tribal funds, or funds available from other sources.

(f) *Labor.* (1) *General.* (i) Every contract for the construction (rehabilitation or new construction) of housing that includes 12 or more units assisted with HOME funds must contain a provision requiring the payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a–5), to all laborers and mechanics employed in the development of any part of the housing. Such contracts must also be subject to the overtime provisions, as applicable, of the Contract Work Hours and Safety Standards Act (42 CFR 327–332).

(ii) The contract for construction must contain these wage provisions if HOME funds are used for any project costs (as defined in subpart C of this part), including construction or non-construction costs, of housing with 12 or more HOME-assisted units. When HOME funds are only used to assist homebuyers to acquire single-family housing, and not for any other project costs, the wage provisions apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that HOME funds will be used to assist homebuyers to buy the housing and the construction contract covers 12 or more housing units to be purchased with HOME assistance. The wage provisions apply to any construction contract that includes a total of 12 or more HOME-assisted units, whether one or more than one project phase is covered by the construction contract. Once they are determined to be applicable, the wage provisions must be contained in the construction contract so as to cover all laborers and mechanics employed in the development of the entire project, including portions other than the assisted units. Arranging multiple construction contracts within a single project for the purpose of avoiding the wage provisions is not permitted.

(iii) Grantees, contractors, subcontractors, and other participants must comply with regulations issued under these Acts and with other Federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development programs), as applicable. Grantees must require certification as to compliance with the provisions of this section before making any payment under such contract.

(2) *Volunteers.* The prevailing wage provisions of paragraph (f)(1) of this section do not apply to an individual who receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and who is not otherwise employed at any time in the construction work. See 24 CFR part 70.

(3) *Sweat equity.* The prevailing wage provisions of paragraph (f)(1) of this section do not apply to members of an eligible family who provide labor in exchange for acquisition of a property for homeownership or provide labor in lieu of, or as a supplement to, rent payments.

(4) *Force account.* (i) The grantee is responsible for compliance with regulatory requirements in the use of grantee work forces for construction or renovation activities performed as part of the activities funded under this part. The grantee must provide for its files the following:

(A) Documentation to indicate that it has carried out or can carry out successfully a project of the size and scope of the proposal;

(B) Documentation to indicate that it has obtained or can obtain adequate supervision for the workers to be used;

(C) Information showing that the workers to be used are, or will be, listed on the grantee payroll and are employed directly by the grantee.

(ii) Any and all excess funds derived from the force account construction or renovation activities shall accrue to the grantee and shall be reprogrammed

for other activities eligible under this part or returned to HUD promptly.

(iii) Insurance coverage for force account workers and activities shall, where applicable, include worker's compensation, public liability, property damage, builder's risk, and vehicular liability.

(iv) The grantee shall specify and apply reasonable labor performance, construction, or renovation standards to work performed under the force account.

(v) The contracting and procurement standards set forth in 24 CFR 85.36 apply to material, equipment, and supply procurement from outside vendors under this section.

(vi) In force account there is no contract. If the grantee which has received the HOME grant to construct the housing units performs the construction work using force account, i.e., with its own employees, the work is not covered by Davis-Bacon and related Acts. If the grantee contracts out the work or part of the work, that work is covered.

(g) *Lead-based paint.* Housing assisted with HOME funds constitutes HUD-associated housing for the purpose of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*) and is, therefore, subject to 24 CFR part 35. Grantees are responsible for testing and abatement activities.

(h) *Conflict of interest.* (1) *Applicability.* (i) The conflict of interest provisions in 24 CFR part 84 and 24 CFR 85.36 apply to the procurement of supplies, equipment, construction, and services by grantees and their subgrantees.

(ii) The provisions of this section apply to all cases not governed by 24 CFR part 84 and 24 CFR 85.36. These cases include the acquisition and disposition of real property and the provision of assistance by the grantee, by subgrantees, or to individuals, housing developers, and other private entities under eligible activities which authorize such assistance (e.g., rehabilitation of housing).

(2) *Conflicts prohibited.* The general rule is that no persons described in paragraph (h)(3) of this section who have or had any functions or responsibilities with respect to activities assisted under this part, or who are in a position to participate in a decision, or gain inside information about such activities, may obtain a financial interest or benefit from these activities. Further, these persons may not have an interest in any contract, subcontract, or agreement concerning such activities; and these persons may not, during their employment or tenure in office and for one year thereafter, have an interest in the proceeds from these activities, either for themselves or for those with whom they have family or business ties. This paragraph does not apply to approved eligible administrative or personnel costs.

(3) *Persons covered.* The conflict of interest provisions of paragraph (h)(2) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee or subgrantee receiving HOME funds.

(4) *Exceptions requiring HUD approval.* (i) *Threshold requirements.* Upon the written request of a grantee, HUD may grant an exception to the provisions of paragraph (h)(2) of this section on a case-by-case basis, when it determines that such an exception will serve to further the purposes of the HOME program and the effective and efficient administration of the grantee's project. An exception may be considered only after the grantee has provided the following:

(A) A disclosure of the nature of the possible conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(B) An opinion of the grantee's attorney that the interest for which the exception is sought would not violate tribal laws on conflict of interest (or State law on conflict of interest, which may apply if the grantee is not exercising recognized powers of self-government).

(ii) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the grantee has satisfactorily met the requirements of paragraph (h)(4)(i) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(A) Whether the exception would provide a significant cost benefit or essential expert knowledge to the project which would otherwise not be available;

(B) Whether the affected person has withdrawn from his or her functions or responsibilities, or from the decision-making process, with reference to the specific assisted activity in question;

(C) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (h)(2) of this section;

(D) Whether undue hardship will result, either to the grantee or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict; and

(E) Any other relevant considerations.

(5) *Circumstances under which the conflict prohibition does not apply.* (i) In instances where a person who might otherwise be deemed to be included under the conflict prohibition is a member of a group or class of beneficiaries of the assisted activity and receives generally the same interest or benefits as are being made available or provided to the group or class, the prohibition does not apply, except that if, by not applying the prohibition against conflict of interest, a violation of tribal (or State) laws on conflict of interest would result, the prohibition does apply.

(ii) A public disclosure of the nature of the grant assistance to be provided and the specific basis for the selection of the proposed beneficiaries must be made prior to the submission of an application to HUD. Evidence of this disclosure must be provided as a component of the application.

(i) *Debarment and suspension.* As required by 24 CFR part 24, each grantee must require participants in lower tier covered transactions (e.g., sub-contractors) to include a certification that neither it nor its principals are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the covered transaction, in any proposal submitted in connection with the lower tier covered transactions. A participant may rely on the certification unless it knows the certification is erroneous.

[61 FR 32223, June 21, 1996, as amended at 67 FR 15112, Mar. 29, 2002]

Subpart B—Applying for Assistance

§ 954.100 General.

For each fiscal year, HUD will provide funds for the Indian HOME program, totaling one percent (or such other percentage or amount as authorized by Congress) of the amount appropriated for the HOME program to expand the supply of affordable housing. The funds will be awarded competitively and will be made available pursuant to a NOFA published in the FEDERAL REGISTER, in accordance with the requirements of this part.

§ 954.101 Allocation of funds.

Unless HUD determines for administrative convenience based on the amount of HOME funds available to hold a nationwide competition, HOME funds will be allocated to the HUD Area ONAPs responsible for the Indian HOME program competition based upon relative need for housing as measured by the most recent and reliable data available.

§ 954.102 Eligible applicants.

(a) Eligible applicants for HOME funds for Indian tribes are any Indian Tribe, band, group, or nation, including Alaskan Indians, Aleuts, and Eskimos, and any Alaska native village of the United States which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450). Eligible recipients under the Indian Self-Determination and Education Assistance Act are determined by the Bureau of Indian Affairs.

(b) Tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act may apply for funds on behalf of any Indian Tribe, band, group, nation, or Alaska native village eligible under that Act when one or more of these entities have authorized the tribal organization to do so through concurring resolutions. Such resolutions

must accompany the application for funding. Eligible tribal organizations under Title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs or Indian Health Service, as appropriate.

(c) Only eligible applicants shall receive grants. However, eligible applicants may contract or otherwise agree with non-eligible entities such as States, cities, counties, or other organizations to assist in the preparation of applications and to help implement assisted activities.

(d) To apply for funding in a given fiscal year, an applicant must be eligible as an Indian Tribe or Alaska native village, as provided in paragraph (a) of this section, or as a tribal organization, as provided in paragraph (b) of this section, by the application submission date.

§ 954.103 Housing strategy.

Grantees are not required to submit a housing strategy to receive HOME funds. However, the application must demonstrate how the proposed project(s) will contribute to a comprehensive approach for expanding the supply of affordable housing for members of the Indian tribe.

§ 954.104 Performance thresholds.

Applicants must have the administrative capacity to undertake the project proposed, including systems of internal control necessary to administer these projects effectively. In addition, an applicant that has participated in the HOME program must have performed adequately. In cases of previously documented deficient performance, the applicant must have taken appropriate corrective action to improve its performance prior to submitting a HOME application to HUD. The Area ONAP will determine whether or not a grantee is eligible to participate in a particular funding round. Examples of deficient performance may include unresolved serious audit findings and failure to initiate a previous grant.

§ 954.105 Criteria for selection.

There are four categories of projects that may be funded under the HOME Indian program: housing rehabilitation; acquisition of housing; new housing construction; and tenant-based rental assistance. Each project must be evaluated using the following three criteria:

(a) *Project need and design.* The degree to which the proposed project addresses the housing need(s) of the grantee as identified in the application, and the degree to which the proposed project is feasible while maximizing benefits to low-income families.

(b) *Planning and implementation.* The degree to which the financial, administrative, and legal actions necessary to undertake the proposed project have been considered and addressed in the application, and the degree to which the grantee has the administrative staff to carry out the project successfully.

(c) *Leveraging.* The degree to which other sources of assistance, including mortgage insurance, State funds, other Federal grants, and private contributions, are used in conjunction with HOME funds to carry out the proposed project.

§ 954.106 Announcement of competition.

A NOFA will describe the maximum points for each of the selection criteria and any special factors to be evaluated in awarding points under the selection factors. The NOFA will also state the deadline for the submission of applications, the total funding available for the competition and any maximum amount of individual awards.

(Approved by the Office of Management and Budget under OMB control number 2577–0191)

§ 954.107 Grant conditions.

HUD may impose reasonable conditions on grant awards.

§ 954.108 Project amendment.

(a) Grantees shall request prior HUD approval for all project amendments.

(b) HUD can approve an amendment to a project if:

(1) The amendment is due to factors beyond the control of the grantee; and

(2) The request for approval for a project amendment which involves $100,000 or more includes all application components required by the NOFA published for the last application cycle

(not necessarily the year in which the project was rated and ranked) and the modified project scores high enough to have been funded in the competition for the last application cycle. A rating equal to or greater than the lowest rating received by a funded project during the last rating cycle must be attained by the modified project. The request for approval of an amendment for a project which involves less than $100,000 does not have to include the components which address the selection criteria. It does require a description of and the reason for the modification.

(c) Approval of an amendment request is subject to the following:

(1) Demonstration by the grantee of the capacity to promptly complete the modified or new project.

(2) The preparation of an amended or new environmental review in accordance with Part 58 of this title, if there is a significant change in the scope or location of approved project.

(d) If a project amendment fails to be approved and the original project is no longer feasible, the grant funds proposed for amendment shall be deobligated by HUD and recaptured.

Subpart C—Eligible Activities and Affordability

§ 954.300 Eligible activities.

(a) *Eligible activities.* (1) *General.* HOME funds may be used by a grantee to provide incentives to develop and support affordable *rental* housing and *homeownership* affordability and to provide payment of reasonable administrative and planning costs. The housing must be permanent or transitional housing, and includes permanent housing for disabled homeless persons, and single-room occupancy housing. The specific eligible costs for these activities are set forth in § 954.303 and § 954.304.

(2) Acquisition of vacant land or demolition must be undertaken only as an integral part of a particular HOME new construction project.

(3) Manufactured housing. Purchase and/or rehabilitation of a manufactured housing unit qualifies as affordable housing only if, at the time of project completion, the unit:

(i) Is situated on a permanent foundation (except—for rehabilitation not involving purchase—when assisting existing unit owners who rent the lot on which their unit sits);

(ii) Is connected to permanent utility hook-ups;

(iii) Is located on land that is held in fee-simple title, land-trust, or long-term ground lease with a term at least equal to that of the appropriate affordability period;

(iv) Meets the construction standards established under 24 CFR part 3280 if produced after June 15, 1976. If the unit was produced prior to June 16, 1976, it must comply with applicable tribal, State or local codes; and

(v) In cases where the owner of a manufactured housing unit does not hold fee-simple title to the land on which the unit is located, the owner may be assisted in purchasing the land under provisions governing rehabilitation not involving purchase.

(b) *Forms of assistance.* A grantee may invest HOME funds as equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies consistent with the purposes of this part, deferred payment loans, grants, or other forms of assistance that HUD determines to be consistent with the purposes of this part. Each grantee has the right to establish the terms of assistance, subject to the requirements of this part.

§ 954.301 Faith-based activities.

(a) Religious organizations are eligible, on the same basis as any other organization, to participate in the Indian HOME program. Neither the federal government nor a tribal government nor any other entity that administers any program or activity under this part shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that receive direct HUD funds under the Indian HOME program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the program or services funded under this part. If an organization conducts such inherently religious activities, the inherently religious activities must be offered separately, in time

or location, from the programs, activities, or services supported by direct HUD funds under this part, and participation must be voluntary for the beneficiaries of the programs, activities, or services provided.

(c) A religious organization that participates in the Indian HOME program will retain its independence from federal, state, local, and tribal governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not engage in any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under a program or activity pursuant to this part. Among other things, religious organizations may use space in their facilities to provide services under the Indian HOME program without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization participating in the Indian HOME program retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) A religious organization's exemption from the federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1), is not forfeited when the organization participates in a HUD program. Some HUD programs, however, contain independent statutory provisions that impose certain nondiscrimination requirements on all grantees. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

(e) An organization that receives direct funds under the Indian HOME program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(f) Indian HOME funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. Indian HOME funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, Indian HOME funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to Indian HOME funds in this part. Sanctuaries, chapels, or other rooms that an Indian HOME-funded religious congregation uses as its principal place of worship, however, are ineligible for Indian HOME-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to governmentwide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(g) If a tribal government voluntarily contributes its own funds to supplement federally funded activities, the tribal government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds. Further, if a state or local government is required to contribute matching funds to supplement a federally funded activity, the matching funds are considered commingled with the federal assistance and therefore subject to the requirements of this section. Some HUD programs requirements govern any project or activity assisted under those programs. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements

[69 FR 62169, Oct. 22, 2004]

§ 954.302 Income determinations.

Whenever a grantee makes a determination under this part based on family income or adjusted family income, it must use the definitions of annual income, adjusted income, monthly income, and monthly adjusted income, as those terms are defined in 24 CFR part

950, except when determining the income of a homeowner for an owner-occupied rehabilitation project, the equity in the homeowner's principal residence is excluded from ''Net Family Assets.''

§ 954.303 Eligible project costs.

HOME funds may be used to pay the following eligible costs:

(a) *Development hard costs.* The actual cost of constructing or rehabilitating housing. These costs include the following:

(1) For new construction, costs to meet the applicable new construction standards of the grantee and the Model Energy Code referred to in § 954.401;

(2) For rehabilitation, costs:

(i) To meet the applicable rehabilitation standards of the grantee or correcting substandard conditions (minimally, the housing quality standards at § 882.109 of this title), to make essential improvements including energy-related repairs or improvements, improvements necessary to permit the use by handicapped persons, and the abatement of lead-based paint hazards, as required by § 954.4, and to repair or replace major housing systems in danger of failure; and

(ii) To refinance existing debt secured by a single-family owner-occupied unit when loaning HOME funds to rehabilitate the unit, if the overall housing costs of the borrower will be reduced and made more affordable.

(3) For both new construction and rehabilitation, costs to demolish existing structures and for improvements to the project site that are in keeping with improvements of surrounding, standard projects, and costs to make utility connections. The ''site'' of the improvements may include property adjacent to or near the immediate site of the housing if this property and the housing are owned by the same entity (e.g., the housing is owned—at least until sold to homebuyers—by the grantee and the housing and the improvements are located on a reservation). If the site improvements will benefit other housing (existing or future) in addition to housing assisted with the particular Indian HOME grant, only a pro-rated share of the site improvements may be charged against the HOME grant. Site improvements include roads, streets, sidewalks, curbs, gutters, and connections to utilities, such as storm and sanitary sewers, water supply, gas, and electricity, and the pro rata development cost of facilities for water supply and sewerage collection utilities.

(4) For new construction or substantial rehabilitation (an expenditure of $25,000 or more per home) the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up (not to exceed 18 months) and which may only be used to pay operating expenses, reserve for replacement payments, and debt service. Any HOME funds placed in an operating deficit reserve that remain unexpended when the reserve terminates must be returned to the grantee's account and shall be reprogrammed for other activities eligible under this part or returned to HUD promptly.

(b) *Acquisition costs.* Costs of acquiring improved or unimproved real property, including acquisition by homebuyers.

(c) *Related soft costs.* Other reasonable and necessary costs incurred by the owner and associated with the financing, or development (or both) of new construction, rehabilitation or acquisition of housing assisted with HOME funds. These costs include, but are not limited to:

(1) Architectural, engineering or related professional services required to prepare plans, drawings, specifications, or work write-ups;

(2) Costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorneys' fees, private appraisal fees and fees for an independent cost estimate, builder and developer fees;

(3) Costs of a project audit that the grantee may require with respect to the development of a specific project; and

(4) Costs to pay impact fees that are charged to all housing.

(d) *Relocation costs.* Costs of relocation payments and other relocation assistance for permanently and temporarily relocated individuals, families,

businesses, private nonprofit organizations, and farm operations where assistance is required under § 954.4 or determined by the grantee to be appropriate under § 954.4.

(e) *Costs related to tenant-based rental assistance.* Eligible costs are the rental assistance and security deposit payments made to provide tenant-based rental assistance for a family.

§ 954.304 Eligible administrative costs.

Eligible administrative costs means reasonable and necessary costs, as described in OMB Circular A–87, (available from the Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G–2200, Washington, DC 20503; Telephone, (202) 395–7332)) incurred by the grantee and related to the planning and execution of HOME activities assisted in whole or in part with funds provided under this part. The grantee may use up to 15 percent of the HOME funds for the payment of eligible administrative costs.

§ 954.305 Tenant-based rental assistance.

(a) *General.* A grantee may use HOME funds for tenant-based rental assistance only if the grantee selects families in accordance with written tenant selection policies and criteria that are consistent with the purpose of providing housing to very low- and low-income families and are reasonably related to preference rules established under section 6(c)(4)(A) of the U.S. Housing Act of 1937 (42 U.S.C. 1437d). The grantee may select eligible families currently residing in units that are designated for rehabilitation or acquisition under the grantee's HOME program without requiring that the family meet the written tenant selection policies and written criteria. Families so selected may use the tenant-based assistance in the rehabilitated or acquired unit or in other qualified housing.

(b) *Program operation.* The grantee may operate the program, or may contract with another entity with the capacity to operate a rental assistance program. The tenant-based rental assistance may be provided through an assistance contract to an owner that leases a unit to an assisted family or directly to the family.

(c) *Term of rental assistance contract.* The term of the rental assistance contract providing assistance with HOME funds may not exceed 24 months, but may be renewed, subject to the availability of HOME funds. The term of the rental assistance contract must begin on the first day of the term of the lease. For a rental assistance contract between a grantee and an owner, the term of the contract must terminate on termination of the lease. For a rental assistance contract between a grantee and a family, the term of the contract need not end on termination of the lease, but no payments may be made after termination of the lease until a family enters into a new lease.

(d) *Rent reasonableness.* The grantee must disapprove a lease if the rent is not reasonable, based on rents that are charged for comparable unassisted rental units.

(e) *Lease requirements.* The lease must comply with the requirements in § 954.402 of this part.

(f) *Maximum subsidy.* (1) The amount of the monthly assistance that a grantee may pay to, or on behalf of, a family may not exceed the difference between a rent standard for the unit size established by the grantee and 30 percent of the family's monthly adjusted income.

(2) The grantee must establish a minimum dollar amount tenant contribution to rent.

(3) The grantee's rent standard for a unit size may not be less than 80 percent of the published section 8 existing housing fair market rent (in effect when the payment standard amount is adopted) for the unit size, nor more than the section 8 fair market rent or HUD-approved community-wide exception rent (in effect when the grantee adopts its rent standard amount) for the unit size. Alternatively, the grantee's rent standard for a unit size may be based on local market conditions. Further, a grantee may approve on a unit-by-unit basis a subsidy based on a rent standard that exceeds the applicable section 8 fair market rent by up to 10 percent for 20 percent of units assisted.

(g) *Housing quality standards.* Housing occupied by a family receiving tenant-

based assistance under this section must meet the performance requirements and acceptability criteria set forth in § 882.109 of this title.

(h) *Use of section 8 assistance.* In any case where assistance under section 8 of the United States Housing Act of 1937 becomes available to a grantee, recipients of tenant-based rental assistance under this part will qualify for tenant selection preferences to the same extent as when they received the tenant-based rental assistance under this part.

(i) *Security deposits.* (1) A grantee may use HOME funds provided for tenant-based rental assistance to provide loans or grants to very low- and low-income families for security deposits for rental of dwelling units whether or not the grantee provides any other tenant-based rental assistance under this section.

(2) The relevant tribe, State or local definition of ''security deposit'' in the jurisdiction where the unit is located is applicable for the purposes of this part, except that the amount of HOME funds that may be provided for a security deposit may not exceed the equivalent of two month's rent for the unit.

(3) Only the prospective tenant may apply for HOME security deposit assistance, although the grantee may pay the funds directly to the tenant or to the landlord.

(4) The lease between a tenant and an owner of rental housing for which HOME security deposit assistance is provided must comply with the requirements of § 954.402.

(5) HOME funds for security deposits may be provided as a grant or a loan. If they are provided as a loan, the provisions at § 954.501 for repayment of HOME investments apply.

§ 954.306 Rental housing: qualification as affordable housing and income targeting.

(a) *Rent limitation.* A rental housing project (including the non-owner-occupied units in housing purchased with HOME funds in accordance with § 954.306) qualifies as affordable housing under this part only if the project:

(1) Bears rents not greater than the lesser of—

(i) The section 8 fair market rent for existing housing for comparable units in the area as established by HUD under § 888.111 of this title, less the monthly allowance for the utilities and services (excluding telephone and cable TV) to be paid by the tenant; or

(ii) A rent that does not exceed 30 percent of the adjusted income of a family whose gross income equals 65 percent of the median income for the area, as determined by HUD, with adjustment for number of bedrooms in the unit, except that HUD may establish income ceilings higher or lower than 65 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or section 8 fair market rents, or unusually high or low family incomes. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or grantee must subtract a monthly allowance for any utilities and services (excluding telephone and cable TV) to be paid by the tenant. HUD will provide average occupancy costs per unit and adjusted income assumptions to be used in calculating the maximum rent allowed under this paragraph (a)(1)(ii) of this section;

(2) Has, in the case of projects with three or more rental units, not less than 20 percent of the units—

(i) Occupied by very low-income families who pay as a contribution toward rent (excluding any Federal, State, or tribal rental subsidy provided on behalf of the family) not more than 30 percent of the family's monthly adjusted income as determined by HUD. To obtain the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or grantee multiplies the annual adjusted income of the tenant family by 30 percent and divides by 12 and, if applicable, subtracts a monthly allowance for the utilities and services (excluding telephone and cable TV) to be paid by the tenant; or

(ii) Occupied by very low-income families and bearing rents not greater than 30 percent of the gross income of a family whose income equals 50 percent of the median income for the area,

as determined by HUD, with adjustment for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or section 8 fair market rents, or unusually high or low family incomes. In determining the maximum monthly rent that may be charged for a unit that is subject to this limitation, the owner or grantee must subtract a monthly allowance for any utilities and services (excluding telephone and cable TV) to be paid by the tenant. HUD will provide average occupancy per unit assumptions to be used in calculating the maximum rent allowed under paragraph (a)(2)(ii) of this section;

(3) Is occupied only by households that qualify as low-income families;

(4) Is not refused for leasing to a holder of a certificate of family participation under 24 CFR part 882 (rental certificate program) or a rental voucher under 24 CFR part 887 (rental voucher program) or to the holder of a comparable document evidencing participation in a HOME tenant-based assistance program because of the status of the prospective tenant as a holder of such certificate of family participation, rental voucher, or comparable HOME tenant-based assistance document; and

(5) Will remain affordable without regard to the term of any mortgage or the transfer of ownership, pursuant to deed restrictions, covenants running with the land, or other mechanisms approved by HUD, for not less than the appropriate period, beginning after project completion, as specified in the following table, except that the affordability restrictions may terminate upon foreclosure or transfer in lieu of foreclosure. The tribe may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure or deed in lieu of foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the affordability period, the owner of record before the foreclosure, or deed in lieu of foreclosure, or any entity that includes the former owner or those with whom the former owner has or had family of business ties, obtains an ownership interest in the project or property.

Activity	Minimum period of affordability in years
Rehabilitation or acquisition of existing housing per unit amount of HOME funds: Under $15,000	5
$15,000 to $40,000	10
Over $40,000	15
New construction or acquisition of newly constructed housing	20

(b) *Rent schedule and utility allowances.* The grantee must review and approve rents proposed by the owner for units with ''flat rents,'' i.e., units subject to the maximum rent limitations in paragraphs (a)(1)(i), (a)(1)(ii), or (a)(2)(ii) of this section, and, if applicable, must review and approve, for all units subject to the maximum rent limitations paragraph (a) of this section, the monthly allowances, proposed by the owner, for utilities and services to be paid by the tenant. The owner must reexamine the income of each tenant household living in lower income units at least annually. The maximum monthly rent must be recalculated by the owner and reviewed and approved by the grantee annually, and may change as changes in the applicable gross rent amounts, the income adjustments, or the monthly allowance for utilities and services warrant. Any increase in rents for low-income units is subject to the provisions of outstanding leases; in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.

(c) *Increases in tenant income.* Rental housing qualifies as affordable housing despite a temporary noncompliance with paragraphs (a)(2) or (a)(3) of this section, if the noncompliance is caused by increases in the incomes of existing tenants and if actions satisfactory to HUD are being taken to ensure that all vacancies are filled in accordance with this section until the noncompliance is corrected. Tenants who no longer qualify as low-income families must pay as rent the lesser of the amount payable by the tenant under tribal, State or local law or 30 percent of the family's

adjusted monthly income, as recertified annually. The preceding sentence shall not apply with respect to funds made available under this part for units that have been allocated a low-income housing tax credit by a housing credit agency pursuant to section 42 of the Internal Revenue Code 1986 (26 U.S.C. 7805).

(d) *Adjustment of qualifying rent.* HUD may adjust the qualifying rent established for a project under paragraph (a)(1) of this section, only if HUD finds that an adjustment is necessary to support the continued financial viability of the project and only by an amount that HUD determines is necessary to maintain continued financial viability of the project. HUD expects that this authority will be used sparingly. Adjustments in section 8 fair market rents and in median income over time should help maintain the financial viability of a project within the qualifying rent standard in paragraph (a)(1) of this section. Regardless of changes in fair market rents and in median income over time, the qualifying rents are not required to be lower than the HOME rent for the project in effect at the time of project commitment.

§ 954.307 Homeownership: qualification as affordable housing.

(a) *Purchase with or without rehabilitation.* Housing that is for purchase by a family qualifies as affordable housing only if the housing: (1)(i) Has an initial purchase price that does not exceed 95% of the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, cooperative unit, combination manufactured home and lot, or manufactured home lot) for the area as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18b; and

(ii) Has an estimated appraised value at acquisition, if standard, or after any repair needed to meet property standards in § 954.401, that does not exceed the limit described in paragraph (a)(1)(i) of this section.

(2) Is the principal residence of an owner whose family qualifies as a low-income family at the time of purchase; and

(3) Is subject—for minimum periods of: 5 years where the per unit amount of HOME funds provided is less than $15,000; 10 years where the per unit amount of HOME funds provided is $15,000 to $40,000; and 15 years where the per unit amount of HOME funds provided is greater than $40,000—to resale restrictions, as described in paragraph (a)(3)(i) of this section, or recapture provisions, as described in paragraph (a)(3)(ii) of this section, that are established by the grantee and determined by HUD to be appropriate.

(i) Resale restrictions must make the housing available for subsequent purchase only to a low income family that will use the property as its principal residence; and

(A) Provide the owner with a fair return on investment, including any improvements; and

(B) Ensure that the housing will remain affordable, pursuant to deed restrictions, covenants running with the land, or other similar mechanisms to ensure affordability, to a reasonable range of low-income homebuyers. The affordability restrictions must terminate upon occurrence of any of the following termination events: foreclosure, transfer in lieu of foreclosure or assignment of an FHA insured mortgage to HUD. The grantee may use purchase options, rights of first refusal or other preemptive rights to purchase the housing before foreclosure to preserve affordability. The affordability restrictions shall be revived according to the original terms if, during the original affordability period, the owner of record before the termination event reacquires title to the property.

(ii) A grantee's recapture provisions must provide for the recapture of the full HOME investment out of net proceeds, except as provided in paragraph (a)(3)(ii)(B) of this section.

(A) Net proceeds means the sales price minus loan repayment and closing costs.

(B) If the net proceeds are not sufficient to recapture the full HOME investment plus enable the homeowner to recover the amount of the homeowner's downpayment, principal payments, and any capital improvement investment, the grantee's recapture

provisions may allow the HOME investment amount that must be recaptured to be reduced. The HOME investment amount may be reduced pro rata based on the time the homeowner has owned and occupied the unit measured against the required affordability period; except that the grantee's recapture provisions may not allow the homeowner to recover more than the amount of the homeowner's downpayment, principal payments, and any capital improvement investment.

(C) The HOME investment that is subject to recapture is the HOME assistance that enabled the first homebuyer to buy the dwelling unit. This includes any HOME assistance, whether a direct subsidy to the homebuyer or a construction or development subsidy, that reduced the purchase price from fair market value to an affordable price. The recaptured funds must be used to carry out HOME-eligible activities. If no HOME funds will be subject to recapture, the provisions at §954.306(a)(3)(i) apply.

(D) Upon recapture of the HOME funds used in a single-family, homebuyer project with two to four units, the affordability period on rental units may be terminated at the discretion of the tribe.

(b) *Rehabilitation not involving purchase.* Housing that is currently owned by a family qualifies as affordable housing only if—

(1) The value of the property, after rehabilitation, does not exceed 95% of the median purchase price for the type of single family housing (1- to 4-family residence, condominium unit, combination manufactured home and lot, or manufactured home lot) for the area as determined by HUD, and which may be appealed in accordance with 24 CFR 203.18b; and

(2) The housing is the principal residence of an owner whose family qualifies as a low-income family at the time HOME funds are committed to the housing.

§954.308 Prohibited activities.

(a) HOME funds may not be used to—

(1) Provide a project reserve account for replacements, a project reserve account for unanticipated increases in operating costs, or operating subsidies; except as authorized under §954.302; (2) Provide nonfederal matching contributions required under any other Federal program;

(3) Provide assistance in connection with programs authorized under part 950 (Indian Housing Programs) of this title;

(4) Provide assistance to eligible low-income housing under part 248 (Prepayment of Low Income Housing Mortgages) of this title; or

(5) Provide assistance (other than tenant-based rental assistance or assistance to a homebuyer to acquire housing previously assisted with HOME funds) to a project previously assisted with HOME funds during the period of affordability established by the grantee under §954.306 or §954.307. However, additional HOME funds may be committed to a project up to one year after project completion (see §954.500), but the amount of HOME funds in the project may not exceed the maximum per-unit subsidy amount established under §954.400.

(b) Grantees may not charge monitoring, servicing and origination fees in HOME-assisted projects. However, grantees may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications.

Subpart D—Project Requirements

§954.400 Maximum per-unit subsidy amount.

The amount of HOME funds that a grantee may invest on a per-unit basis in affordable housing may not exceed the total development cost standard for the area, as issued by HUD under 24 CFR 950.220. These total development cost standards are available from HUD Area ONAPs.

§954.401 Property standards.

(a) Housing that is assisted with HOME funds, at a minimum, must meet the housing quality standards in §882.109 of this title. In addition, housing that is newly constructed or substantially rehabilitated with HOME funds must meet all applicable local codes, rehabilitation standards, ordinances, and zoning ordinances. The

grantee must have written standards for rehabilitation. Newly constructed housing must meet the current edition of the Model Energy Code published by the Council of American Building Officials.

(b) The following requirements apply to housing for homeownership that is to be rehabilitated after transfer of the ownership interest:

(1) Before the transfer of the ownership interest, the grantee must:

(i) Inspect the housing for any defects that pose a danger to health; and

(ii) Notify the prospective purchaser of the work needed to cure the defects and the time by which defects must be cured and applicable property standards met.

(2) The housing must be free from all noted health and safety defects before occupancy and not later than 6 months after the transfer for completion of the transitional housing tenancy period.

(3) The housing must meet the applicable property standards (at a minimum, the housing quality standards in § 882.109 of this title) not later than 2 years after transfer of the ownership interest.

§ 954.402 Tenant and participant protections.

(a) *Lease.* The lease between a tenant and an owner of rental housing assisted with HOME funds must be for not less than one year, unless by mutual agreement between the tenant and the owner.

(b) *Prohibited lease terms.* The lease may not contain any of the following provisions:

(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 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 remaining in the housing unit after the tenant has moved out of the unit. The owner may dispose of this personal property in accordance with tribal law (or State law, which may apply if the Indian tribe is not exercising recognized powers of self-government);

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

(4) *Waiver of notice.* Agreement of the tenant that the owner may institute a lawsuit 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 the tenant's right to appeal, or to otherwise challenge in court, a court decision in connection with the lease; and

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

(c) *Termination of tenancy.* An owner may not terminate the tenancy or refuse to renew the lease of a tenant of rental housing assisted with HOME funds except for serious or repeated violation of the terms and conditions of the lease; for violation of applicable Federal, or tribal law (or State law, which may apply if the grantee is not exercising recognized powers of self-government); or for other good cause. Any termination or refusal to renew must be preceded by not less than 30 days by the owner's service upon the tenant of a written notice specifying the grounds for the action.

(d) *Maintenance and replacement.* An owner of rental housing assisted with HOME funds must maintain the premises in compliance with all applicable housing quality standards and local code requirements.

(e) *Tenant selection.* An owner of rental housing assisted with HOME funds must adopt written tenant selection policies and criteria that—

(1) Are consistent with the purpose of providing housing for very low-income and low-income families;

(2) Are reasonably related to program eligibility and the applicant's ability to perform the obligations of the lease;

(3) Give reasonable consideration to the housing needs of families that would have a preference under section 6(c)(4)(A) of the U.S. Housing Act of 1937 (Federal selection preferences for admission to public housing); and

(4) Provide for—

(i) The selection of tenants from a written waiting list in the chronological order of their application, insofar as is practicable; and

(ii) The prompt written notification to any rejected applicant of the grounds for any rejection.

Subpart E—Program Administration

§954.500 Repayment of investment.

(a) HOME funds will be made available pursuant to a HOME Investment Partnership Agreement. The agreement ensures that HOME funds invested in affordable housing are repayable if the housing ceases to qualify as affordable housing before the period of affordability expires. The amount of HOME funds expended on housing assisted with HOME funds that does not meet the affordability requirements for the period specified in §954.306 or §954.307, as applicable, must be repaid in accordance with paragraph (b) of this section.

(b) Any repayment of HOME funds (including repayment required if the housing no longer qualifies as affordable housing), and any payment of interest or other return on the investment of HOME funds, that is made before grant close out must be deposited in the grantee's account and used in accordance with the requirements of this part. A grantee may retain repayments, interest, and other return on investment of HOME funds that are made after grant closeout if the grantee agrees to use the funds for eligible activities.

(c) HUD will recapture HOME funds that are not expended within five years after the last day of the month in which it obligated the funds.

(d) *Termination before completion.* If a project is terminated before its completion, whether voluntarily by the grantee or otherwise, an amount equal to the HOME funds disbursed for the project must be paid by the grantee to its HOME account. If the HOME funds were disbursed by HUD, the amount must be paid to HUD; if the HOME funds were disbursed from the grantee's account, the amount must be paid to the grantee's account. If the amount is not repaid, the grantee will be subject to actions under §954.600 *Performance reviews,* §954.601 *Corrective and remedial actions,* and §954.602 *Notice and opportunity for hearing; sanctions.*

§954.501 Grantee responsibilities; written agreements; monitoring.

(a) *Responsibilities.* The grantee is responsible for ensuring that HOME funds are used in accordance with all program requirements. The use of subgrantees and contractors does not relieve the grantee of this responsibility.

(b) *Executing a written agreement.* Before disbursing any HOME funds to any entity (e.g., for-profit housing developer, nonprofit organization, homeowner, or IHA) the grantee must enter into a written agreement with the entity ensuring compliance with the requirements of this part. A subgrantee and a contractor must also enter into a written agreement before it disburses funds to any entity. The agreement remains in effect during the period for affordability under §954.306 or §954.307, as applicable, or if the entity is a subgrantee, during any period that the entity has control over HOME funds.

(c) *Provisions in written agreement.* At a minimum, the written agreement must include applicable provisions concerning the following items:

(1) *Use of the HOME funds.* The agreement must describe the use of the HOME funds, including the tasks to be performed, a schedule for completing the tasks, and a budget. These items must be in sufficient detail to provide a sound basis for the grantee effectively to monitor performance under the agreement.

(2) *Affordability.* The agreement must require housing assisted with HOME funds to meet the affordability requirements of § 954.306 or § 954.307, as applicable, and must require repayment of the funds if the housing does not meet the affordability requirements for the specified time period.

(3) *Repayments.* If the entity is a subgrantee, the agreement must state if repayment, interest, and other return on the investment of HOME funds are to be remitted to the grantee or are to be retained for additional eligible activities by the entity.

(4) *Uniform administrative requirements.* If the entity is a subgrantee, the agreement must require the entity to comply with applicable uniform administrative requirements, as described in § 954.502.

(5) *Project requirements.* The agreement must require compliance with project requirements in § 954.400 through § 954.402 of this part, as applicable in accordance with the type of project assisted.

(6) *Housing quality standard.* The agreement must require owners of rental housing assisted with HOME funds to maintain the housing in compliance with applicable Housing Quality Standards and local housing code requirements for the duration of the agreement.

(7) *Other program requirements.* The agreement must require the entity to carry out each activity in compliance with all Federal laws and regulations described in § 954.4.

(8) *Conditions for religious organizations.* Where applicable, the agreement must include the conditions prescribed in § 954.301 for the use of HOME funds by religious organizations.

(9) *Requests for disbursements of funds.* The agreement must specify that the entity may not request disbursement of funds under the agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

(10) *Reversion of assets.* If the entity is a subgrantee, the agreement must specify that upon expiration of the agreement, the entity must transfer to the grantee any HOME funds on hand at the time of expiration and any accounts receivable attributable to the use of HOME funds.

(11) *Records and reports.* The agreement must specify the particular records that must be maintained and any information or reports that must be submitted in order to assist the grantee in meeting its recordkeeping and reporting requirements.

(12) *Enforcement of the agreement.* The agreement must provide for a means of enforcement by the grantee or the intended beneficiaries. In addition, the agreement must specify remedies for breach of the provisions of the agreement. If the entity is a subgrantee, the agreement must specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the entity materially fails to comply with any term of the agreement, and that the agreement may be terminated for convenience in accordance with 24 CFR 85.44.

(13) *Duration of the agreement.* The agreement must specify that the agreement is in effect for the period of affordability required by the grantee under § 954.306 or § 954.307.

(d) *Monitoring.* The grantee is responsible for managing the day-to-day operations of its HOME program, for monitoring the performance of all entities receiving HOME funds from the grantee to assure compliance with the requirements of this part, and for taking appropriate action when performance problems arise.

(1) Not less than annually, the grantee must review the activities of owners of rental housing assisted with HOME funds to assess compliance with the requirement of this part, as set forth in the written agreement under paragraphs (b) and (c) of this section. For multifamily housing, each review must include on-site inspection to determine compliance with housing codes and the requirements of this part. For rental housing containing one- to four-dwelling units, an on-site review must be made once within each two-year period. The results of each review must be included in the grantee's performance report.

(2) Not less than annually, the grantee must review the performance of each contractor and subgrantee.

§ 954.502 Applicability of uniform administrative requirements.

(a) *Governmental entities.* The requirements of OMB Circular No. A–87 and the following requirements of 24 CFR part 85 apply to the grantee and any governmental subgrantee receiving HOME funds: §§ 85.6, 85.12, 85.20, 85.21, 85.22, 85.26, 85.32, 85.33, 85.35, 85.36, 85.43, 85.44, 85.51, and 85.52.

(b) *Non-profit organizations.* The requirements of OMB Circular No. A–122 (available from the Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G–2200, Washington, DC 20503; Telephone, (202) 395–7332)) and the following requirements of 24 CFR part 84 apply to subgrantees receiving HOME funds that are private nonprofit organizations: §§ 84.12, 84.22, 84.23, 84.25, 84.51, 84.52, and 84.71.

(c) *Alternatives to bonding.* For construction contracts that exceed the amount for small purchase under 24 CFR 85.36, each contractor shall be required to provide bid guarantees and adequate assurance of performance and payment acceptable to HUD in accordance with 24 CFR 85.36(h). Performance and payment bonds for 100 percent of the total contract price are acceptable to HUD. There may be circumstances under which the bonding requirements of § 85.36(h) are inconsistent with other responsibilities and obligations of the grantee. Alternative methods to provide performance and payment assurance may include:

(1) Deposit with the grantee of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;

(2) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the grantee, subject to reduction during the warranty period commensurate with potential risk.

§ 954.503 Audit.

Audits of the grantee and subgrantees must be conducted in accordance with 24 CFR parts 44 and 45, as applicable.

§ 954.504 Closeout.

(a) A grant will be closed out when all the following criteria have been met:

(1) All funds to be closed out have been drawn down and expended for completed project costs, or funds not drawn down and expended have been deobligated by HUD;

(2) Project Completion Reports for all projects using funds to be closed out have been submitted. HUD will use data contained in the project completion reports in the preparation of the Closeout Reports;

(3) The grantee has been reviewed and audited and HUD has determined that all requirements, including affordability (for which also see paragraph (b)(2) of this section), are met or all monitoring and audit findings have been resolved.

(i) A signed copy of the grantee's most recent audit report—covering all funds to be closed out—must be received by HUD. If the audit review by the Department of Interior (DOI) results in significant delays, the Area ONAP may request a signed copy of the audit prior to DOI review and use it as the document needed prior to closeout. If the audit does not cover all funds to be closed out, the closeout may proceed, provided the grantee agrees in the Closeout Report that any costs paid with the funds that were not audited must be subject to the grantee's next single audit and that the grantee may be required to repay to HUD any disallowed costs based on the results of the audit.

(ii) The on-site monitoring of the grantee by the Area ONAP must include verification of data reflected in the Closeout Report and reconciliation of any discrepancies which may exist between HUD data and grantee records.

(b) The Closeout Report contains the final data on the funds and must be signed by the grantee and HUD. In addition, the report must contain:

(1) A provision regarding unaudited funds (''closeout subject to audit''), required by paragraph (a)(3)(i) of this section; and

(2) A provision requiring the grantee to continue to meet the requirements applicable to housing projects for the period of affordability specified in

§ 954.306 or § 954.307, to keep records demonstrating that the requirements have been met and to repay the HOME funds, as required by § 954.500, if the housing fails to remain affordable for the required period.

§ 954.505 Recordkeeping.

(a) *General.* Each grantee must establish and maintain sufficient records to enable HUD to determine whether the grantee has met the requirements of this part. Records must be kept in a manner that identifies the source and use of funds for each project.

(b) *Period of record retention.* (1) Except as provided in paragraphs (b)(2), (b)(3), or (b)(4) of this section, records must be retained for three years after closeout of the funds.

(2) If any litigation, claim, negotiation, audit, or other action has been started before the expiration of the regular period specified in paragraph (b)(1) of this section, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular period, whichever is later.

(3) Records regarding project requirements (§ 954.400 to § 954.402) and other federal requirements (§ 954.4) that apply for the duration of the period of affordability, as well as the written agreement and inspection and monitoring reports must be retained for three years after the required period of affordability specified in § 954.306 or § 954.307, as applicable.

(4) Records covering displacements and acquisition must be retained for at least three years after the date by which all persons displaced from the property and all persons whose property is acquired for the project have received the final payment to which they are entitled in accordance with § 954.4(e).

(c) *Access to records.* (1) The grantee must provide citizens, public agencies, and other interested parties with reasonable access to records, consistent with applicable tribal laws (or State law, which may apply if the Indian tribe is not exercising recognized powers of self-government) regarding privacy and obligations of confidentiality.

(2) HUD and the Comptroller General of the United States, or any of their representatives, have the right of access to any pertinent books, documents, papers or other records of the grantees and subgrantees, in order to make audits, examinations, excerpts, and transcripts.

(Approved by the Office of Management and Budget under OMB control number 2577–0191)

§ 954.506 Performance reports.

(a) *Management reports.* Each grantee must submit management reports on its HOME program in such format and at such time as HUD may prescribe. Each grantee must submit a ''Financial Status Report,'' SF–269A, short form, at the same time it submits the Semi-Annual Performance Report, described below. A separate ''Financial Status Report'' is to be submitted for each Indian HOME program grant that the grantee has received.

(b) *Semi-Annual performance report.* (1) *Submission.* A grantee must submit a semi-annual performance report on its HOME activities to the responsible Area ONAP at such time as HUD may prescribe. Single copies of the report must be provided to the public upon request at no charge.

(2) *Elements of the semi-annual performance report.* The report must contain such information and be in such form as HUD may prescribe, and must include at least the following:

(i) A report on the proposed use of HOME funds from the grant application, consisting of the number of additional housing opportunities to be created for low-income and very low-income families, by project category (housing rehabilitation, acquisition of housing, new housing construction, and tenant-based rental assistance);

(ii) A report on the actual use of HOME funds, consisting of the number of additional housing opportunities created for low-income and very low-income families, by project category (housing rehabilitation, acquisition of housing, new housing construction, and tenant-based rental assistance). This includes a report on project income and includes data on the amount of repayments, interest, and other return on investment of HOME funds and the use of the funds for projects, including number of projects assisted, and characteristics of tenants and owners;

(iii) An assessment of the effectiveness of the efforts in providing the preferences and opportunities under section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); and

(iv) Data on the total number of households (families and individuals) and business and nonprofit organizations displaced as a result of investments of HOME funds, including the cost of relocation payments (moving expenses and replacement housing), and the number and cost of real property acquisitions.

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§ 954.507 Submission of project completion reports.

A Project Completion Report must be submitted to HUD within 120 days of the final drawdown request for the project. If a satisfactory Project Completion Report is not submitted by the due date, HUD will suspend further HOME disbursements and grant approvals for the grantee. Disbursements and grant approvals will remain suspended until a satisfactory Project Completion Report is received.

(Approved by the Office of Management and Budget under OMB control number 2577–0191)

Subpart F—Performance Reviews and Sanctions

§ 954.600 Performance reviews.

(a) *General.* HUD will review the performance of each grantee in carrying out its responsibilities under this part whenever determined necessary by HUD, but at least annually. In conducting performance reviews, HUD will rely primarily on information obtained from the grantee's records and reports, findings from on-site monitoring, audit reports, and information generated from fund requisition systems. Where applicable, HUD may also consider relevant information pertaining to a grantee's performance gained from other sources, including citizen comments, complaint determinations, and litigation. Reviews to determine compliance with specific requirements of this part will be conducted as necessary, with or without prior notice to the grantee. Comprehensive performance reviews under the standards in paragraph (b) of this section will be conducted after prior notice to the grantee.

(b) *Standards for comprehensive performance review.* A grantee's performance will be comprehensively reviewed periodically, as prescribed by HUD, to determine whether the grantee:

(1) Has committed the HOME funds in the HUD account as required and expended the funds as required; and

(2) Has met the requirements of the grant agreement and this part, particularly eligible activities and affordability.

§ 954.601 Corrective and remedial actions.

(a) *General.* HUD will use the procedures in this section in conducting the performance review as provided in § 954.600 and in taking corrective and remedial actions. However, HUD may temporarily suspend payments based upon HUD's preliminary determination that the grantee has failed to comply with the requirements of the Act, regulations, or grant agreement if suspension is necessary to preclude the further expenditure of funds for activities affected by the failure to comply.

(b) *Performance review.* (1) If HUD determines preliminarily that the grantee has not met a requirement of this part, the grantee will be given notice of this determination and an opportunity to demonstrate, within the time prescribed by HUD (not to exceed 30 days) and on the basis of substantial facts and data, that it has done so.

(2) If the grantee fails to demonstrate to HUD's satisfaction that it has met the requirement, HUD will take corrective or remedial action in accordance with this section or § 954.602.

(c) *Corrective and remedial actions.* Corrective or remedial actions for a performance deficiency (failure to meet a provision of this part) will be designed to prevent a continuation of the deficiency; mitigate, to the extent possible, its adverse effects or consequences; and prevent its recurrence.

(1) HUD may request the grantee to submit and comply with proposals for action to correct, mitigate and prevent a performance deficiency, including:

(i) Preparing and following a schedule of actions for carrying out the affected activities, consisting of schedules, timetables, and milestones necessary to implement the affected activities;

(ii) Establishing and following a management plan that assigns responsibilities for carrying out the remedial actions;

(iii) Cancelling or revising activities likely to be affected by the performance deficiency, before expending HOME funds for the activities;

(iv) Reprogramming HOME funds in the HUD account that have not yet been expended from affected activities to other eligible activities;

(v) Reimbursing the HUD account in any amount not used in accordance with the requirements of this part; and

(vi) Suspending disbursement of funds in the HUD account for affected activities.

(2) HUD may also—

(i) Change the method of payment from an advance to reimbursement basis; and

(ii) Take other remedies that may be legally available.

§ 954.602 Notice and opportunity for hearing; sanctions.

(a) If HUD finds after reasonable notice and opportunity for hearing that a grantee has failed to comply with any provision of this part and until HUD is satisfied that there is no longer any such failure to comply:

(1) HUD shall reduce the funds in the HUD account by the amount of any expenditures that were not in accordance with the requirements of this part; and

(2) HUD may—

(i) Prevent withdrawals from the HUD account for activities affected by the failure to comply; or

(ii) Prohibit the grantee from competing for HOME funds under § 954.104; *Provided, however,* that HUD may on due notice suspend payments from the HUD account at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (b)(1) of this section, pending such hearing and a final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by the failure to comply.

(b) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the grantee.

(1) *Notice of opportunity for hearing.* HUD shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall be sent by first class mail. The notice shall specify:

(i) In a manner which is adequate to allow the respondent to prepare its response, the basis upon which HUD determined that the respondent failed to comply with a provision of this part;

(ii) That the hearing procedures are governed by these rules;

(iii) That the respondent has 14 days from receipt of the notice within which to provide a written request for a hearing to the Chief Docket Clerk, Office of Administrative Law Judges, and the address and telephone number of the Chief Docket Clerk;

(iv) The action HUD proposes to take and that the authority for this action is § 954.602; and

(v) That if the respondent fails to request a hearing within the time specified, HUD's determination that the respondent failed to comply with a provision of this part shall be final and HUD may proceed to take the proposed action.

(2) *Initiation of hearing.* The respondent shall be allowed 14 days from receipt of the notice within which to notify the Chief Docket Clerk, Office of Administrative Law Judges, of its request for a hearing. If no request is received within the time specified, HUD's determination that the respondent failed to comply with a provision of this part shall be final and HUD may proceed to take the proposed action.

(3) *Administrative Law Judge.* Proceedings conducted under these rules shall be presided over by an Administrative Law Judge (ALJ), appointed as provided by section 11 of the Administrative Procedures Act (5 U.S.C. 3105). The case shall be referred to the ALJ at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing

and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power to:

(i) Administer oaths and affirmations;

(ii) Issue subpoenas as authorized by law;

(iii) Rule upon offers of proof and receive relevant evidence;

(iv) Order or limit discovery before the hearing as the interests of justice may require;

(v) Regulate the course of the hearing and the conduct of the parties and their counsel;

(vi) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(vii) Consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and

(viii) Make and file initial determinations.

(4) *Ex parte communications.* An *ex parte* communication is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party. *Ex parte* communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an *ex parte* communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized *ex parte* communications shall not be taken into consideration in deciding any matter in issue.

(5) *The hearing.* All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. HUD has the burden of proof in showing by a preponderance of the evidence that the respondent failed to comply with a provision of this part. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

(6) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

(7) *The ALJ's decision.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Generally within 60 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by first class mail and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(8) *The record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching the initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

(9) *Review by the Secretary.* The decision by the ALJ shall constitute the

final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the basis of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the rationale therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 60 days after the decision of the ALJ was furnished to the parties.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

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AUTHORITY: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z–3, and 3535(d).

SOURCE: 40 FR 33446, Aug. 8, 1975, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

Subpart A—Applicability, Definitions, Equal Opportunity Requirements

SOURCE: 65 FR 16724, Mar. 29, 2000, unless otherwise noted.

§ 960.101 Applicability.

This part is applicable to public housing.

§ 960.102 Definitions.

(a) *Definitions found elsewhere:* (1) *General definitions.* The following terms are defined in part 5, subpart A of this

title: *1937 Act, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, MSA, premises, public housing, public housing agency* (PHA), *Section 8, violent criminal activity*.

(2) *Definitions under the 1937 Act*. The following terms are defined in part 5, subpart D of this title: *annual contributions contract* (ACC), *applicant, elderly family, elderly person, extremely low income family, family, low income family, person with disabilities*.

(3) *Definitions and explanations concerning income and rent*. The following terms are defined or explained in part 5, subpart F of this title: *Annual income* (see § 5.609); *economic self-sufficiency program, tenant rent, total tenant payment* (see § 5.628), *utility allowance*.

(b) *Additional definitions*. In addition to the definitions in paragraph (a), the following definitions and cross-references apply:

Ceiling rent. See § 960.253(d).

Designated housing. See part 945 of this chapter.

Disabled families. See § 5.403 of this title.

Eligible families. Low income families who are eligible for admission to the public housing program.

Flat rent. See § 960.253(b).

Income-based rent. See § 960.253(c).

Mixed population development. A public housing development, or portion of a development, that was reserved for elderly and disabled families at its inception (and has retained that character). If the development was not so reserved at its inception, the PHA has obtained HUD approval to give preference in tenant selection for all units in the development (or portion of development) to elderly families and disabled families. These developments were formerly known as elderly projects.

Over-income family. A family that is not a low income family. See subpart E of this part.

PHA plan. See part 903 of this chapter.

Residency preference. A preference for admission of persons who reside in a specified geographic area.

Tenant-based. See § 982.1(b) of this chapter.

[65 FR 16724, Mar. 29, 2000, as amended at 66 FR 28799, May 24, 2001]

§ 960.103 Equal opportunity requirements.

(a) *Applicable requirements*. The PHA must administer its public housing program in accordance with all applicable equal opportunity requirements imposed by contract or federal law, including the authorities cited in § 5.105(a) of this title.

(b) *PHA duty to affirmatively further fair housing*. The PHA must affirmatively further fair housing in the administration of its public housing program.

(c) *Equal opportunity certification*. The PHA must submit signed equal opportunity certifications to HUD in accordance with § 903.7(o) of this title, including certification that the PHA will affirmatively further fair housing.

Subpart B—Admission

SOURCE: 66 FR 28799, May 24, 2001, unless otherwise noted.

§ 960.200 Purpose.

(a) This subpart states HUD eligibility and selection requirements for admission to public housing.

(b) See also related HUD regulations in this title concerning these subjects:

(1) 1937 Act definitions: part 5, subpart D;

(2) Restrictions on assistance to noncitizens: part 5, subpart E;

(3) Family income and family payment: part 5, subpart F;

(4) Public housing agency plans: part 903;

(5) Rent and reexamination: part 960, subpart C;

(6) Mixed population developments: part 960, subpart D;

(7) Occupancy by over-income families or police officers: part 960, subpart E.

§ 960.201 Eligibility.

(a) *Who is eligible?* (1) Basic eligibility. An applicant must meet all eligibility requirements in order to receive housing assistance. At a minimum, the applicant must be a family, as defined in § 5.403 of this title, and must be income-eligible, as described in this section. Such eligible applicants include single persons.

(2) *Low income limit.* No family other than a low income family is eligible for admission to a PHA's public housing program.

(b) *Income used for eligibility and targeting.* Family annual income (see § 5.609) is used both for determination of income eligibility under paragraph (a) and for PHA income targeting under § 960.202

(c) *Reporting.* The PHA must comply with HUD-prescribed reporting requirements that will permit HUD to maintain the data, as determined by HUD, necessary to monitor compliance with income eligibility and targeting requirement.

§ 960.202 Tenant selection policies.

(a) *Selection policies, generally.* (1) The PHA shall establish and adopt written policies for admission of tenants.

(2) These policies shall provide for and include the following:

(i) Targeting admissions to extremely low income families as provided in paragraph (b) of this section.

(ii) Deconcentration of poverty and income-mixing in accordance with the PHA Plan regulations (see 24 CFR part 903).

(iii) Precluding admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the residents or the project environment;

(iv) Objective and reasonable policies for selection by the PHA among otherwise eligible applicants, including requirements for applications and waiting lists (see 24 CFR 1.4), and for verification and documentation of information relevant to acceptance or rejection of an applicant, including documentation and verification of citizenship and eligible immigration status under 24 CFR part 5; and

(v) Policies of participant transfer between units, developments, and programs. For example, a PHA could adopt a criterion for voluntary transfer that the tenant had met all obligations under the current program, including payment of charges to the PHA.

(b) *Targeting admissions to extremely low income families.*

(1) *Targeting requirement.* (i) Not less than 40 percent of the families admitted to a PHA's public housing program during the PHA fiscal year from the PHA waiting list shall be extremely low income families. This is called the ''basic targeting requirement.''

(ii) To the extent provided in paragraph (b)(2) of this section, admission of extremely low income families to the PHA's Section 8 voucher program during the same PHA fiscal year is credited against the basic targeting requirement.

(iii) A PHA must comply with both the targeting requirement found in this part and the deconcentration requirements found in part 903 of this chapter.

(2) *Credit for admissions to PHA voucher program.* (i) If admissions of extremely low income families to the PHA's voucher program during a PHA fiscal year exceeds the 75 percent minimum targeting requirement for the PHA's voucher program (see 24 CFR 982.201(b)(2)), such excess shall be credited (subject to the limitations in paragraph (b)(2)(ii) of this section) against the PHA's basic targeting requirement for the same fiscal year.

(ii) The fiscal year credit for voucher program admissions that exceed the minimum voucher program targeting requirement shall not exceed the lower of:

(A) Ten percent of public housing waiting list admissions during the PHA fiscal year;

(B) Ten percent of waiting list admission to the PHA's Section 8 tenant-based assistance program during the PHA fiscal year; or

(C) The number of qualifying low income families who commence occupancy during the fiscal year of PHA public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low income family means a low income family other than an extremely low income family.

(c) *Adoption and availability of tenant selection policies.* These selection policies shall:

(1) Be duly adopted and implemented;

(2) Be publicized by posting copies thereof in each office where applications are received and by furnishing copies to applicants or tenants upon request, free or at their expense, at the discretion of the PHA; and

(3) Be consistent with the fair housing and equal opportunity provisions of §5.105 of this title; and

(4) Be submitted to the HUD field office upon request from that office.

§960.203 Standards for PHA tenant selection criteria.

(a) The tenant selection criteria to be established and information to be considered shall be reasonably related to individual attributes and behavior of an applicant and shall not be related to those which may be imputed to a particular group or category of persons of which an applicant may be a member. The PHA may use local preferences, as provided in §960.206.

(b) Under the Public Housing Assessment System (PHAS), PHAs that have adopted policies, implemented procedures and can document that they successfully screen out and deny admission to certain applicants with unfavorable criminal histories receive points. (See 24 CFR 902.43(a)(5).) This policy takes into account the importance of screening to public housing communities and program integrity, and the demand for assisted housing by families who will adhere to lease responsibilities.

(c) In selection of families for admission to its public housing program, or to occupy a public housing development or unit, the PHA is responsible for screening family behavior and suitability for tenancy. The PHA may consider all relevant information, which may include, but is not limited to:

(1) An applicant's past performance in meeting financial obligations, especially rent;

(2) A record of disturbance of neighbors, destruction of property, or living or housekeeping habits at prior residences which may adversely affect the health, safety or welfare of other tenants; and

(3) A history of criminal activity involving crimes of physical violence to persons or property and other criminal acts which would adversely affect the health, safety or welfare of other tenants. (See §960.204.) With respect to criminal activity described in §960.204:

(i) The PHA may require an applicant to exclude a household member in order to be admitted to the housing program where that household member has participated in or been culpable for actions described in §960.204 that warrants denial.

(ii) The PHA may, where a statute requires that the PHA prohibit admission for a prescribed period of time after some disqualifying behavior or event, choose to continue that prohibition for a longer period of time.

(d) In the event of the receipt of unfavorable information with respect to an applicant, consideration shall be given to the time, nature, and extent of the applicant's conduct (including the seriousness of the offense).

(1) In a manner consistent with the PHA's policies, procedures and practices referenced in paragraph (b) of this section, consideration may be given to factors which might indicate a reasonable probability of favorable future conduct. For example:

(i) Evidence of rehabilitation; and

(ii) Evidence of the applicant family's participation in or willingness to participate in social service or other appropriate counseling service programs and the availability of such programs;

(2) *Consideration of rehabilitation.* (i) In determining whether to deny admission for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the PHA may require the applicant to submit evidence of the household member's current participation in, or successful completion of, a

supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(ii) If rehabilitation is not an element of the eligibility determination (see §960.204(a)(1)), the PHA may choose not to consider whether the person has been rehabilitated.

§ 960.204 Denial of admission for criminal activity or drug abuse by household members.

(a) *Required denial of admission.* (1) *Persons evicted for drug-related criminal activity.* The PHA standards must prohibit admission of an applicant to the PHA's public housing program for three years from the date of the eviction if any household member has been evicted from federally assisted housing for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

(i) The evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(ii) The circumstances leading to the eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(2) *Persons engaging in illegal use of a drug.* The PHA must establish standards that prohibit admission of a household to the PHA's public housing program if:

(i) The PHA determines that any household member is currently engaging in illegal use of a drug (For purposes of this section, a household member is ''currently engaged in'' the criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current); or

(ii) The PHA determines that it has reasonable cause to believe that a household member's illegal use or pattern of illegal use of a drug may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(3) *Persons convicted of methamphetamine production.* The PHA must establish standards that permanently prohibit admission to the PHA's public housing program if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(4) *Persons subject to sex offender registration requirement.* The PHA must establish standards that prohibit admission to the PHA's public housing program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In the screening of applicants, the PHA must perform necessary criminal history background checks in the State where the housing is located and in other States where household members are known to have resided. (See part 5, subpart J of this title for provisions concerning access to sex offender registration records.)

(b) *Persons that abuse or show a pattern of abuse of alcohol.* The PHA must establish standards that prohibit admission to the PHA's public housing program if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(c) *Use of criminal records.* Before a PHA denies admission to the PHAs public housing program on the basis of a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the applicant with a copy of the criminal record and an opportunity to dispute the accuracy and relevance of that record. (See part 5, subpart J of this title for provisions concerning access to criminal records.)

(d) *Cost of obtaining criminal record.* The PHA may not pass along to the applicant the costs of a criminal records check.

§ 960.205 Drug use by applicants: Obtaining information from drug treatment facility.

(a) *Purpose.* This section addresses a PHA's authority to request and obtain information from drug abuse treatment facilities concerning applicants. This section does not apply to information requested or obtained from drug abuse

treatment facilities other than under the authority of section 6(t).

(b) *Additional terms* used in this section are as follows:

(1) *Currently engaging in illegal use of a drug.* Illegal use of a drug occurred recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member.

(2) *Drug abuse treatment facility.* An entity:

(i) That holds itself out as providing, and provides, diagnosis, treatment, or referral for treatment with respect to the illegal drug use; and

(ii) That is either an identified unit within a general care facility; or an entity other than a general medical care facility.

(c) *Authorization by household member for PHA to receive information from a drug abuse treatment facility.* (1) The PHA may require each applicant to submit for all household members who are at least 18 years of age, and for each family head or spouse regardless of age, one or more consent forms signed by such household member that:

(i) Requests any drug abuse treatment facility to inform the PHA only whether the drug abuse treatment facility has reasonable cause to believe that the household member is currently engaging in illegal drug use;

(ii) Complies with the form of written consent required by 42 CFR 2.31; and

(iii) Authorizes the PHA to receive such information from the drug abuse treatment facility, and to utilize such information in determining whether to prohibit admission of the household member to the PHA's public housing program in accordance with §960.203. (See the Public Health Service Act, 42 U.S.C. 290dd–2, and implementing regulations at 42 CFR part 2, with respect to responsibilities of the drug abuse treatment facility.)

(2) The consent form submitted for a proposed household member must expire automatically after the PHA has made a final decision to either approve or deny the admission of such person.

(d) *PHA request for information from drug use treatment facility.* (1) The PHA may request that a drug abuse treatment facility disclose whether the drug abuse treatment facility has reasonable cause to believe that the proposed household member is currently engaging in the illegal use of a drug (as defined in §5.100 of this title).

(2) The PHA's request to the drug abuse treatment facility must include a copy of the consent form signed by the proposed household member.

(3) A drug abuse treatment facility is not liable for damages based on any information required to be disclosed under this section if such disclosure is consistent with section 543 of the Public Health Service Act (42 U.S.C. 290dd–2).

(4) The PHA is not obligated to request information from a drug treatment facility under this section, and is not liable for damages for failing to request or receive such information.

(5) A drug abuse treatment facility may charge the PHA a reasonable fee for information provided under this section. The PHA may not pass along to the applicant or tenant the costs of obtaining this information.

(e) *Prohibition of discriminatory treatment of applicants.* (1) A PHA may request information from a drug abuse treatment facility under paragraph (d) of this section only if the PHA has adopted and has consistently implemented either of the following policies, obtaining a signed consent form from the proposed household members:

(i) *Policy A—Request for all families.* Under Policy A, the PHA must submit a request for information to a drug abuse treatment facility in accordance with paragraph (d) of this section before admitting any family to the PHA's public housing program. For each such family, the request must be submitted for each proposed household member described in paragraph (c)(1) of this section.

(ii) *Policy B—Request for certain household members.* Under Policy B, the PHA must submit a request to a drug abuse treatment facility only with respect to each proposed household member:

(A) Whose criminal record indicates prior arrest or conviction for any criminal activity that may be a basis for denial of admission under §960.205; or

(B) Whose prior tenancy records indicate that the proposed household member:

(1) Engaged in the destruction of property;

(2) Engaged in violent activity against another person; or

(3) Interfered with the right of peaceful enjoyment of the premises of other residents.

(4) The policy adopted by the PHA must be included in the PHA administrative plan and the PHA plan.

(f) *Records management and confidentiality.* Each PHA that receives information from a drug abuse treatment facility under this section must establish and implement a system of records management that ensures that any information which the PHA receives from the drug abuse treatment facility about a person:

(1) Is maintained confidentially in accordance with section 543 of the Public Health Service Act (12 U.S.C. 290dd–2);

(2) Is not misused or improperly disseminated; and

(3) Is destroyed, as applicable:

(i) Not later than 5 business days after the PHA makes a final decision to admit the person as a household member under the PHA's public housing program; or

(ii) If the PHA denies the admission of such person as a household member, in a timely manner after the date on which the statute of limitations for the commencement of a civil action based upon that denial of admissions has expired without the filing of a civil action or until final disposition of any such litigation.

§ 960.206 Waiting list: Local preferences in admission to public housing program.

(a) *Establishment of PHA local preferences.* (1) The PHA may adopt a system of local preferences for selection of families admitted to the PHA's public housing program. The PHA system of selection preferences must be based on local housing needs and priorities as determined by the PHA. In determining such needs and priorities, the PHA shall use generally accepted data sources. Such sources include public comment on the PHA plan (as received pursuant to § 903.17 of this chapter), and on the consolidated plan for the relevant jurisdiction (as received pursuant to part 91 of this title).

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

(3) PHA adoption and implementation of local preferences is subject to HUD requirements concerning income-targeting (§ 960.202(b)), deconcentration and income-mixing (§ 903.7), and selection preferences for developments designated exclusively for elderly or disabled families or for mixed population developments (§ 960.407).

(4) The PHA must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences.

(b) *Particular local preferences*—(1) *Residency requirements or preferences.*

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

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

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

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

(v) Applicants who are working or who have been notified that they are

hired to work in a residency preference area must be treated as residents of the residency preference area. The PHA may treat graduates of, or active participants in, education and training programs in a residency preference area as residents of the residency preference area if the education or training program is designed to prepare individuals for the job market.

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

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

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

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

(c) *Selection for particular unit.* In selecting a family to occupy a particular unit, the PHA may match characteristics of the family with the type of unit available, for example, number of bedrooms. In selection of families to occupy units with special accessibility features for persons with disabilities, the PHA must first offer such units to families which include persons with disabilities who require such accessibility features (see §§ 8.27 and 100.202 of this title).

(d) *Housing assistance limitation for single persons.* A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a resident family may not be provided a housing unit with two or more bedrooms.

(e) *Selection method.* (1) The PHA must use the following to select among applicants on the waiting list with the same priority for admission:

(i) Date and time of application; or

(ii) A drawing or other random choice technique.

(2) The method for selecting applicants 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 PHA plan.

§ 960.208 Notification to applicants.

(a) The PHA must promptly notify any applicant determined to be ineligible for admission to a project of the basis for such determination, and must provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination.

(b) When a determination has been made that an applicant is eligible and satisfies all requirements for admission, including the tenant selection criteria, the applicant must be notified of the approximate date of occupancy insofar as that date can be reasonably determined.

Subpart C—Rent and Reexamination

SOURCE: 65 FR 16726, Mar. 29, 2000, unless otherwise noted.

§ 960.253 Choice of rent.

(a) *Rent options.* (1) *Annual choice by family.* Once a year, the PHA must give each family the opportunity to choose between the two methods for determining the amount of tenant rent payable monthly by the family. The family may choose to pay as tenant rent either a flat rent as determined in accordance with paragraph (b) of this section, or an income-based rent as determined in accordance with paragraph (c) of this section. Except for financial hardship cases as provided in paragraph (d) of this section, the family may not be offered this choice more than once a year.

(2) *Relation to minimum rent.* Regardless of whether the family chooses to pay a flat rent or income-based rent,

the family must pay at least the minimum rent as determined in accordance with § 5.630 of this title.

(b) *Flat rent.* (1) The flat rent is based on the market rent charged for comparable units in the private unassisted rental market. It is equal to the estimated rent for which the PHA could promptly lease the public housing unit after preparation for occupancy.

(2) The PHA must use a reasonable method to determine the flat rent for a unit. To determine the flat rent, the PHA must consider:

(i) The location, quality, size, unit type and age of the unit; and

(ii) Any amenities, housing services, maintenance and utilities provided by the PHA.

(3) The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

(4) If the family chooses to pay a flat rent, the PHA does not pay any utility reimbursement.

(5) The PHA must maintain records that document the method used to determine flat rents, and also show how flat rents are determined by the PHA in accordance with this method, and document flat rents offered to families under this method.

(c) *Income-based rent.* (1) An income-based rent is a tenant rent that is based on the family's income and the PHA's rent policies for determination of such rents.

(2) The PHA rent policies may specify that the PHA will use percentage of family income or some other reasonable system to determine income-based rents. The PHA rent policies may provide for depositing a portion of tenant rent in an escrow or savings account, for imposing a ceiling on tenant rents, for adoption of permissive income deductions (see § 5.611(b) of this title), or for another reasonable system to determining the amount of income-based tenant rent.

(3) The income-based tenant rent must not exceed the total tenant payment (§ 5.628 of this title) for the family minus any applicable utility allowance for tenant-paid utilities. If the utility allowance exceeds the total tenant payment, the PHA shall pay such excess amount (the utility reimbursement) either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount of utility reimbursement paid to the utility supplier.

(d) *Ceiling rent.* Instead of using flat rents, a PHA may retain ceiling rents that were authorized and established before October 1, 1999, for a period of three years from October 1, 1999. After this three year period, the PHA must adjust such ceiling rents to the level required for flat rents under this section; however, ceiling rents are subject to paragraph (a) of this section, the annual reexamination requirements, and the limitation that the tenant rent plus any utility allowance may not exceed the total tenant payment.

(e) *Information for families.* For the family to make an informed choice about its rent options, the PHA must provide sufficient information for an informed choice. Such information must include at least the following written information:

(1) The PHA's policies on switching type of rent in circumstances of financial hardship, and

(2) The dollar amounts of tenant rent for the family under each option. If the family chose a flat rent for the previous year, the PHA is required to provide the amount of income-based rent for the subsequent year only the year the PHA conducts an income reexamination or if the family specifically requests it and submits updated income information. For a family that chooses the flat rent option, the PHA must conduct a reexamination of family income at least once every three years.

(f) *Switch from flat rent to income-based rent because of hardship.* (1) A family that is paying a flat rent may at any time request a switch to payment of income-based rent (before the next annual option to select the type of rent) if the family is unable to pay flat rent because of financial hardship. The PHA must adopt written policies for determining when payment of flat rent is a financial hardship for the family.

(2) If the PHA determines that the family is unable to pay the flat rent because of financial hardship, the PHA must immediately allow the requested switch to income-based rent. The PHA shall make the determination within a reasonable time after the family request.

(3) The PHA policies for determining when payment of flat rent is a financial hardship must provide that financial hardship include the following situations:

(i) The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance;

(ii) The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items; and

(iii) Such other situations determined by the PHA to be appropriate.

§ 960.255 Self-sufficiency incentives—Disallowance of increase in annual income.

(a) *Definitions.* The following definitions apply for purposes of this section.

Disallowance. Exclusion from annual income.

Previously unemployed includes a person who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in public housing:

(i) Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;

(ii) Whose annual income increases as a result of increased earnings by a family member during participation in any economic self-sufficiency or other job training program; or

(iii) Whose annual income increases, as a result of new employment or increased earnings of a family member, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the PHA in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least $500.

(b) *Disallowance of increase in annual income.* (1) *Initial twelve month exclusion.* During the cumulative twelve month period beginning on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income (as defined in § 5.609 of this title) of a qualified family any increase in income of the family member as a result of employment over prior income of that family member.

(2) *Second twelve month exclusion and phase-in.* During the second cumulative twelve month period after the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) *Maximum four year disallowance.* The disallowance of increased income of an individual family member as provided in paragraph (b)(1) or (b)(2) of this section is limited to a lifetime 48 month period. It only applies for a maximum of twelve months for disallowance under paragraph (b)(1) and a maximum of twelve months for disallowance under paragraph (b)(2), during the 48 month period starting from the initial exclusion under paragraph (b)(1) of this section.

(c) *Inapplicability to admission.* The disallowance of increases in income as a result of employment under this section does not apply for purposes of admission to the program (including the determination of income eligibility and income targeting).

(d) *Individual Savings Accounts.* As an alternative to the disallowance of increases in income as a result of employment described in paragraph (b) of this section, a PHA may choose to provide for individual savings accounts for public housing residents who pay an income-based rent, in accordance with a written policy, which must include the following provisions:

(1) The PHA must advise the family that the savings account option is available;

(2) At the option of the family, the PHA must deposit in the savings account the total amount that would have been included in tenant rent payable to the PHA as a result of increased income that is disallowed in accordance with paragraph (b) of this section;

(3) Amounts deposited in a savings account may be withdrawn only for the purpose of:

(i) Purchasing a home;

(ii) Paying education costs of family members;

(iii) Moving out of public or assisted housing; or

(iv) Paying any other expense authorized by the PHA for the purpose of promoting the economic self-sufficiency of residents of public housing;

(4) The PHA must maintain the account in an interest bearing investment and must credit the family with the net interest income, and the PHA may not charge a fee for maintaining the account;

(5) At least annually the PHA must provide the family with a report on the status of the account; and

(6) If the family moves out of public housing, the PHA shall pay the tenant any balance in the account, minus any amounts owed to the PHA.

§ 960.257 Family income and composition: Regular and interim reexaminations.

(a) *When PHA is required to conduct reexamination.* (1) For families who pay an income-based rent, the PHA must conduct a reexamination of family income and composition at least annually and must make appropriate adjustments in the rent after consultation with the family and upon verification of the information.

(2) For families who choose flat rents, the PHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every three years.

(3) For all families who include nonexempt individuals, as defined in § 960.601, the PHA must determine compliance once each twelve months with community service and self-sufficiency requirements in subpart F of this part.

(4) The PHA may use the results of these reexaminations to require the family to move to an appropriate size unit.

(b) *Interim reexaminations.* A family may request an interim reexamination of family income or composition because of any changes since the last determination. The PHA must make the interim reexamination within a reasonable time after the family request. The PHA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition.

(c) *PHA reexamination policies.* The PHA must adopt admission and occupancy policies concerning conduct of annual and interim reexaminations in accordance with this section, and shall conduct reexaminations in accordance with such policies. The PHA reexamination policies must be in accordance with the PHA plan.

§ 960.259 Family information and verification.

(a) *Family obligation to supply information.* (1) The family must supply any information that the PHA or HUD determines is necessary in administration of the public housing program, including submission of required evidence of citizenship or eligible immigration status (as provided by part 5, subpart E of this title). ''Information'' includes any requested certification, release or other documentation.

(2) The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or an interim reexamination of family income and composition in accordance with HUD requirements.

(3) For requirements concerning the following, see part 5, subpart B of this title:

(i) Family verification and disclosure of social security numbers;

(ii) Family execution and submission of consent forms for obtaining wage and claim information from State Wage Information Collection Agencies (SWICAs).

(4) Any information supplied by the family must be true and complete.

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

(2) The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of the program.

(c) *PHA responsibility for reexamination and verification.* (1) The PHA must obtain and document in the family file third party verification of the following factors, or must document in the file why third party verification was not available:

(i) Reported family annual income;

(ii) The value of assets;

(iii) Expenses related to deductions from annual income; and

(iv) Other factors that affect the determination of adjusted income or income-based rent.

§ 960.261 Restriction on eviction of families based on income.

(a) PHAs may evict or terminate the tenancies of families who are over income, subject to paragraph (b) of this section.

(b) Unless it is required to do so by local law, a PHA may not evict or terminate the tenancy of a family solely because the family is over the income limit for public housing, if the family has a valid contract for participation in an FSS program under 24 part 984. A PHA may not evict a family for being over the income limit for public housing if the family currently receives the earned income disallowance provided by 42 U.S.C. 1437a(d) and 24 CFR 960.255.

[69 FR 68791, Nov. 26, 2004]

Subpart D—Preference for Elderly Families and Disabled Families in Mixed Population Projects

SOURCE: 59 FR 17667, Apr. 13, 1994, unless otherwise noted.

§ 960.401 Purpose.

This subpart establishes a preference for elderly families and disabled families for admission to mixed population public housing projects, as defined in § 960.405.

§ 960.403 Applicability.

(a) This subpart applies to all dwelling units in mixed population projects (as defined in § 960.405), or portions of mixed population projects, assisted under the U.S. Housing Act of 1937. These projects formerly were known as elderly projects.

(b) This subpart does not apply to section 23 and section 10(c) leased housing projects or the section 23 Housing Assistance Payments Program where the owners enter into leases directly with the tenants, or to the Section 8 Housing Assistance Payments Program, the Low-Rent Housing Homeownership Opportunities Program (Turnkey III), the Mutual Help Homeownership Opportunities Program, or to Indian Housing Authorities. (For applicability to Indian Housing Authorities, see part 905 of this chapter.) Additionally, this subpart is not applicable to projects designated for elderly families or designated for disabled families in accordance with 24 CFR part 945.

§ 960.407 Selection preference for mixed population developments.

(a) The PHA must give preference to elderly families and disabled families equally in determining priority for admission to mixed population developments. The PHA may not establish a limit on the number of elderly families or disabled families who may be accepted for occupancy in a mixed population development.

(b) In selecting elderly families and disabled families to occupy units in mixed population developments, the PHA must first offer units that have special accessibility features for persons with disabilities to families who include persons with disabilities who require the accessibility features of such units (see §§8.27 and 100.202 of this title).

[65 FR 16729, Mar. 29, 2000]

Subpart E—Occupancy by Over-Income Families or Police Officers

SOURCE: 65 FR 16729, Mar. 29, 2000, unless otherwise noted.

§ 960.503 Occupancy by over-income families.

A PHA that owns or operates fewer than two hundred fifty (250) public housing units, may lease a unit in a public housing development to an over-income family (a family whose annual income exceeds the limit for a low income family at the time of initial occupancy), in accordance with its PHA annual plan (or supporting documents), if all the following conditions are satisfied:

(a) There are no eligible low income families on the PHA waiting list or applying for public housing assistance when the unit is leased to an over-income family;

(b) The PHA has publicized availability of the unit for rental to eligible low income families, including publishing public notice of such availability in a newspaper of general circulation in the jurisdiction at least thirty days before offering the unit to an over-income family;

(c) The over-income family rents the unit on a month-to-month basis for a rent that is not less than the PHA's cost to operate the unit;

(d) The lease to the over-income family provides that the family agrees to vacate the unit when needed for rental to an eligible family; and

(e) The PHA gives the over-income family at least thirty days notice to vacate the unit when the unit is needed for rental to an eligible family.

§ 960.505 Occupancy by police officers to provide security for public housing residents.

(a) *Police officer.* For purpose of this subpart E, ''police officer'' means a person determined by the PHA to be, during the period of residence of that person in public housing, employed on a full-time basis as a duly licensed professional police officer by a Federal, State or local government or by any agency of these governments. An officer of an accredited police force of a housing agency may qualify.

(b) *Occupancy in public housing.* For the purpose of increasing security for residents of a public housing development, the PHA may allow police officers who would not otherwise be eligible for occupancy in public housing, to reside in a public housing dwelling unit. The PHA must include in the PHA annual plan or supporting documents the number and location of the units to be occupied by police officers, and the terms and conditions of their tenancies; and a statement that such occupancy is needed to increase security for public housing residents.

Subpart F—When Resident Must Perform Community Service Activities or Self-Sufficiency Work Activities

SOURCE: 65 FR 16729, Mar. 29, 2000, unless otherwise noted.

§ 960.600 Implementation.

PHAs and residents must comply with the requirements of this subpart beginning with PHA fiscal years that commence on or after October 1, 2000. Unless otherwise provided by §903.11 of this chapter, Annual Plans submitted for those fiscal years are required to contain information regarding the PHA's compliance with the community service requirement, as described in §903.7 of this chapter.

§ 960.601 Definitions.

(a) *Definitions found elsewhere.*

(1) *General definitions.* The following terms are defined in part 5, subpart A of this title: *public housing, public housing agency* (PHA).

(2) *Definitions concerning income and rent.* The following terms are defined in part 5, subpart F of this title: *economic self-sufficiency program, work activities.*

(b) *Other definitions.* In addition to the definitions in paragraph (a) of this section, the following definitions apply:

Community service. The performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities.

Exempt individual. An adult who:

(1) Is 62 years or older;

(2)(i) Is a blind or disabled individual, as defined under 216(i)(1) or 1614 of the Social Security Act (42 U.S.C. 416(i)(1); 1382c), and who certifies that because of this disability she or he is unable to comply with the service provisions of this subpart, or

(ii) Is a primary caretaker of such individual;

(3) Is engaged in work activities;

(4) Meets the requirements for being exempted from having to engage in a work activity under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*) or under any other welfare program of the State in which the PHA is located, including a State-administered welfare-to-work program; or

(5) Is a member of a family receiving assistance, benefits or services under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*) or under any other welfare program of the State in which the PHA is located, including a State-administered welfare-to-work program, and has not been found by the State or other administering entity to be in noncompliance with such a program.

Service requirement. The obligation of each adult resident, other than an exempt individual, to perform community service or participate in an economic-self sufficiency program required in accordance with § 960.603.

§ 960.603 General requirements.

(a) *Service requirement.* Except for any family member who is an exempt individual, each adult resident of public housing must:

(1) Contribute 8 hours per month of community service (not including political activities); or

(2) Participate in an economic self-sufficiency program for 8 hours per month; or

(3) Perform 8 hours per month of combined activities as described in paragraphs (a)(1) and (a)(2) of this section.

(b) *Family violation of service requirement.* The lease shall specify that it shall be renewed automatically for all purposes, unless the family fails to comply with the service requirement. Violation of the service requirement is grounds for nonrenewal of the lease at the end of the twelve month lease term, but not for termination of tenancy during the course of the twelve month lease term (see § 966.4(l)(2)(i) of this chapter).

§ 960.605 How PHA administers service requirements.

(a) *PHA policy.* Each PHA must develop a local policy for administration of the community service and economic self-sufficiency requirements for public housing residents.

(b) *Administration of qualifying community service or self-sufficiency activities for residents.* The PHA may administer qualifying community service or economic self-sufficiency activities directly, or may make such activities available through a contractor, or through partnerships with qualified organizations, including resident organizations, and community agencies or institutions.

(c) *PHA responsibilities.* (1) The PHA policy must describe how the PHA determines which family members are subject to or exempt from the service requirement, and the process for determining any changes to exempt or nonexempt status of family members.

(2) The PHA must give the family a written description of the service requirement, and of the process for claiming status as an exempt person and for PHA verification of such status. The PHA must also notify the family of its determination identifying the family members who are subject to the

service requirement, and the family members who are exempt persons.

(3) The PHA must review family compliance with service requirements, and must verify such compliance annually at least thirty days before the end of the twelve month lease term. If qualifying activities are administered by an organization other than the PHA, the PHA shall obtain verification of family compliance from such third parties.

(4) The PHA must retain reasonable documentation of service requirement performance or exemption in participant files.

(5) The PHA must comply with nondiscrimination and equal opportunity requirements listed at § 5.105(a) of this title.

§ 960.607 Assuring resident compliance.

(a) *Third-party certification.* If qualifying activities are administered by an organization other than the PHA, a family member who is required to fulfill a service requirement must provide signed certification to the PHA by such other organization that the family member has performed such qualifying activities.

(b) *PHA notice of noncompliance.* (1) If the PHA determines that there is a family member who is required to fulfill a service requirement, but who has violated this family obligation (noncompliant resident), the PHA must notify the tenant of this determination.

(2) The PHA notice to the tenant must:

(i) Briefly describe the noncompliance;

(ii) State that the PHA will not renew the lease at the end of the twelve month lease term unless:

(A) The tenant, and any other noncompliant resident, enter into a written agreement with the PHA, in the form and manner required by the PHA, to cure such noncompliance, and in fact cure such noncompliance in accordance with such agreement; or

(B) The family provides written assurance satisfactory to the PHA that the tenant or other noncompliant resident no longer resides in the unit.

(iii) State that the tenant may request a grievance hearing on the PHA determination, in accordance with part 966, subpart B of this chapter, and that the tenant may exercise any available judicial remedy to seek timely redress for the PHA's nonrenewal of the lease because of such determination.

(c) *Tenant agreement to comply with service requirement.* If the tenant or another family member has violated the service requirement, the PHA may not renew the lease upon expiration of the term unless:

(1) The tenant, and any other noncompliant resident, enter into a written agreement with the PHA, in the form and manner required by the PHA, to cure such noncompliance by completing the additional hours of community service or economic self-sufficiency activity needed to make up the total number of hours required over the twelve-month term of the new lease, and

(2) All other members of the family who are subject to the service requirement are currently complying with the service requirement or are no longer residing in the unit.

§ 960.609 Prohibition against replacement of PHA employees.

In implementing the service requirement under this subpart, the PHA may not substitute community service or self-sufficiency activities performed by residents for work ordinarily performed by PHA employees, or replace a job at any location where residents perform activities to satisfy the service requirement.

Subpart G—Pet Ownership in Public Housing

SOURCE: 65 FR 42522, July 10, 2000, unless otherwise noted.

§ 960.701 Purpose.

The purpose of this subpart is, in accordance with section 31 of the United States Housing Act of 1937 (42 U.S.C. 1437z–3), to permit pet ownership by residents of public housing, subject to compliance with reasonable requirements established by the public housing agency (PHA) for pet ownership.

§ 960.703 Applicability.

This subpart applies to public housing as that term is defined in section

3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)), except that such term does not include public housing developments for the elderly or persons with disabilities. Regulations that apply to pet ownership in such developments are located in part 5, subpart C, of this title.

§ 960.705 Animals that assist, support, or provide service to persons with disabilities.

(a) This subpart G does not apply to animals that assist, support or provide service to persons with disabilities. PHAs may not apply or enforce any policies established under this subpart against animals that are necessary as a reasonable accommodation to assist, support or provide service to persons with disabilities. This exclusion applies to such animals that reside in public housing, as that term is used in § 960.703, and such animals that visit these developments.

(b) Nothing in this subpart G:

(1) Limits or impairs the rights of persons with disabilities;

(2) Authorizes PHAs to limit or impair the rights of persons with disabilities; or

(3) Affects any authority that PHAs may have to regulate service animals that assist, support or provide service to persons with disabilities, under Federal, State, or local law.

§ 960.707 Pet ownership.

(a) *Ownership Conditions.* A resident of a dwelling unit in public housing, as that term is used in § 960.703, may own one or more common household pets or have one or more common household pets present in the dwelling unit of such resident, subject to the reasonable requirements of the PHA, if the resident maintains each pet:

(1) Responsibly;

(2) In accordance with applicable State and local public health, animal control, and animal anti-cruelty laws and regulations; and

(3) In accordance with the policies established in the PHA Annual Plan for the agency as provided in part 903 of this chapter.

(b) *Reasonable requirements.* Reasonable requirements may include but are not limited to:

(1) Requiring payment of a non-refundable nominal fee to cover the reasonable operating costs to the development relating to the presence of pets, a refundable pet deposit to cover additional costs attributable to the pet and not otherwise covered, or both;

(2) Limitations on the number of animals in a unit, based on unit size;

(3) Prohibitions on types of animals that the PHA classifies as dangerous, provided that such classifications are consistent with applicable State and local law, and prohibitions on individual animals, based on certain factors, including the size and weight of animals;

(4) Restrictions or prohibitions based on size and type of building or project, or other relevant conditions;

(5) Registration of the pet with the PHA; and

(6) Requiring pet owners to have their pets spayed or neutered.

(c) *Restriction.* A PHA may not require pet owners to have any pet's vocal chords removed.

(d) *Pet deposit.* A PHA that requires a resident to pay a pet deposit must place the deposit in an account of the type required under applicable State or local law for pet deposits or, if State or local law has no requirements regarding pet deposits, for rental security deposits, if applicable. The PHA shall comply with such applicable law as to retention of the deposit, interest, and return of the deposit or portion thereof to the resident, and any other applicable requirements.

(e) *PHA Plan.* Unless otherwise provided by § 903.11 of this chapter, Annual Plans are required to contain information regarding the PHA's pet policies, as described in § 903.7(n) of this chapter, beginning with PHA fiscal years that commence on or after January 1, 2001.

PART 963—PUBLIC HOUSING—CONTRACTING WITH RESIDENT-OWNED BUSINESSES

Subpart A—General

Sec.

963.1 Purpose.
963.3 Applicability.
963.5 Definitions.

Subpart B—Contracting with Resident-Owned Businesses

963.10 Eligible resident-owned businesses.
963.12 Alternative procurement process.

AUTHORITY: 42 U.S.C. 1437 and 3535(d).

SOURCE: 57 FR 20189, May 11, 1992, unless otherwise noted.

Subpart A—General

§ 963.1 Purpose.

The purpose of this part is to enhance the economic opportunities of public housing residents by providing public housing agencies with a method of soliciting and contracting with eligible and qualifed resident-owned businesses (as defined in this part) for public housing services, supplies, or construction. The contract award method provided by this part is based on the established procurement procedures set forth in 24 CFR 85.36, with solicitation as provided by these procedures limited to resident-owned businesses. The contract award method provided by this part is not a requirement. It is an alternative procurement method available to public housing agencies, subject to the conditions set forth in this part, and subject to permissibility under State and local laws.

§ 963.3 Applicability.

The policies and procedures contained in this part apply to public housing developments that are owned by public housing agencies (PHAs) and that are covered by Annual Contributions Contracts (ACC) with the Department. Public housing contracts eligible to be awarded under the alternative procurement process provided by this part are limited to individual contracts that do not exceed $1,000,000. Resident-owned businesses eligible to participate in the alternative procurement process are limited to those that meet the eligibility requirements of § 963.10. The policies and procedures contained in this part are consistent with the objectives of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and similar Federal requirements imposed on public housing programs. (See 24 CFR 941.208(a) and 24 CFR 968.110(a)).

[57 FR 20189, May 11, 1992, as amended at 59 FR 33895, June 30, 1994]

§ 963.5 Definitions.

The terms *HUD* and *Public housing agency (PHA)* are defined in 24 CFR part 5.

Act. The U.S. Housing Act of 1937 (42 U.S.C. 1437).

Alternative procurement process. The alternative method of public housing contract award available to public housing agencies and eligible resident-owned businesses under the conditions set forth in this part.

Annual Contributions Contract (ACC). See definition in 24 CFR 968.105.

Certification. A written assertion based on supporting evidence, which shall be kept available for inspection by the Secretary, the Inspector General, and the public, which assertion shall be deemed to be accurate for purposes of this part, unless the Secretary determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

Contract or *public housing contract.* Any contract awarded by a PHA for services, supplies, or construction necessary for the development, operation, modernization, or maintenance of public housing.

Management officials. The individuals who possess the power to make the day-to-day, as well as major, decisions on matters of management, policy, and operations of the resident-owned business.

Principal. An owner, partner, director, or management official of the resident-owned business with the power and authority to represent the business and to execute contract, leases, agreements, and other documents on behalf of the business.

Public housing or *public housing development.* Any public housing development which is owned by a Public Housing Agency (PHA) and is receiving funds under an Annual Contribution Contract (ACC).

Public housing resident. Any individual who resides in public housing as a signatory on a public housing lease,

or as a member of the family of the individual(s) who is the signatory on the public housing lease.

Resident-owned business. Any business concern which is owned and controlled by public housing residents. (The term ''resident-owned business'' includes sole proprietorships.) For purposes of this part, ''owned and controlled'' means a business:

(1) Which is at least 51 percent owned by one or more public housing residents; and

(2) Whose management and daily business operations are controlled by one or more such individuals.

All securities which constitute ownership or control of a corporation for purposes of establishing the business as a resident-owned business shall be held directly by the public housing residents. No securities held in trust, or by any guardian for a minor, shall be considered as held by the public housing resident in determining the ownership or control of a corporation.

[57 FR 20189, May 11, 1992, as amended at 61 FR 5215, Feb. 9, 1996]

Subpart B—Contracting With Resident-Owned Businesses

§ 963.10 Eligible resident-owned businesses.

To be eligible for the alternative procurement process provided by this part, a business must meet the following requirements, and must submit evidence to the PHA, in the form described below, or as the PHA may require, that shows how each requirement has been met.

(a) *Legally formed business.* The business shall submit certified copies of any State, county, or municipal licenses that may be required of the business to engage in the type of business activity for which it was formed. Where applicable (as for example, in the case of corporations), the business also shall submit a certified copy of its corporate charter or other organizational document that verifies that the business was properly formed in accordance with State law.

(b) *Resident-owned business.* The business shall submit a certification that it is a resident-owned business as defined by this part. The business shall disclose to the PHA all owners of the business, and each owner's percentage of ownership interest in the business. The business also shall disclose all individuals who possess the power to make the day-to-day, as well as major, decisions on matters of management, policy, and operations (management officials). The business shall identify all owners and management officials who are not public housing residents, and shall disclose any relationship that these owners and officials may have to a business (resident- or non-resident-owned) engaged in the type of business activity with which the resident-owned business is engaged. For purposes of this part, ''relationship'' means employment by, or having an ownership interest in, a business. The business also shall submit such evidence as the PHA may require to verify that the owner or owners identified as public housing residents reside within public housing of the PHA.

(c) *Responsibility to complete contract.* The business shall submit evidence sufficient to demonstrate to the satisfaction of the PHA that the business has the ability to perform successfully under the terms and conditions of the proposed contract. Consideration will be given to various factors, including but not limited to those identified in 24 CFR 85.36(b)(8) and also to such matters as proof of completion of courses in business administration or financial management, and proof of job training or apprenticeship in the particular trade, business, profession, or occupation.

(d) *Limitation on alternative procurement contract awards.* The business shall submit a certification as to the number of contracts awarded, and the dollar amount of each contract award received, under the alternative procurement process provided by this part. A resident-owned business is not eligible to participate in the alternative procurement process provided by this part if the resident-owned business has received under this process one or more contracts with a total combined dollar value of $1,000,000.

[57 FR 20189, May 11, 1992, as amended at 59 FR 33895, June 30, 1994]

§ 963.12 Alternative procurement process.

(a) *Method of procurement.* In contracting with resident-owned businesses, the PHA shall follow the applicable method of procurement as set forth in 24 CFR 85.36(d), with solicitation limited to resident-owned businesses. Additionally, the PHA shall ensure that the method of procurement conforms to the procurement standards set forth in 24 CFR 85.36(b).

(b) *Contract awards.* Contracts awarded under this part shall be made only to resident-owned businesses that meet the requirements of § 963.10, and that comply with such other requirements as may be required of a contractor under the particular procurement and the Department's regulations. An award shall not be made to the resident-owned business if the contract award exceeds the independent cost estimate required by 24 CFR 85.36(f), and the price normally paid for comparable supplies, services, or construction in the project area.

(c) *Contract requirements.* Any contract entered into between a PHA and a resident-owned business under this part shall comply with: the contract provisions of 24 CFR 85.36(i); the provisions of 24 CFR 85.36(h), 24 CFR 968.240(d) or 24 CFR 968.335(c)(1) governing bonding requirements, where applicable; and such other contract terms that may be applicable to the particular procurement under the Department's regulations. In addition to the recordkeeping requirements imposed by 24 CFR 85.36(i), the PHA also shall maintain records sufficient to detail the significant history of the procurement made under this part. These records will include, but are not necessarily limited to the following: The independent cost estimate and comparable price analysis as required by paragraph (b) of this section; the basis for contractor selection, including documentation concerning the eligibility of the selected resident-owned business under § 963.10; and the basis for determining the reasonableness of the proposed contract price.

PART 964—TENANT PARTICIPATION AND TENANT OPPORTUNITIES IN PUBLIC HOUSING

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AUTHORITY: 42 U.S.C. 1437d, 1437g, 1437r, 3535(d).

SOURCE: 59 FR 43636, Aug. 24, 1994, unless otherwise noted.

Subpart A—General Provisions

§964.1 Purpose.

The purpose of this part is to recognize the importance of resident involvement in creating a positive living environment and in actively participating in the overall mission of public housing.

§964.3 Applicability and scope.

(a) The policies and procedures contained in this part apply to any PHA that has a Public Housing Annual Contributions Contract (ACC) with HUD. This part, except for subpart E, does not apply to PHAs with housing assistance payments contracts with HUD under section 8 of the U.S. Housing Act of 1937.

(b) Subpart B of this part contains HUD policies, procedures, and requirements for the participation of residents in public housing operations. These policies, procedures, and requirements apply to all residents participating under this part.

(c)(1) Subpart C of this part contains HUD policies, procedures, and requirements for residents participating in the Tenant Opportunities Program (TOP) (replaces the Resident Management Program under Section 20 of the United States Housing Act of 1937). Resident management in public housing is viable and remains an option under TOP.

(2) Subpart C of this part is not intended to negate any pre-existing arrangements for resident management in public housing between a PHA and a resident management corporation. On or after September 23, 1994, any new, renewed or renegotiated contracts must meet the requirements of this part, the ACC and all applicable laws and regulations.

(d) Subpart D of this part includes requirements for the Family Investment Centers (FIC) Program which was established by Section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t) to provide families living in public housing and Indian housing with better access to educational and employment opportunities.

(e) Subpart E of this part implements section 2(b) of the United States Housing Act of 1937 (42 U.S.C. 1437), which provides for resident membership on the board of directors or similar governing body of a PHA. Subpart E applies to any public housing agency that has a public housing annual contributions contract with HUD or administers tenant-based rental under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(f) The term ''resident,'' as used throughout this part, is interchangeable with the term ''tenant,'' to reflect the fact that local resident organizations have differing preferences for the terms. Terms such as ''resident council'' and ''tenant council'' and ''resident management'' and ''tenant management'' are interchangeable. Hereafter, for ease of discussion, the rule will use the terms resident, resident council and resident management corporation, as appropriate.

[57 9R 43636, Aug. 24, 1994, as amended at 64 FR 56879, Oct. 21, 1999]

§964.7 Definitions.

Annual Contributions Contract (ACC). A contract (in the form prescribed by HUD) under which HUD agrees to provide financial assistance, and the HA agrees to comply with HUD requirements for the development and operation of the public housing project.

Eligible residents for FIC. A participating resident of a participating HA. If the HA is combining FIC with the Family Self-Sufficiency (FSS) program, the term also means Public Housing FSS and Section 8 families participating in the FSS program. Although Section 8 FSS families are eligible residents for FIC, they do not qualify for income exclusions that are

provided for public housing residents participating in employment and supportive service programs.

Family Investment Centers (FIC). A facility on or near public housing which provides families living in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence.

FIC service coordinator. Any person who is responsible for:

(1) Determining the eligibility and assessing needs of families to be served by the FIC;

(2) Assessing training and service needs of eligible residents;

(3) Working with service providers to coordinate the provision of services on a HA-wide or less than HA-wide basis, and to tailor the services to the needs and characteristics of eligible residents;

(4) Mobilizing public and private resources to ensure that the supportive services identified can be funded over the five-year period, at least, following the initial receipt of funding.

(5) Monitoring and evaluating the delivery, impact, and effectiveness of any supportive service funded with capital or operating assistance under the FIC program;

(6) Coordinating the development and implementation of the FIC program with other self-sufficiency programs, and other education and employment programs; and

(7) Performing other duties and functions that are appropriate for providing eligible residents with better access to educational and employment opportunities.

HA means the same as *Public Housing Agency (PHA).*

Management. All activities for which the HA is responsible to HUD under the ACC, within the definition of ''operation'' under the Act and the ACC, including the development of resident programs and services.

Management contract. A written agreement between a resident management corporation and a HA, as provided by subpart C.

Public Housing Agency (PHA) is defined in 24 CFR part 5.

Public housing development (Development). The term ''development'' has the same meaning as that provided for ''low-income housing project'' as that term is defined Section 3(b)(1) of the Act.

Resident management. The performance of one or more management activities for one or more projects by a resident management corporation under a management contract with the HA.

Resident management corporation. An entity that proposes to enter into, or enters into, a contract to manage one or more management activities of a HA.

Resident-owned business. Any business concern which is owned and controlled by public housing residents. (The term ''resident-owned business'' includes sole proprietorships.) For purposes of this part, ''owned and controlled'' means a business:

(1) Which is at least 51 percent owned by one or more public housing residents; and

(2) Whose management and daily business operations are controlled by one or more such individuals.

Supportive services for FIC. New or significantly expanded services that are essential to providing families living with children in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence.

Tenant Opportunities Program (TOP). The TOP program is designed to prepare residents to experience the dignity of meaningful work, to own and operate resident businesses, to move toward financial independence, and to enable them to choose where they want to live and engage in meaningful participation in the management of housing developments in which they live. Financial assistance in the form of technical assistance grants is available to RCs/RMCs to prepare to manage activities in their public housing developments.

Vacant unit under FIC. A dwelling unit that is not under an effective lease to an eligible family. An effective lease is a lease under which an eligible family has a right to possession of the unit and is being charged rent, even if the amount of any utility allowance equals or exceeds the amount of a total resident payment that is based on income

and, as a result, the amount paid by the family to the HA is zero.

[59 FR 43636, Aug. 24, 1994, as amended at 61 FR 5215, Feb. 9, 1996]

§ 964.11 HUD policy on tenant participation.

HUD promotes resident participation and the active involvement of residents in all aspects of a HA's overall mission and operation. Residents have a right to organize and elect a resident council to represent their interests. As long as proper procedures are followed, the HA shall recognize the duly elected resident council to participate fully through a working relationship with the HA. HUD encourages HAs and residents to work together to determine the most appropriate ways to foster constructive relationships, particularly through duly-elected resident councils.

§ 964.12 HUD policy on the Tenant Opportunities Program (TOP).

HUD promotes TOP programs to support activities that enable residents to improve the quality of life and resident satisfaction, and obtain other social and economic benefits for residents and their families. Tenant opportunity programs are proven to be effective in facilitating economic uplift, as well as in improving the overall conditions of the public housing communities.

§ 964.14 HUD policy on partnerships.

HUD promotes partnerships between residents and HAs which are an essential component to building, strengthening and improving public housing. Strong partnerships are critical for creating positive changes in lifestyles thus improving the quality of life for public housing residents, and the surrounding community.

§ 964.15 HUD policy on resident management.

It is HUD's policy to encourage resident management. HUD encourages HAs, resident councils and resident management corporations to explore the various functions involved in management to identify appropriate opportunities for contracting with a resident management corporation. Potential benefits of resident-managed entities include improved quality of life, experiencing the dignity of meaningful work, enabling residents to choose where they want to live, and meaningful participation in the management of the housing development.

§ 964.16 HUD role in activities under this part.

(a) *General.* Subject to the requirements of this part and other requirements imposed on HAs by the ACC, statute or regulation, the form and extent of resident participation including resident management are local decisions to be made jointly by resident councils/resident management corporations and their HAs. HUD will promote tenant participation and tenant opportunities programs, and will provide additional guidance, as necessary and appropriate. In addition, HUD will endeavor to provide technical assistance in connection with these initiatives.

(b) *Monitoring.* HUD shall ensure that the requirements under this part are operating efficiently and effectively.

§ 964.18 HA role in activities under subparts B & C.

(a) *HAs with 250 units or more.* (1) A HA shall officially recognize a duly elected resident council as the sole representative of the residents it purports to represent, and support its tenant participation activities.

(2) When requested by residents, a HA shall provide appropriate guidance to residents to assist them in establishing and maintaining a resident council.

(3) A HA may consult with residents, or resident councils (if they exist), to determine the extent to which residents desire to participate in activities involving their community, including the management of specific functions of a public housing development that may be mutually agreeable to the HA and the resident council/resident management corporation.

(4) A HA shall provide the residents or any resident council with current information concerning the HA's policies on tenant participation in management.

(5) If requested, a HA should provide a duly recognized resident council office space and meeting facilities, free of charge, preferably within the development it represents. If there is no

community or rental space available, a request to approve a vacant unit for this non-dwelling use will be considered on a case-by-case basis.

(6) If requested, a HA shall negotiate with the duly elected resident council on all uses of community space for meetings, recreation and social services and other resident participation activities pursuant to HUD guidelines. Such agreements shall be put into a written document to be signed by the HA and the resident council. If a HA fails to negotiate with a resident council in good faith or, after negotiations, refuses to permit such usage of community space, the resident council may file an informal appeal with HUD, setting out the circumstances and providing copies of relevant materials evidencing the resident council's efforts to negotiate a written agreement. HUD shall require the HA to respond with a report stating the HA's reasons for rejecting the request or for refusing to negotiate. HUD shall require the parties (with or without direct HUD participation) to undertake or to resume negotiations on an agreement. If no resolution is achieved within 90 days from the date HUD required the parties to undertake or resume such negotiations, HUD shall serve notice on both parties that administrative remedies have been exhausted (except that, pursuant to mutual agreement of the parties, the time for negotiations may be extended by no more than an additional 30 days).

(7) In no event shall HUD or a HA recognize a competing resident council once a duly elected resident council has been established. Any funding of resident activities and resident input into decisions concerning public housing operations shall be made only through the officially recognized resident council.

(8) The HA shall ensure open communication and frequent meetings between HA management and resident councils and shall encourage the formation of joint HA management-resident committees to work on issues and planning.

(9) The resident council shall hold frequent meetings with the residents to ensure that residents have input, and are aware and actively involved in HA management-resident council decisions and activities.

(10) The HA and resident council shall put in writing in the form of a Memorandum of Understanding the elements of their partnership agreement and it shall be updated at least once every three (3) years.

(11) The HA, in collaboration with the resident councils, shall assume the lead role for assuring maximum opportunities for skills training for public housing residents. To the extent possible, the training resources should be local to ensure maximum benefit and on-going access.

(b) *HAs with fewer than 250 units.* (1) HAs with fewer than 250 units of public housing have the option of participating in programs under this part.

(2) HAs shall not deny residents the opportunity to organize. If the residents decide to organize and form a resident council, the HA shall comply with the following:

(i) A HA shall officially recognize a duly elected resident council as the sole representative of the residents it purports to represent, and support its tenant participation activities.

(ii) When requested by residents, a HA shall provide appropriate guidance to residents to assist them in establishing and maintaining a resident council.

(iii) A HA shall provide the residents or any resident council with current information concerning the HA's policies on tenant participation in management.

(iv) In no event shall HUD or a HA officially recognize a competing resident council once a duly elected resident council has been established. If a duly elected resident council has been formed, any input into changes concerning public housing operations shall be made only through the officially recognized resident council.

§ 964.24 HUD policy on FIC Program.

HUD promotes Family Investment Centers which provide better access to educational and employment opportunities for residents living in public housing. HUD encourages resident involvement in the FIC Program and promotes resident-HA partnerships to achieve mutual goals.

§ 964.30 Other Program requirements.

In addition to the requirements set forth in 24 CFR part 5, the following Federal requirements apply to this program:

(a) *Affirmative Outreach.* (1) The Affirmative Fair Housing Marketing Program requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and

(2) The fair housing advertising and poster guidelines at 24 CFR parts 109 and 110.

(b) Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131) and implementing regulations at 28 CFR part 35.

[61 FR 5216, Feb. 9, 1996]

Subpart B—Tenant Participation

§ 964.100 Role of resident council.

The role of a resident council is to improve the quality of life and resident satisfaction and participate in self-help initiatives to enable residents to create a positive living environment for families living in public housing. Resident councils may actively participate through a working partnership with the HA to advise and assist in all aspects of public housing operations.

§ 964.105 Role of the jurisdiction-wide resident council.

(a) *Jurisdiction-wide resident council.* Resident councils may come together to form an organization which can represent the interest of residents residing in units under a HA's jurisdiction. This can be accomplished by the presidents of duly elected resident councils forming an organization, by resident councils electing a representative to the organization, or through jurisdiction-wide elections. If duly elected resident councils form such an organization, the HA shall recognize it as the voice of authority-wide residents for input into housing authority policy making.

(b) *Function.* The jurisdiction-wide council may advise the Board of Commissioners and executive director in all areas of HA operations, including but not limited to occupancy, general management, maintenance, security, resident training, resident employment, social services and modernization priorities.

(c) *Cooperation with other groups.* There shall be regularly scheduled meetings between the HA and the local duly elected resident council, and the jurisdiction-wide resident council to discuss problems, plan activities and review progress.

§ 964.115 Resident council requirements.

A resident council shall consist of persons residing in public housing and must meet each of the following requirements in order to receive official recognition from the HA/HUD, and be eligible to receive funds for resident council activities, and stipends for officers for their related costs for volunteer work in public housing:

(a) It may represent residents residing:

(1) In scattered site buildings;

(2) In areas of contiguous row houses; or

(3) In one or more contiguous buildings;

(4) In a development; or

(5) In a combination of these buildings or developments;

(b) It must adopt written procedures such as by-laws, or a constitution which provides for the election of residents to the governing board by the voting membership of the residents residing in public housing, described in paragraph (b) of this section, on a regular basis but at least once every three (3) years. The written procedures must provide for the recall of the resident board by the voting membership. These provisions shall allow for a petition or other expression of the voting membership's desire for a recall election, and set the number of percentage of voting membership (''threshold'') who must be in agreement in order to hold a recall election. This threshold shall not be less than 10 percent of the voting membership.

(c) It must have a democratically elected governing board that is elected by the voting membership. At a minimum, the governing board should consist of five (5) elected board members.

The voting membership must consist of heads of households (any age) and other residents at least 18 years of age

or older and whose name appears on a lease for the unit in the public housing that the resident council represents.

§ 964.117 Resident council partnerships.

A resident council may form partnerships with outside organizations, provided that such relationships are complementary to the resident council in its duty to represent the residents, and provided that such outside organizations do not become the governing entity of the resident council.

§ 964.120 Resident management corporation requirements.

A resident management corporation must consist of residents residing in public housing and have each of the following characteristics in order to receive official recognition by the HA and HUD:

(a) It shall be a non-profit organization that is validly incorporated under the laws of the State in which it is located;

(b) It may be established by more than one resident council, so long as each such council:

(1) Approves the establishment of the corporation; and

(2) Has representation on the Board of Directors of the corporation;

(c) It shall have an elected Board of Directors, and elections must be held at least once every three (3) years;

(d) Its by-laws shall require the Board of Directors to include resident representatives of each resident council involved in establishing the corporation; include qualifications to run for office, frequency of elections, procedures for recall, and term limits if desired.

(e) Its voting members shall be heads of households (any age) and other residents at least 18 years of age and whose name appears on the lease of a unit in the public housing represented by the resident management corporation;

(f) Where a resident council already exists for the development, or a portion of the development, the resident management corporation shall be approved by the resident council board and a majority of the residents. If there is no resident council, a majority of the residents of the public housing development it will represent must approve the establishment of such a corporation for the purposes of managing the project; and

(g) It may serve as both the resident management corporation and the resident council, so long as the corporation meets the requirements of this part for a resident council.

§ 964.125 Eligibility for resident council membership.

(a) Any member of a public housing household whose name is on the lease of a unit in the public housing development and meets the requirements of the by-laws is eligible to be a member of a resident council. The resident council may establish additional criteria that are non-discriminatory and do not infringe on rights of other residents in the development. Such criteria must be stated in the by-laws or constitution as appropriate.

(b) The right to vote for resident council board shall be limited to designated heads of households (any age) and other members of the household who are 18 years or older whose name appears on the lease of a unit in the public housing development represented by the resident council.

(c) Any qualified voting member of a resident council who meets the requirements described in the by-laws and is in compliance with the lease may seek office and serve on the resident council governing board.

§ 964.130 Election procedures and standards.

At a minimum, a resident council may use local election boards/commissions. The resident council shall use an independent third-party to oversee elections and recall procedures.

(a) Resident councils shall adhere to the following minimum standards regarding election procedures:

(1) All procedures must assure fair and frequent elections of resident council members—at least once every three years for each member.

(2) Staggered terms for resident council governing board members and term limits shall be discretionary with the resident council.

(3) Each resident council shall adopt and issue election and recall procedures in their by-laws.

(4) The election procedures shall include qualifications to run for office, frequency of elections, procedures for recall, and term limits if desired.

(5) All voting members of the resident community must be given sufficient notice (at least 30 days) for nomination and election. The notice should include a description of election procedures, eligibility requirements, and dates of nominations and elections.

(b) If a resident council fails to satisfy HUD minimum standards for fair and frequent elections, or fails to follow its own election procedures as adopted, HUD shall require the HA to withdraw recognition of the resident council and to withhold resident services funds as well as funds provided in conjunction with services rendered for resident participation in public housing.

(c) HAs shall monitor the resident council election process and shall establish a procedure to appeal any adverse decision relating to failure to satisfy HUD minimum standards. Such appeal shall be submitted to a jointly selected third-party arbitrator at the local level. If costs are incurred by using a third-party arbitrator, then such costs should be paid from the HAs resident services funds pursuant to § 964.150.

§ 964.135 Resident involvement in HA management operations.

Residents shall be involved and participate in the overall policy development and direction of Public Housing operations.

(a) Resident management corporations (RMCs) may contract with HAs to perform one or more management functions provided the resident entity has received sufficient training and/or has staff with the necessary expertise to perform the management functions and provided the RMC meets bonding and licensing requirements.

(b) Residents shall be actively involved in a HA's decision-making process and give advice on matters such as modernization, security, maintenance, resident screening and selection, and recreation.

(c) While a HA has responsibility for management operations, it shall ensure strong resident participation in all issues and facets of its operations through the duly elected resident councils at public housing developments, and with jurisdiction-wide resident councils.

(d) A HA shall work in partnership with the duly elected resident councils.

(e) HAs, upon request from the duly elected resident council, shall ensure that the duly elected resident council officers as defined in subpart B of this part, and other residents in the development are fully trained and involved in developing and implementing Federal programs including but not limited to Comprehensive Improvement Assistance Program (CIAP), Comprehensive Grant Program, Urban Revitalization Demonstration, Drug Elimination, and FIC.

(f) HAs shall involve resident council officers and other interested residents at the development through education and direct participation in all phases of the budgetary process.

(g) Resident council officers shall be encouraged to become involved in the resident screening and selection process for prospective residents at the development. Those selected to perform resident screening and selection functions must be trained by the HA in resident screening and selection and must sign a legal document committing to confidentiality.

§ 964.140 Resident training.

(a) *Resident training opportunities.* HUD encourages a partnership between the residents, the HA and HUD, as well as with the public and non-profit sectors to provide training opportunities for public housing residents. The categories in which training could occur include, but are not limited to:

(1) Community organization and leadership training;

(2) Organizational development training for Resident Management Corporations and duly elected Resident Councils;

(3) Public housing policies, programs, rights and responsibilities training; and

(4) Business entrepreneurial training, planning and job skills.

(b) *Local training resources.* HUD encourages the use of local training resources to ensure the ongoing accessibility and availability of persons to provide training and technical assistance. Possible training resources may include:

(1) Resident organizations;

(2) Housing authorities;

(3) Local community colleges, vocational schools; and

(4) HUD and other Federal agencies and other local public, private and nonprofit organizations.

§ 964.145 Conflict of interest.

Resident council officers can not serve as contractors or employees if they are in policy making or supervisory positions at the HA.

§ 964.150 Funding tenant participation.

(a) *Funding duly elected resident councils and jurisdiction wide resident councils.* (1) The HA shall provide funds it receives for this purpose to the duly elected resident council at each development and/or those jurisdiction-wide councils eligible to receive the resident portion of the tenant services account to use for resident participation activities. This shall be an addition to the Performance Funding System (PFS), as provided by 24 CFR part 990, to permit HAs to fund $25 per unit per year for units represented by duly elected resident councils for resident services, subject to the availability of appropriations. Of this amount, $15 per unit per year would be provided to fund tenant participation activities under subpart B of this part for duly elected resident councils and/or jurisdiction-wide councils and $10 per unit per year would be used by the HA to pay for costs incurred in carrying out tenant participation activities under subpart B of this part, including the expenses for conducting elections, recalls or arbitration required under § 964.130 in subpart B. This will guarantee the resources necessary to create a bona fide partnership among the duly elected resident councils, the HA and HUD. Where both local and jurisdiction-wide councils exist, the distribution will be agreed upon by the HA and the respective councils.

(2) If funds are available through appropriations, the HA must provide tenant services funding to the duly elected resident councils regardless of the HA's financial status. The resident council funds shall not be impacted or restricted by the HA financial status and all said funds must be used for the purpose set forth in subparts B and C of this part.

(3) The HA and the duly elected resident council at each development and/or those jurisdiction-wide councils shall collaborate on how the funds will be distributed for tenant participation activities. If disputes regarding funding decisions arise between the parties, the matter shall be referred to the Field Office for intervention. HUD Field Office shall require the parties to undertake further negotiations to resolve the dispute. If no resolution is achieved within 90 days from the date of the Field Office intervention, the Field Office shall refer the matter to HUD Headquarters for final resolution.

(b) *Stipends.* (1) HUD encourages HAs to provide stipends to resident council officers who serve as volunteers in their public housing developments. The amount of the stipend, up to $200 per month/per officer, shall be decided locally by the resident council and the HA. Subject to appropriations, the stipends will be funded from the resident council's portion of the operating subsidy funding for resident council expenses ($15.00 per unit per year).

(2) Pursuant to § 913.106, stipends are not to be construed as salaries and should not be included as income for calculation of rents, and are not subject to conflict of interest requirements.

(3) Funding provided by a HA to a duly elected resident council may be made only under a written agreement between the HA and a resident council, which includes a resident council budget and assurance that all resident council expenditures will not contravene provisions of law and will promote serviceability, efficiency, economy and stability in the operation of the local development. The agreement must require the local resident council to account to the HA for the use of the funds and permit the HA to inspect and

audit the resident council's financial records related to the agreement.

Subpart C—Tenant Opportunities Program

§ 964.200 General.

(a) The Tenant Opportunities Program (TOP) provides technical assistance for various activities, including but not limited to resident management, for resident councils/resident management corporations as authorized by Section 20 of the U.S. Housing Act of 1937. The TOP provides opportunities for resident organizations to improve living conditions and resident satisfaction in public housing communities.

(b) This subpart establishes the policies, procedures and requirements for participating in the TOP with respect to applications for funding for programs identified in this subpart.

(c) This subpart contains the policies, procedures and requirements for the resident management program as authorized by section 20 of the U.S. Housing Act of 1937.

§ 964.205 Eligibility.

(a) *Resident councils/resident management corporations.* Any eligible resident council/resident management corporation as defined in subpart B of this part is eligible to participate in a program administered under this subpart.

(b) *Activities.* Activities to be funded and carried out by an eligible resident council or resident management corporation, as defined in subpart B of this part, must improve the living conditions and public housing operations and may include any combination of, but are not limited to, the following:

(1) *Resident capacity building.* (i) Training Board members in community organizing, Board development, and leadership training;

(ii) Determining the feasibility of resident management enablement for a specific project or projects; and

(iii) Assisting in the actual creation of an RMC, such as consulting and legal assistance to incorporate, preparing by-laws and drafting a corporate charter.

(2) *Resident management.* (i) Training residents, as potential employees of an RMC, in skills directly related to the operation, management, maintenance and financial systems of a project;

(ii) Training of residents with respect to fair housing requirements; and

(iii) Gaining assistance in negotiating management contracts, and designing a long-range planning system.

(3) *Resident management business development.* (i) Training related to resident-owned business development and technical assistance for job training and placement in RMC developments;

(ii) Technical assistance and training in resident managed business development through:

(A) Feasibility and market studies;

(B) Development of business plans;

(C) Outreach activities; and

(D) Innovative financing methods including revolving loan funds; and

(iii) Legal advice in establishing a resident managed business entity.

(4) *Social support needs (such as self-sufficiency and youth initiatives).* (i) Feasibility studies to determine training and social services needs;

(ii) Training in management-related trade skills, computer skills, etc;

(iii) Management-related employment training and counseling;

(iv) Coordination of support services;

(v) Training for programs such as child care, early childhood development, parent involvement, volunteer services, parenting skills, before and after school programs;

(vi) Training programs on health, nutrition and safety;

(vii) Workshops for youth services, child abuse and neglect prevention, tutorial services, in partnership with community-based organizations such as local Boys and Girls Clubs, YMCA/YWCA, Boy/Girl Scouts, Campfire and Big Brother/Big Sisters, etc. Other HUD programs such as the Youth Sports Program and the Public Housing Drug Elimination Programs also provide funding in these areas;

(viii) Training in the development of strategies to successfully implement a youth program. For example, assessing the needs and problems of the youth, improving youth initiatives that are currently active, and training youth, housing authority staff, resident management corporations and resident

councils on youth initiatives and program activities; and

(5) *Homeownership Opportunity*. Determining feasibility for homeownership by residents, including assessing the feasibility of other housing (including HUD owned or held single or multifamily) affordable for purchase by residents.

(6) *General*. (i) Required training on HUD regulations and policies governing the operation of low-income public housing including contracting/procurement regulations, financial management, capacity building to develop the necessary skills to assume management responsibilities at the project and property management;

(ii) Purchasing hardware, i.e., computers and software, office furnishings and supplies, in connection with business development. Every effort must be made to acquire donated or discounted hardware;

(iii) Training in accessing other funding sources; and

(iv) Hiring trainers or other experts (RCs/RMCs must ensure that this training is provided by a qualified housing management specialist, a community organizer, the HA, or other sources knowledgeable about the program).

§ 964.210 Notice of funding availability.

A Notice of Funding Availability shall be published periodically in the FEDERAL REGISTER containing the amounts of funds available, funding criteria, where to obtain and submit applications, and the deadline for submissions.

§ 964.215 Grant agreement.

(a) *General*. HUD shall enter into a grant agreement with the recipient of a technical assistance grant which defines the legal framework for the relationship between HUD and a resident council or resident management corporation for the proposed funding.

(b) *Term of grant agreement*. A grant shall be for a term of three to five years (3–5 years), and renewable at the expiration of the term.

§ 964.220 Technical assistance.

(a) *Financial assistance*. HUD will provide financial assistance, to the extent available, to resident councils or resident management corporations for technical assistance and training to further the activities under this subpart.

(b) *Requirements for a management specialist*. If a resident council or resident management corporation seeks to manage a development, it must select, in consultation with the HA, a qualified housing management specialist to assist in determining the feasibility of, and to help establish, a resident management corporation and to provide training and other duties in connection with the daily operations of the project.

§ 964.225 Resident management requirements.

The following requirements apply when a HA and its residents are interested in providing for resident performance of several management functions in one or more projects.

(a) *Resident management corporation responsibilities*. Resident councils interested in contracting with a HA must establish a resident management corporation that meets the requirements for such a corporation, as specified in subpart B. The RMC and its employees must demonstrate their ability and skill to perform in the particular areas of management pursuant to the management contract.

(b) *HA responsibilities*. HAs shall give full and serious consideration to resident management corporations seeking to enter into a management contract with the HA. A HA shall enter into good-faith negotiations with a corporation seeking to contract to provide management services.

(c) *Duty to bargain in good faith*. If a HA refuses to negotiate with a resident management corporation in good faith or, after negotiations, refuses to enter into a contract, the corporation may file an informal appeal with HUD, setting out the circumstances and providing copies of relevant materials evidencing the corporation's efforts to negotiate a contract. HUD shall require the HA to respond with a report stating

the HA's reasons for rejecting the corporation's contract offer or for refusing to negotiate. Thereafter, HUD shall require the parties (with or without direct HUD participation) to undertake or to resume negotiations on a contract providing for resident management, and shall take such other actions as are necessary to resolve the conflicts between the parties. If no resolution is achieved within 90 days from the date HUD required the parties to undertake or resume such negotiations, HUD shall serve notice on both parties that administrative remedies have been exhausted (except that, pursuant to mutual agreement of the parties, the time for negotiations may be extended by no more than an additional 30 days).

(d) *Management contract.* A management contract between the HA and a resident management corporation is required for property management. The HA and the resident management corporation may agree to the performance by the corporation of any or all management functions for which the HA is responsible to HUD under the ACC and any other functions not inconsistent with the ACC and applicable state and local laws, regulations and licensing requirements.

(e) *Procurement requirements.* The management contract shall be treated as a contracting out of services, and must be subject to any provision of a collective bargaining agreement regarding the contracting out of services to which the HA is subject. Provisions on competitive bidding and requirements of prior written HUD approval of contracts contained in the ACC do not apply to the decision of a HA to contract with a RMC.

(f) *Rights of families; operation of project.* If a resident management corporation is approved by the tenant organization representing one or more buildings or an area of row houses that are part of a public housing project for purposes of part 941 of this chapter, the resident management program may not, as determined by the HA, interfere with the rights of other residents of such project or harm the efficient operation of such project.

(g) *Comprehensive improvement assistance with RMCs.* (1) The HA may enter into a contract with the RMC to provide comprehensive improvement assistance under part 968 of this chapter to modernize a project managed by the RMC.

(2) The HA shall not retain, for any administrative or other reason, any portion of the comprehensive improvement assistance provided, unless the PHA and the RMC provide otherwise by contract.

(3) In assessing the modernization needs of its projects under 24 CFR part 968, or other grant mechanisms established by the Housing and Community Development Act of 1987, the HAs must consult with the tenant management corporation regarding any project managed by the corporation, in order to determine the modernization needs and preferences of resident-managed projects. Evidence of this required consultation must be included with a HA's initial submission to HUD.

(h) *Direct provision of operating and capital assistance to RMC*—(1) *Direct provision of assistance to RMC.* The ACC shall provide for the direct provision of operating and capital assistance by HUD to an RMC if:

(i) The RMC petitions HUD for the release of funds;

(ii) The contract provides for the RMC to assume the primary management responsibilities of the PHA;

(iii) The RMC has been designated as at least a ''standard performer'' under the Public Housing Assessment System (PHAS) (see 24 CFR part 902); and

(iv) The RMC is not in violation of any financial, accounting, procurement, civil rights, fair housing or other program requirements that HUD determines call into question the capability of the RMC to effectively discharge its responsibilities under the contract.

(2) *Use of assistance.* Any direct capital or operating assistance provided to the RMC must be used for purposes of performing eligible activities with respect to public housing as may be provided under the contract.

(3) *Responsibilities of PHA.* If HUD provides direct funding to a RMC under paragraph (h)(1) of this section, the PHA is not responsible for the actions of the RMC.

(i) *Prohibited activities.* A HA may not contract for assumption by the resident management corporation of the HA's underlying responsibilities to HUD under the ACC.

(j) *Bonding, insurance, and licensing*—(1) *Bonding and insurance.* Before assuming any management responsibility under its contract, the RMC must provide fidelity bonding and insurance, or equivalent protection that is adequate (as determined by HUD and the PHA) to protect HUD and the PHA against loss, theft, embezzlement, or fraudulent acts on the part of the RMC or its employees.

(2) *Licensing and other local requirements.* An RMC must be in compliance with any local licensing, or other local requirement, governing the qualifications or operations of a property manager.

(k) *Waiver of HUD requirements.* Upon the joint request of a resident management corporation and the HA, HUD may waive any requirement that HUD has established and that is not required by law, if HUD determines, after consultation with the resident management corporation and the HA, that the requirement unnecessarily increases the costs to the project or restricts the income of the project; and that the waiver would be consistent with the management contract and any applicable collective bargaining agreement. Any waiver granted to a resident management corporation under this section will apply as well to the HA to the extent the waiver affects the HA's remaining responsibilities relating to the resident management corporation's project.

(l) *Monitoring of RMC performance.* The HA must review periodically (but not less than annually) the management corporation's performance to ensure that it complies with all applicable requirements and meets agreed-upon standards of performance. (The method of review and criteria used to judge performance should be specified in the management contract.)

[59 FR 43636, Aug. 24, 1994, as amended at 65 FR 42515, July 10, 2000]

§ 964.230 Audit and administrative requirements.

(a) *TOP grant recipients.* The HUD Inspector General, the Comptroller General of the United States, or any duly authorized representative shall have access to all records required to be retained by this subpart or by any agreement with HUD for the purpose of audit or other examinations.

(1) Grant recipients must comply with the requirements of OMB Circulars A–110 and A–122, as applicable.

(2) A final audit shall be required of the financial statements made pursuant to this subpart by a Certified Public Accountant (CPA), in accordance with generally accepted government audit standards. A written report of the audit must be forwarded to HUD within 60 days of issuance.

(b) *Resident management corporations.* Resident management corporations who have entered into a contract with a HA with respect to management of a development(s) must comply with the requirements of OMB Circulars A–110 and A–122, as applicable. Resident management corporations managing a development(s) must be audited annually by a licensed certified public accountant, designated by the corporation, in accordance with generally accepted government audit standards. A written report of each audit must be forwarded to HUD and the HA within 30 days of issuance. These requirements are in addition to any other Federal law or other requirement that would apply to the availability and audit of books and records of resident management corporations under this part.

Subpart D—Family Investment Centers (FIC) Program

§ 964.300 General.

The Family Investment Centers Program provides families living in public housing with better access to educational and employment opportunities by:

(a) Developing facilities in or near public housing for training and support services;

(b) Mobilizing public and private resources to expand and improve the delivery of such services;

(c) Providing funding for such essential training and support services that cannot otherwise be funded; and

(d) Improving the capacity of management to assess the training and service needs of families, coordinate the provision of training and services that meet such needs, and ensure the long-term provision of such training and services. FIC provides funding to HAs to access educational, housing, or other social service programs to assist public housing residents toward self-sufficiency.

§ 964.305 Eligibility.

(a) *Public Housing Authorities.* HAs may apply to establish one or more FICs for more than one public housing development.

(b) *FIC Activities.* Activities that may be funded and carried out by eligible HAs, as defined in § 964.305(a) and § 964.310(a) may include:

(1) The renovation, conversion, or combination of vacant dwelling units in a HA development to create common areas to accommodate the provision of supportive services;

(2) The renovation of existing common areas in a HA development to accommodate the provision of supportive services;

(3) The acquisition, construction or renovation of facilities located near the premises of one or more HA developments to accommodate the provision of supportive services;

(4) The provision of not more than 15 percent of the total cost of supportive services (which may be provided directly to eligible residents by the HA or by contract or lease through other appropriate agencies or providers), but only if the HA demonstrates that:

(i) The supportive services are appropriate to improve the access of eligible residents to employment and educational opportunities; and

(ii) The HA has made diligent efforts to use or obtain other available resources to fund or provide such services; and

(5) The employment of service coordinators.

(c) *Follow up.* A HA must demonstrate a firm commitment of assistance from one or more sources ensuring that supportive services will be provided for not less than one year following the completion of activities.

(d) *Environmental Review.* Any environmental impact regarding eligible activities will be addressed through an environmental review of that activity as required by 24 CFR part 50, including the applicable related laws and authorities under § 50.4, to be completed by HUD, to ensure that any environmental impact will be addressed before assistance is provided to the HA. Grantees will be expected to adhere to all assurances applicable to environmental concerns.

§ 964.308 Supportive services requirements.

HAs shall provide new or significantly expanded services essential to providing families in public housing with better access to educational and employment opportunities to achieve self-sufficiency and independence. HAs applying for funds to provide supportive services must demonstrate that the services will be provided at a higher level than currently provided. Supportive services may include:

(a) Child care, of a type that provides sufficient hours of operation and serves appropriate ages as needed to facilitate parental access to education and job opportunities;

(b) Employment training and counseling (e.g., job training, preparation and counseling, job development and placement, and follow-up assistance after job placement);

(c) Computer skills training;

(d) Education (e.g., remedial education, literacy training, completion of secondary or post-secondary education, and assistance in the attainment of certificates of high school equivalency);

(e) Business entrepreneurial training and counseling;

(f) Transportation, as necessary to enable any participating family member to receive available services or to commute to his or her place of employment;

(g) Personal welfare (e.g., substance/alcohol abuse treatment and counseling, self-development counseling, etc.);

(h) Supportive Health Care Services (e.g., outreach and referral services); and

(i) Any other services and resources, including case management, that are determined to be appropriate in assisting eligible residents.

§ 964.310 Audit/compliance requirements.

HAs cannot have serious unaddressed, outstanding Inspector General audit findings or fair housing and equal opportunity monitoring review findings or Field Office management review findings. In addition, the HA must be in compliance with civil rights laws and equal opportunity requirements. A HA will be considered to be in compliance if:

(a) As a result of formal administrative proceedings, there are no outstanding findings of noncompliance with civil rights laws unless the HA is operating in compliance with a HUD-approved compliance agreement designed to correct the area(s) of noncompliance;

(b) There is no adjudication of a civil rights violation in a civil action brought against it by a private individual, unless the HA demonstrates that it is operating in compliance with a court order, or implementing a HUD-approved resident selection and assignment plan or compliance agreement, designed to correct the area(s) of noncompliance;

(c) There is no deferral of Federal funding based upon civil rights violations;

(d) HUD has not deferred application processing by HUD under Title VI of the Civil Rights Act of 1964, the Attorney General's Guidelines (28 CFR 50.3) and HUD's Title VI regulations (24 CFR 1.8) and procedures (HUD Handbook 8040.1) [HAs only] or under Section 504 of the Rehabilitation Act of 1973 and HUD regulations (24 CFR 8.57) [HAs and IHAs];

(e) There is no pending civil rights suit brought against the HA by the Department of Justice; and

(f) There is no unresolved charge of discrimination against the HA issued by the Secretary under Section 810(g) of the Fair Housing Act, as implemented by 24 CFR 103.400.

§ 964.315 HAs role in activities under this part.

The HAs shall develop a process that assures that RC/RMC representatives and residents are fully briefed and have an opportunity to comment on the proposed content of the HA's application for funding. The HA shall give full and fair consideration to the comments and concerns of the residents. The process shall include:

(a) Informing residents of the selected developments regarding the preparation of the application, and providing for residents to assist in the development of the application.

(b) Once a draft application has been prepared, the HA shall make a copy available for reading in the management office; provide copies of the draft to any resident organization representing the residents of the development(s) involved; and provide adequate opportunity for comment by the residents of the development and their representative organizations prior to making the application final.

(c) After HUD approval of a grant, notify the duly elected resident organization and if none exists, notify the residents of the development of the approval of the grant; provide notification of the availability of the HUD-approved implementation schedule in the management office for reading; and develop a system to facilitate a regular resident role in all aspects of program implementation.

§ 964.320 HUD Policy on training, employment, contracting and subcontracting of public housing residents.

In accordance with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135, HAs, their contractors and subcontractors shall make best efforts, consistent with existing Federal, State, and local laws and regulations, to give low and very low-income persons the training and employment opportunities generated by Section 3 covered assistance (as this term is defined in 24 CFR 135.7) and to give Section 3 business concerns the contracting opportunities generated by Section 3 covered assistance. Training,

employment and contracting opportunities connected with programs funded under the FIC and TOP are covered by Section 3.

§ 964.325 Notice of funding availability.

A Notice of Funding Availability will be published periodically in the FEDERAL REGISTER containing the amounts of funds available, funding criteria, where to obtain and submit applications, the deadline for the submissions, and further explanation of the selection criteria.

§ 964.330 Grant set-aside assistance.

The Department may make available five percent (5%) of any amounts available in each fiscal year (subsequent to the first funding cycle) available to eligible HAs to supplement grants previously awarded under this program. These supplemental grants would be awarded if the HA demonstrates that the funds cannot otherwise be obtained and are needed to maintain adequate levels of services to residents.

§ 964.335 Grant agreement.

(a) *General.* HUD will enter into a grant agreement with the recipients of a Family Investment Centers grant which defines the legal framework for the relationship between HUD and a HA.

(b) *Term of grant agreement.* A grant will be for a term of three to five years depending upon the tasks undertaken, as defined under this subpart.

§ 964.340 Resident compensation.

Residents employed to provide services or renovation or conversion work funded under this program shall be paid at a rate not less than the highest of:

(a) The minimum wage that would be applicable to the employees under the Fair Labor Standards Act of 1938 (FLSA), if section 6(a)(1) of the FLSA applied to the resident and if the resident were not exempt under section 13 of the FLSA;

(b) The State or local minimum wage for the most nearly comparable covered employment; or

(c) The prevailing rate of pay for persons employed in similar public occupations by the same employer.

§ 964.345 Treatment of income.

Program participation shall begin on the first day the resident enters training or begins to receive services. Furthermore, the earnings of and benefits to any HA resident resulting from participation in the FIC program shall not be considered as income in computing the resident's total annual income that is used to determine the resident rental payment during:

(a) The period that the resident participates in the program; and

(b) The period that begins with the commencement of employment of the resident in the first job acquired by the resident after completion of the program that is not funded by assistance under the 1937 Act, and ends on the earlier of:

(1) The date the resident ceases to continue employment without good cause; or

(2) The expiration of the 18-month period beginning on the date of commencement of employment in the first job not funded by assistance under this program. (See § 913.106, Annual Income.) This provision does not apply to residents participating in the Family Self-Sufficiency Program who are utilizing the escrow account.

§ 964.350 Administrative requirements.

The HUD Inspector General, the Comptroller General of the United States, or any duly authorized representative shall have access to all records required to be retained by this subpart or by any agreements with HUD for the purpose of audit or other examinations.

(a) Each HA receiving a grant shall submit to HUD an annual progress report, participant evaluation and assessment data and other information, as needed, regarding the effectiveness of FIC in achieving self-sufficiency.

(b) The policies, guidelines, and requirements of OMB Circular Nos. A–110 and A–122 are applicable with respect to the acceptance and use of assistance by private nonprofit organizations.

Subpart E—Resident Board Members

SOURCE: 64 FR 56879, Oct. 21, 1999, unless otherwise noted.

§ 964.400 Purpose.

The purpose of this subpart is to implement section 2(b) of the United States Housing Act of 1937 (42 U.S.C. 1437).

§ 964.405 Applicability.

(a) *General.* Except as described in paragraph (b) of this section, this subpart applies to any public housing agency that has a public housing annual contributions contract with HUD or administers tenant-based rental assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(b) *Exceptions.* The requirements of this subpart do not apply to a public housing agency that is:

(1) Located in a State that requires the members of a governing board to be salaried and to serve on a full-time basis; or

(2) Not governed by a governing board.

§ 964.410 Additional definitions.

The following additional definitions apply to this subpart only:

Directly assisted. Directly assisted means a public housing resident or a recipient of housing assistance in the tenant-based section 8 program. Direct assistance does not include any State financed housing assistance or Section 8 project-based assistance.

Eligible resident. An eligible resident is a person:

(1) Who is directly assisted by a public housing agency;

(2) Whose name appears on the lease; and

(3) Is eighteen years of age or older.

Governing board. Governing board means the board of directors or similar governing body of a public housing agency.

Resident board member. A resident board member is a member of the governing board who is directly assisted by that public housing agency.

§ 964.415 Resident board members.

(a) *General.* Except as provided in §§ 964.405(b) and 964.425, the membership of the governing board of each public housing agency must contain not less than one eligible resident board member.

(b) *Resident board member no longer directly assisted.* (1) A resident board member who ceases to be directly assisted by the public housing agency is no longer an ''eligible resident'' as defined in § 964.410.

(2) Such a board member may be removed from the PHA board for that cause, where such action is permitted under State or local law.

(3) Alternatively, the board member may be allowed to complete his/her current term as a member of the governing board. However, the board member may not be re-appointed (or re-elected) to the governing board for purposes of serving as the statutorily required resident board member.

(c) *Minimum qualifications for board membership.* Any generally applicable qualifications for board membership also apply to residents, unless the application of the requirements would result in the governing board not containing at least one eligible resident as a member. Further, PHAs and localities may not establish eligibility requirements for board membership that are solely applicable to residents.

§ 964.420 Resident board member may be elected.

(a) *General.* Residents directly assisted by a public housing agency may elect a resident board member if provided for in the public housing agency plan, adopted in accordance with 24 CFR part 903.

(b) *Notice to residents.* The public housing agency must provide residents with at least 30 days advance notice for nominations and elections. The notice should include a description of the election procedures, eligibility requirements, and dates of nominations and elections. Any election procedures devised by the public housing agency must facilitate fair elections.

§ 964.425 Small public housing agencies.

(a) *General.* The requirements of this subpart do not apply to any public housing agency that:

(1) Has less than 300 public housing units (or has no public housing units):

(2) Has provided reasonable notice to the resident advisory board of the opportunity for residents to serve on the governing board;

(3) Has not been notified of the intention of any resident to participate on the governing board within a reasonable time (which shall not be less than 30 days) of the resident advisory board receiving the notice described in paragraph (a)(3) of this section; and

(4) Repeats the requirements of paragraphs (a)(2) and (a)(3) of this section at least once every year.

(b) *Public housing agencies that only administer Section 8 assistance.* A public housing agency that has no public housing units, but administers Section 8 tenant-based assistance, is eligible for the exception described in paragraph (a) of this section, regardless of the number of Section 8 vouchers it administers.

(c) *Failure to meet requirements for exception.* A public housing agency that is otherwise eligible for the exception described in paragraphs (a) and (b) of this section, but does not meet the three conditions described in paragraphs (a)(2) through (a)(4) of this section, must comply with the requirements of this subpart.

§ 964.430 Nondiscrimination.

(a) *Membership status.*—(1) *General.* A resident board member is a full member of the governing board.

(2) *Resident participation must include matters regarding Federal public housing and Section 8 tenant-based assistance.* A resident board member must be allowed to take part in decisions related to the administration, operation, and management of Federal public housing programs and Section 8 tenant-based rental assistance programs. This rule does not extend to matters that:

(i) Exclusively relate to other types of housing assistance (such as State financed housing assistance); or

(ii) Do not involve housing assistance (as may occur where the city or county governing body also serves as the PHA board).

(3) *Public housing agency may expand scope of resident participation.* A public housing agency may choose to expand the scope of resident member involvement to matters not required under paragraph (a)(2) of this section.

(b) *Residence status.* A governing board may not prohibit any person from serving on the governing board because that person is a resident of a public housing project or is assisted under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

(c) *Conflict of interest.* A governing board may not exclude any resident board member from participating in any matter before the governing board on the grounds that the resident board member's lease with the public housing agency, or the resident board member's status as a public housing resident or recipient of Section 8 tenant-based assistance, either results or may result in a conflict of interest, unless the matter is clearly applicable to the resident board member only in a personal capacity and applies uniquely to that member and not generally to residents or to a subcategory of residents.

PART 965—PHA-OWNED OR LEASED PROJECTS—GENERAL PROVISIONS

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965.805 Smoke detectors.

AUTHORITY: 42 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

SOURCE: 41 FR 20276, May 17, 1976, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

Subpart A—Preemption of State Prevailing Wage Requirements

§ 965.101 Preemption of State prevailing wage requirements.

(a) A prevailing wage rate including basic hourly rate and any fringe benefits) determined under State law shall be inapplicable to a contract or PHA-performed work item for the development, maintenance, and modernization of a project whenever:

(1) The contract or work item: (i) Is otherwise subject to State law requiring the payment of wage rates determined by a State or local government or agency to be prevailing and (ii) is assisted with funds for low-income public housing under the U.S. Housing Act of 1937, as amended; and

(2) The wage rate determined under State law to be prevailing with respect to an employee in any trade or position employed in the development, maintenance, and modernization of a project exceeds whichever of the following Federal wage rates is applicable:

(i) The wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade;

(ii) An applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency;

(iii) An applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(iv) The wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

(v) For the purpose of ascertaining whether a wage rate determined under State law for a trade or position exceeds the Federal wage rate: (A) Where a rate determined by the Secretary of Labor or an apprentice or trainee wage rate based thereon is applicable, the total wage rate determined under State law, including fringe benefits (if any) and basic hourly rate, shall be compared to the total wage rate determined by the Secretary of Labor or apprentice or trainee wage rate; and (B) where a rate determined by the Secretary of HUD is applicable, any fringe benefits determined under State law shall be excluded from the comparison with the rate determined by the Secretary of HUD.

(b) Whenever paragraph (a)(1) of this section is applicable:

(1) Any solicitation of bids or proposals issued by the PHA and any contract executed by the PHA for development, maintenance, and modernization of the project shall include a statement that any prevailing wage rate (including basic hourly rate and any fringe benefits) determined under State law to be prevailing with respect to an employee in any trade or position employed under the contract is inapplicable to the contract and shall not be enforced against the contractor or any subcontractor with respect to employees engaged under the contract whenever either of the following occurs:

(i) Such nonfederal prevailing wage rate exceeds: (A) The applicable wage rate determined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a *et seq.*) to be prevailing in the locality with respect to such trade; (B) an applicable apprentice wage rate based thereon specified in an apprenticeship program registered with the Department of Labor or a DOL-recognized State Apprenticeship Agency or (C) an applicable trainee wage rate based thereon specified in a DOL-certified trainee program; or

(ii) Such nonfederal prevailing wage rate, exclusive of any fringe benefits, exceeds the applicable wage rate determined by the Secretary of HUD to be prevailing in the locality with respect to such trade or position.

Failure to include this statement may constitute grounds for requiring resolicitation of the bid or proposal;

(2) The PHA itself shall not be required to pay the basic hourly rate or any fringe benefits comprising a prevailing wage rate determined under State law and described in paragraph (a)(2) of this section to any of its own employees who may be engaged in the work item for development, maintenance, and modernization of the project; and

(3) Neither the basic hourly rate nor any fringe benefits comprising a prevailing wage rate determined under State law and described in paragraph (a)(2) shall be enforced against the PHA or any of its contractors or subcontractors with respect to employees engaged in the contract or PHA-performed work item for development, maintenance, and modernization of the project.

(c) Nothing in this section shall affect the applicability of any wage rate established in a collective bargaining agreement with a PHA or its contractors or subcontractors where such wage rate equals or exceeds the applicable Federal wage rate referred to in paragraph (a)(2) of this section, nor does this section impose a ceiling on wage rates a PHA or its contractors or subcontractors may choose to pay independent of State law.

(d) The provisions of this section shall be applicable to work performed under any prime contract entered into as a result of a solicitation of bids or proposals issued on or after October 6, 1988 and to any work performed by employees of a PHA on or after October 6, 1988, but not to work or contracts administered by Indian Housing Authorities (for which, see part 905 of this chapter).

[53 FR 30217, Aug. 10, 1988, as amended at 57 FR 28358, June 24, 1992; 61 FR 8736, Mar. 5, 1996]

Subpart B—Required Insurance Coverage

SOURCE: 58 FR 51957, Oct. 5, 1993, unless otherwise noted.

§ 965.201 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart is to implement policies concerning insurance coverage required under the Annual Contributions Contract (ACC) between the U.S. Department of Housing and Urban Development (HUD) and a Public Housing Agency (PHA).

(b) *Applicability.* The provisions of this subpart apply to all housing owned by PHAs, including Turnkey III housing. However, these provisions do not apply to Section 23 and Section 10(c) PHA-leased projects or to Section 8 Housing Assistance Payments Program projects.

§ 965.205 Qualified PHA-owned insurance entity.

(a) *Contractual requirements for insurance coverage.* The Annual Contributions Contract (ACC) between PHAs and the U.S. Department of Housing and Urban Development requires that

PHAs maintain specified insurance coverage for property and casualty losses that would jeopardize the financial stability of the PHAs. The insurance coverage is required to be obtained under procedures that provide ''for open and competitive bidding.'' The HUD Appropriations Act for Fiscal Year 1992 provided that a PHA could purchase insurance coverage without regard to competitive selection procedures when it purchases it from a nonprofit insurance entity owned and controlled by PHAs approved by HUD in accordance with standards established by regulation. This section specifies the standards.

(b) *Method of selecting insurance coverage.* While 24 CFR part 85 requires that grantees solicit full and open competition for their procurements, the HUD Appropriations Act for Fiscal Year 1992 provides an exception to this requirement. PHAs are authorized to obtain any line of insurance from a nonprofit insurance entity that is owned and controlled by PHAs and approved by HUD in accordance with this section, without regard to competitive selection procedures. Procurement of insurance from other entities is subject to competitive selection procedures.

(c) *Approval of a nonprofit insurance entity.* Under the following conditions, HUD will approve a nonprofit self-funded insurance entity created by PHAs that limits participation to PHAs (and to nonprofit entities associated with PHAs that engage in activities or perform functions only for housing authorities or housing authority residents):

(1) *An insurance company (including a risk retention group).* (i) The insurance company is licensed or authorized to do business in the State by the State Insurance Commissioner and has submitted documentation of this approval to HUD; and

(ii) The insurance company has not been suspended from providing insurance coverage in the State or been suspended or debarred from doing business with the federal government. The insurance company is obligated to send to HUD a copy of any action taken by the authorizing official to withdraw the license or authorization.

(2) *An entity not organized as an insurance company.* (i) The entity has competent underwriting staff (hired directly or engaged by contract with a third party), as evidenced by professionals with an average of at least five years of experience in large risk (exceeding $100,000 in annual premiums) commercial underwriting or at least five years of experience in the underwriting of risks for public entity risk pools. This standard may be satisfied by submission of evidence of competent underwriting staff, including copies of resumes of underwriting staff for the entity;

(ii) The entity has efficient and qualified management (hired directly or engaged by contract with a third party), as evidenced by the report submitted to HUD in accordance with paragraph (d)(3) of this section and by having at least one senior staff person who has a minimum of five years of experience:

(A) At the management level of Vice President of a property/casualty insurance entity;

(B) As a senior branch manager of a branch office with annual property/casualty premiums exceeding $5 million; or

(C) As a senior manager of a public entity risk pool. Documentation for this standard must include copies of resumes of key management personnel responsible for oversight and for the day-to-day operation of the entity;

(iii) The entity maintains internal controls and cost containment measures, as evidenced by an annual budget;

(iv) The entity maintains sound investments consistent with the State insurance commissioner's requirements for licensed insurance companies, or other State statutory requirements controlling investments of public entities, in the State in which the entity is organized, investing only in assets that qualify as ''admitted assets'';

(v) The entity maintains adequate surplus and reserves for undischarged liabilities of all types, as evidenced by a current audited financial statement and an actuarial review conducted in accordance with paragraph (d) of this section; and

(vi) Upon application for initial approval, the entity has proper organizational documentation, as evidenced by copies of the articles of incorporation, by-laws, business plans, copies of contracts with third party administrators, and an opinion from legal counsel that establishment of the entity conforms with all legal requirements under Federal and State law. Any material changes made to these documents after initial approval must be submitted for review and approval before becoming effective.

(d) *Professional evaluations of performance.* Audits and actuarial reviews are required to be prepared and submitted annually to the HUD Office of Public and Indian Housing, for review and appropriate action, by nonprofit insurance entities that are not insurance companies approved under paragraph (c)(1) of this section. In addition, an evaluation of other management factors is required to be performed by an insurance professional every three years. For fiscal years ending on or after December 31, 1993, the initial audit, actuarial review, and insurance management review required for a nonprofit insurance entity must be submitted to HUD within 90 days after the entity's fiscal year.

(1) The annual financial statement prepared in accordance with generally accepted accounting principles (including any supplementary data required under GASB 10) is to be audited by an independent auditor (see 24 CFR part 44), in accordance with generally accepted auditing standards. The independent auditor shall express an opinion on whether the entity's financial statement is presented fairly in accordance with generally accepted accounting principles. A copy of this audit must be submitted to HUD.

(2) The actuarial review must be done consistent with requirements established by the National Association of Insurance Commissioners and must be conducted by an independent property/casualty actuary who is an Associate or Fellow of a recognized professional actuarial organization, such as the Casualty Actuary Society. The report issued, a copy of which must be submitted to HUD, must include an opinion on any over or under reserving and the adequacy of the reserves maintained for the open claims and for incurred but unreported claims.

(3) A review must be conducted, a copy of which must be submitted to HUD, by an independent insurance consulting firm that has at least one person on staff who has received the professional designation of chartered property/casualty underwriter (CPCU), associate in risk management (ARM), or associate in claims (AIC), of the following:

(i) Efficiency of any Third Party Administrator;

(ii) Timeliness of the claim payments and reserving practices; and

(iii) The adequacy of reinsurance coverage.

(e) *Revocation of approval of a nonprofit insurance entity.* HUD may revoke its approval of a nonprofit insurance entity under this section when it no longer meets the requirements of this section. The nonprofit insurance entity will be notified in writing of: the proposed revocation of its approval, the reasons for the action, and the manner and time in which to request a hearing to challenge the determination. The procedure to be followed is specified in 24 CFR part 26, subpart A.

[41 FR 20276, May 17, 1976, as amended at 61 FR 7969, Feb. 29, 1996; 61 FR 50219, Sept. 24, 1996]

§ 965.215 Lead-based paint liability insurance coverage.

(a) *General.* The purpose of this section is to specify what HUD deems reasonable insurance coverage with respect to the hazards associated with lead-based paint activities that the PHA undertakes, in accordance with the PHA's ACC with HUD. The insurance coverage does not relieve the PHA of its responsibility for assuring that lead-based paint activities are conducted in a responsible manner.

(b) *Insurance coverage requirements.* When the PHA undertakes lead-based paint activities, it must assure that it has reasonable insurance coverage for itself for potential personal injury liability associated with those activities. If the work is being done by PHA employees, the PHA must obtain a liability insurance policy directly to protect the PHA. If the work is being done by

a contractor, the PHA must obtain, from the insurer of the contractor performing this type of work in accordance with a contract, a certificate of insurance providing evidence of such insurance and naming the PHA as an additional insured; or obtain such insurance directly. Insurance must remain in effect during the entire period of lead-based paint activity and must comply with the following requirements:

(1) *Named insured.* If purchased by the PHA, the policy shall name the PHA as insured. If purchased by an independent contractor, the policy shall name the contractor as insured and the PHA as an additional insured, in connection with performing work under the PHA's contract pertaining to lead-based paint activities. If the PHA has executed a contract with a Resident Management Corporation (RMC) to manage a building/project on behalf of the PHA, the RMC shall be an additional insured under the policy in connection with the PHA's contract related to lead-based paint activities. (The duties of the RMC are similar to those of a real estate management firm.)

(2) *Coverage limits.* The minimum limit of liability shall be $500,000 per occurrence written, with a combined single limit for bodily injury and property damage.

(3) *Deductible.* A deductible, if any, may not exceed $5,000 per occurrence.

(4) *Supplementary payments.* Payments for such supplementary costs as the costs of defending against a claim must be in addition to, and not as a reduction of, the limit of liability. However, it will be permissible for the policy to have a limit on the amount payable for defense costs. If a limit is applicable, it must not be less than $250,000 per claim prior to such costs being deducted from the limit of liability.

(5) *Occurrence form policy.* The form used must be an ''occurrence'' form, or a ''claims made'' form that contains an extended reporting period of at least five years. (Under an occurrence form, coverage applies to any loss regardless of when the claim is made.)

(6) *Aggregate limit.* If the policy contains an aggregate limit, the minimum acceptable limit is $1,000,000.

(7) *Cancellation.* In the event of cancellation, at least 30 days' advance notice is to be given to the insured and any additional insured.

(c) *Exception to requirements.* Insurance already purchased by the PHA or contractor and enforced on the day this section is effective which provides coverage for lead-based paint activities shall be considered as meeting the requirements of this section until the expiration of the policy. This section is not applicable to architects, engineers or consultants who do not physically perform lead-based paint activities.

(d) *Insurance for the existence of lead-based paint hazards.* A PHA may also purchase special liability insurance against the existence of lead-based paint hazards, although it is not a required coverage. A PHA may purchase this coverage if, in the opinion of the PHA, the policy meets the PHA's requirements, the premium is reasonable and the policy is obtained in accordance with applicable procurement standards. (See part 85 of this title and § 965.205 of this title.) If this coverage is purchased, the premium must be paid from funds available under the Performance Funding System or from reserves.

[59 FR 31930, June 21, 1994, as amended at 64 FR 50228, Sept. 15, 1999]

Subpart C—Energy Audits and Energy Conservation Measures

SOURCE: 61 FR 7969, Feb. 29, 1996, unless otherwise noted.

§ 965.301 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart C is to implement HUD policies in support of national energy conservation goals by requiring PHAs to conduct energy audits and undertake certain cost-effective energy conservation measures.

(b) *Applicability.* The provisions of this subpart apply to all PHAs with PHA-owned housing, but they do not apply to Indian Housing Authorities. (For similar provisions applicable to Indian housing, see part 950 of this

chapter.) No PHA-leased project or Section 8 Housing Assistance Payments Program project, including a PHA-owned Section 8 project, is covered by this subpart.

§ 965.302 Requirements for energy audits.

All PHAs shall complete an energy audit for each PHA-owned project under management, not less than once every five years. Standards for energy audits shall be equivalent to State standards for energy audits. Energy audits shall analyze all of the energy conservation measures, and the payback period for these measures, that are pertinent to the type of buildings and equipment operated by the PHA.

§ 965.303 [Reserved]

§ 965.304 Order of funding.

Within the funds available to a PHA, energy conservation measures should be accomplished with the shortest payback periods funded first. A PHA may make adjustments to this funding order because of insufficient funds to accomplish high-cost energy conservation measures (ECM) or where an ECM with a longer pay-back period can be more efficiently installed in conjunction with other planned modernization. A PHA may not install individual utility meters that measure the energy or fuel used for space heating in dwelling units that need substantial weatherization, when installation of meters would result in economic hardship for residents. In these cases, the ECMs related to weatherization shall be accomplished before the installation of individual utility meters.

§ 965.305 Funding.

(a) The cost of accomplishing cost-effective energy conservation measures, including the cost of performing energy audits, shall be funded from operating funds of the PHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a modernization program, for funding from any available development funds in the case of projects still in development, or for other available funds that HUD may designate to be used for energy conservation.

(b) If a PHA finances energy conservation measures from sources other than modernization or operating reserves, such as a loan from a utility entity or a guaranteed savings agreement with a private energy service company, HUD may agree to provide adjustments in its calculation of the PHA's operating subsidy eligibility under the PFS for the project and utility involved based on a determination that payments can be funded from the reasonably anticipated energy cost savings (See § 990.107(g) of this chapter).

§ 965.306 Energy conservation equipment and practices.

In purchasing original or, when needed, replacement equipment, PHAs shall acquire only equipment that meets or exceeds the minimum efficiency requirements established by the U.S. Department of Energy. In the operation of their facilities, PHAs shall follow operating practices directed to maximum energy conservation.

§ 965.307 Compliance schedule.

All energy conservation measures determined by energy audits to be cost effective shall be accomplished as funds are available.

§ 965.308 Energy performance contracts.

(a) *Method of procurement.* Energy performance contracting shall be conducted using one of the following methods of procurement:

(1) Competitive proposals (see 24 CFR 85.36(d)(3)). In identifying the evaluation factors and their relative importance, as required by § 85.36(d)(3)(i) of this title, the solicitation shall state that technical factors are significantly more important than price (of the energy audit); or

(2) If the services are available only from a single source, noncompetitive proposals (see 24 CFR 85.36(d)(4)(i)(A)).

(b) *HUD Review.* Solicitations for energy performance contracting shall be submitted to the HUD Field Office for review and approval prior to issuance. Energy performance contracts shall be submitted to the HUD Field Office for review and approval before award.

Subpart D—Individual Metering of Utilities for Existing PHA-Owned Projects

SOURCE: 61 FR 7970, Feb. 29, 1996, unless otherwise noted.

§ 965.401 Individually metered utilities.

(a) All utility service shall be individually metered to residents, either through provision of retail service to the residents by the utility supplier or through the use of checkmeters, unless:

(1) Individual metering is impractical, such as in the case of a central heating system in an apartment building;

(2) Change from a mastermetering system to individual meters would not be financially justified based upon a benefit/cost analysis; or

(3) Checkmetering is not permissible under State or local law, or under the policies of the particular utility supplier or public service commission.

(b) If checkmetering is not permissible, retail service shall be considered. Where checkmetering is permissible, the type of individual metering offering the most savings to the PHA shall be selected.

§ 965.402 Benefit/cost analysis.

(a) A benefit/cost analysis shall be made to determine whether a change from a mastermetering system to individual meters will be cost effective, except as otherwise provided in § 965.405.

(b) Proposed installation of checkmeters shall be justified on the basis that the cost of debt service (interest and amortization) of the estimated installation costs plus the operating costs of the checkmeters will be more than offset by reduction in future utilities expenditures to the PHA under the mastermeter system.

(c) Proposed conversion to retail service shall be justified on the basis of net savings to the PHA. This determination involves making a comparison between the reduction in utility expense obtained through eliminating the expense to the PHA for PHA-supplied utilities and the resultant allowance for resident-supplied utilities, based on the cost of utility service to the residents after conversion.

§ 965.403 Funding.

The cost to change mastermeter systems to individual metering of resident consumption, including the costs of benefit/cost analysis and complete installation of checkmeters, shall be funded from operating funds of the PHA to the extent feasible. When sufficient operating funds are not available for this purpose, such costs are eligible for inclusion in a modernization project or for funding from any available development funds.

§ 965.404 Order of conversion.

Conversions to individually metered utility service shall be accomplished in the following order when a PHA has projects of two or more of the designated categories, unless the PHA has a justifiable reason to do otherwise, which shall be documented in its files.

(a) In projects for which retail service is provided by the utility supplier and the PHA is paying all the individual utility bills, no benefit/cost analysis is necessary, and residents shall be billed directly after the PHA adopts revised payment schedules providing appropriate allowances for resident-supplied utilities.

(b) In projects for which checkmeters have been installed but are not being utilized as the basis for determining utility charges to the residents, no benefit/cost analysis is necessary. The checkmeters shall be used as the basis for utility charges, and residents shall be surcharged for excess utility use.

(c) Projects for which meter loops have been installed for utilization of checkmeters shall be analyzed both for the installation of checkmeters and for conversion to retail service.

(d) Low- or medium-rise family units with a mastermeter system should be analyzed for both checkmetering and conversion to retail service, because of their large potential for energy savings.

(e) Low- or medium-rise housing for the elderly should next be analyzed for both checkmetering and conversion to retail service, since the potential for energy saving is less than for family units.

(f) Electric service under mastermeters for high-rise buildings, including projects for the elderly, should be analyzed for both use of retail service and of checkmeters.

§ 965.405 Actions affecting residents.

(a) Before making any conversion to retail service, the PHA shall adopt revised payment schedules, providing appropriate allowances for the resident-supplied utilities resulting from the conversion.

(b) Before implementing any modifications to utility services arrangements with the residents or charges with respect thereto, the PHA shall make the requisite changes in resident dwelling leases in accordance with 24 CFR part 966.

(c) PHAs must work closely with resident organizations, to the extent practicable, in making plans for conversion of utility service to individual metering, explaining the national policy objectives of energy conservation, the changes in charges and rent structure that will result, and the goals of achieving an equitable structure that will be advantageous to residents who conserve energy.

(d) A transition period of at least six months shall be provided in the case of initiation of checkmeters, during which residents will be advised of the charges but during which no surcharge will be made based on the readings. This trial period will afford residents ample notice of the effects the checkmetering system will have on their individual utility charges and also afford a test period for the adequacy of the utility allowances established.

(e) During and after the transition period, PHAs shall advise and assist residents with high utility consumption on methods for reducing their usage. This advice and assistance may include counseling, installation of new energy conserving equipment or appliances, and corrective maintenance.

§ 965.406 Benefit/cost analysis for similar projects.

PHAs with more than one project of similar design and utilities service may prepare a benefit/cost analysis for a representative project. A finding that a change in metering is not cost effective for the representative project is sufficient reason for the PHA not to perform a benefit/cost analysis on the remaining similar projects.

§ 965.407 Reevaluations of mastermeter systems.

Because of changes in the cost of utility services and the periodic changes in utility regulations, PHAs with mastermeter systems are required to reevaluate mastermeter systems without checkmeters by making benefit/cost analyses at least every 5 years. These analyses may be omitted under the conditions specified in § 965.406.

Subpart E—Resident Allowances for Utilities

SOURCE: 61 FR 7971, Feb. 29, 1996, unless otherwise noted.

§ 965.501 Applicability.

(a) This subpart E applies to public housing, including the Turnkey III Homeownership Opportunities program. This subpart E also applies to units assisted under sections 10(c) and 23 of the U. S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) as in effect before amendment by the Housing and Community Development Act of 1974 (12 U.S.C. 1706e) and to which 24 CFR part 900 is not applicable. This subpart E does not apply to Indian housing projects (see 24 CFR part 950).

(b) In rental units for which utilities are furnished by the PHA but there are no checkmeters to measure the actual utilities consumption of the individual units, residents shall be subject to charges for consumption by resident-owned major appliances, or for optional functions of PHA-furnished equipment, in accordance with § 965.502(e) and 965.506(b), but no utility allowance will be established.

§ 965.502 Establishment of utility allowances by PHAs.

(a) PHAs shall establish allowances for PHA-furnished utilities for all checkmetered utilities and allowances for resident-purchased utilities for all utilities purchased directly by residents from the utilities suppliers.

(b) The PHA shall maintain a record that documents the basis on which allowances and scheduled surcharges, and revisions thereof, are established and revised. Such record shall be available for inspection by residents.

(c) The PHA shall give notice to all residents of proposed allowances, scheduled surcharges, and revisions thereof. Such notice shall be given, in the manner provided in the lease or homebuyer agreement, not less than 60 days before the proposed effective date of the allowances or scheduled surcharges or revisions; shall describe with reasonable particularity the basis for determination of the allowances, scheduled surcharges, or revisions, including a statement of the specific items of equipment and function whose utility consumption requirements were included in determining the amounts of the allowances or scheduled surcharges; shall notify residents of the place where the PHA's record maintained in accordance with paragraph (b) of this section is available for inspection; and shall provide all residents an opportunity to submit written comments during a period expiring not less than 30 days before the proposed effective date of the allowances or scheduled surcharges or revisions. Such written comments shall be retained by the PHA and shall be available for inspection by residents.

(d) Schedules of allowances and scheduled surcharges shall not be subject to approval by HUD before becoming effective, but will be reviewed in the course of audits or reviews of PHA operations.

(e) The PHA's determinations of allowances, scheduled surcharges, and revisions thereof shall be final and valid unless found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.

§ 965.503 Categories for establishment of allowances.

Separate allowances shall be established for each utility and for each category of dwelling units determined by the PHA to be reasonably comparable as to factors affecting utility usage.

§ 965.504 Period for which allowances are established.

(a) *PHA-furnished utilities.* Allowances will normally be established on a quarterly basis; however, residents may be surcharged on a monthly basis. The allowances established may provide for seasonal variations.

(b) *Resident-purchased utilities.* Monthly allowances shall be established. The allowances established may provide for seasonal variations.

§ 965.505 Standards for allowances for utilities.

(a) The objective of a PHA in designing methods of establishing utility allowances for each dwelling unit category and unit size shall be to approximate a reasonable consumption of utilities by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

(b) Allowances for both PHA-furnished and resident-purchased utilities shall be designed to include such reasonable consumption for major equipment or for utility functions furnished by the PHA for all residents (e.g., heating furnace, hot water heater), for essential equipment whether or not furnished by the PHA (e.g., range and refrigerator), and for minor items of equipment (such as toasters and radios) furnished by residents.

(c) The complexity and elaborateness of the methods chosen by the PHA, in its discretion, to achieve the foregoing objective will depend upon the nature of the housing stock, data available to the PHA and the extent of the administrative resources reasonably available to the PHA to be devoted to the collection of such data, the formulation of methods of calculation, and actual calculation and monitoring of the allowances.

(d) In establishing allowances, the PHA shall take into account relevant factors affecting consumption requirements, including:

(1) The equipment and functions intended to be covered by the allowance for which the utility will be used. For instance, natural gas may be used for cooking, heating domestic water, or

space heating, or any combination of the three;

(2) The climatic location of the housing projects;

(3) The size of the dwelling units and the number of occupants per dwelling unit;

(4) Type of construction and design of the housing project;

(5) The energy efficiency of PHA-supplied appliances and equipment;

(6) The utility consumption requirements of appliances and equipment whose reasonable consumption is intended to be covered by the total resident payment;

(7) The physical condition, including insulation and weatherization, of the housing project;

(8) Temperature levels intended to be maintained in the unit during the day and at night, and in cold and warm weather; and

(9) Temperature of domestic hot water.

(e) If a PHA installs air conditioning, it shall provide, to the maximum extent economically feasible, systems that give residents the option of choosing to use air conditioning in their units. The design of systems that offer each resident the option to choose air conditioning shall include retail meters or checkmeters, and residents shall pay for the energy used in its operation. For systems that offer residents the option to choose air conditioning, the PHA shall not include air conditioning in the utility allowances. For systems that offer residents the option to choose air conditioning but cannot be checkmetered, residents are to be surcharged in accordance with §965.506. If an air conditioning system does not provide for resident option, residents are not to be charged, and these systems should be avoided whenever possible.

§965.506 Surcharges for excess consumption of PHA-furnished utilities.

(a) For dwelling units subject to allowances for PHA-furnished utilities where checkmeters have been installed, the PHA shall establish surcharges for utility consumption in excess of the allowances. Surcharges may be computed on a straight per unit of purchase basis (e.g., cents per kilowatt hour of electricity) or for stated blocks of excess consumption, and shall be based on the PHA's average utility rate. The basis for calculating such surcharges shall be described in the PHA's schedule of allowances. Changes in the dollar amounts of surcharges based directly on changes in the PHA's average utility rate shall not be subject to the advance notice requirements of this section.

(b) For dwelling units served by PHA-furnished utilities where checkmeters have not been installed, the PHA shall establish schedules of surcharges indicating additional dollar amounts residents will be required to pay by reason of estimated utility consumption attributable to resident-owned major appliances or to optional functions of PHA-furnished equipment. Such surcharge schedules shall state the resident-owned equipment (or functions of PHA-furnished equipment) for which surcharges shall be made and the amounts of such charges, which shall be based on the cost to the PHA of the utility consumption estimated to be attributable to reasonable usage of such equipment.

§965.507 Review and revision of allowances.

(a) *Annual review.* The PHA shall review at least annually the basis on which utility allowances have been established and, if reasonably required in order to continue adherence to the standards stated in §965.505, shall establish revised allowances. The review shall include all changes in circumstances (including completion of modernization and/or other energy conservation measures implemented by the PHA) indicating probability of a significant change in reasonable consumption requirements and changes in utility rates.

(b) *Revision as a result of rate changes.* The PHA may revise its allowances for resident-purchased utilities between annual reviews if there is a rate change (including fuel adjustments) and shall be required to do so if such change, by itself or together with prior rate changes not adjusted for, results in a change of 10 percent or more from the rates on which such allowances were

based. Adjustments to resident payments as a result of such changes shall be retroactive to the first day of the month following the month in which the last rate change taken into account in such revision became effective. Such rate changes shall not be subject to the 60 day notice requirement of § 965.502(c).

§ 965.508 Individual relief.

Requests for relief from surcharges for excess consumption of PHA-purchased utilities, or from payment of utility supplier billings in excess of the allowances for resident-purchased utilities, may be granted by the PHA on reasonable grounds, such as special needs of elderly, ill or disabled residents, or special factors affecting utility usage not within the control of the resident, as the PHA shall deem appropriate. The PHA's criteria for granting such relief, and procedures for requesting such relief, shall be adopted at the time the PHA adopts the methods and procedures for determining utility allowances. Notice of the availability of such procedures (including identification of the PHA representative with whom initial contact may be made by residents), and the PHA's criteria for granting such relief, shall be included in each notice to residents given in accordance with § 965.502(c) and in the information given to new residents upon admission.

Subpart F—Physical Condition Standards and Physical Inspection Requirements

§ 965.601 Physical condition standards; physical inspection requirements.

Housing owned or leased by a PHA, and public housing owned by another entity approved by HUD, must be maintained in accordance with the physical condition standards in 24 CFR part 5, subpart G. For each PHA, HUD will perform an independent physical inspection of a statistically valid sample of such housing based upon the physical condition standards in 24 CFR part 5, subpart G.

[63 FR 46580, Sept. 1, 1998]

Subpart G [Reserved]

Subpart H—Lead-Based Paint Poisoning Prevention

§ 965.701 Lead-based paint poisoning prevention.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, L, and R of this title apply to this program.

[64 FR 50229, Sept. 15, 1999]

Subpart I—Fire Safety

SOURCE: 57 FR 33853, July 30, 1992, unless otherwise noted.

§ 965.800 Applicability.

This subpart applies to all PHA-owned or -leased housing housing, including Mutual Help and Turnkey III.

§ 965.805 Smoke detectors.

(a) *Performance requirement.* (1) After October 30, 1992, each unit covered by this subpart must be equipped with at least one battery-operated or hard-wired smoke detector, or such greater number as may be required by state or local codes, in working condition, on each level of the unit. In units occupied by hearing-impaired residents, smoke detectors must be hard-wired.

(2) After October 30, 1992, the public areas of all housing covered by this subpart must be equipped with a sufficient number, but not less than one for each area, of battery-operated or hard-wired smoke detectors to serve as adequate warning of fire. Public areas include, but are not limited to, laundry rooms, community rooms, day care centers, hallways, stairwells, and other common areas.

(b) *Acceptability criteria.* (1) The smoke detector for each individual unit must be located, to the extent practicable, in a hallway adjacent to the bedroom or bedrooms. In units occupied by hearing-impaired residents, hard-wired smoke detectors must be connected to an alarm system designed

for hearing-impaired persons and installed in the bedroom or bedrooms occupied by the hearing-impaired residents. Individual units that are jointly occupied by both hearing and hearing-impaired residents must be equipped with both audible and visual types of alarm devices.

(2) If needed, battery-operated smoke detectors, except in units occupied by hearing-impaired residents, may be installed as a temporary measure where no detectors are present in a unit. Temporary battery-operated smoke detectors must be replaced with hard-wired electric smoke detectors in the normal course of a PHA's planned CIAP or CGP program to meet the required HUD Modernization Standards or state or local codes, whichever standard is stricter. Smoke detectors for units occupied by hearing-impaired residents must be installed in accordance with the acceptability criteria in paragraph (b)(1) of this section.

(c) *Funding.* PHAs shall use operating funds to provide battery-operated smoke detectors in units that do not have any smoke detector in place. If operating funds or reserves are insufficient to accomplish this, PHAs may apply for emergency CIAP funding. The PHAs may apply for CIAP or CGP funds to replace battery-operated smoke detectors with hard-wired smoke detectors in the normal course of a planned modernization program.

PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE

Subpart A—Dwelling Leases, Procedures and Requirements

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AUTHORITY: 42 U.S.C. 1437d and 3535(d).

Subpart A—Dwelling Leases, Procedures and Requirements

SOURCE: 40 FR 33402, Aug. 7, 1975, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

§966.1 Purpose and applicability.

(a) This part is applicable to public housing.

(b) Subpart A of this part prescribes the provisions that must be incorporated in leases for public housing dwelling units.

(c) Subpart B of this part prescribes public housing grievance hearing requirements.

[66 FR 28802, May 24, 2001]

§966.2 Definitions.

The following terms are defined in part 5, subpart A of this title: *1937 Act, covered person, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, other person under the tenant's control, public housing, premises, public housing agency, Section 8, violent criminal activity.*

[66 FR 28802, May 24, 2001]

§966.3 Tenants' opportunity for comment.

Each PHA shall provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the lease form used by the PHA, and providing an opportunity to present written comments. Subject to requirements of this rule, comments submitted shall be considered by the PHA before formal adoption of any new lease form.

[56 FR 51576, Oct. 11, 1991]

§966.4 Lease requirements.

A lease shall be entered into between the PHA and each tenant of a dwelling unit which shall contain the provisions described hereinafter.

(a) *Parties, dwelling unit and term.* (1) The lease shall state:

(i) The names of the PHA and the tenant;

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

(iii) The term of the lease (lease term and renewal in accordance with paragraph (a)(2) of this section);

(iv) A statement of what utilities, services and equipment are to be supplied by the PHA without additional cost, and what utilities and appliances are to be paid for by the tenant;

(v) The composition of the household as approved by the PHA (family members and any PHA-approved live-in-aide). The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit.

(2) *Lease term and renewal.* (i) The lease shall have a twelve month term. Except as provided in paragraph (a)(2)(ii) of this section, the lease term must be automatically renewed for the same period.

(ii) The PHA may not renew the lease if the family has violated the requirement for resident performance of community service or participation in an economic self-sufficiency program in accordance with part 960, subpart F of this chapter.

(iii) At any time, the PHA may terminate the tenancy in accordance with § 966.4(l).

(3) *Execution and modification.* The lease must be executed by the tenant and the PHA, except for automatic renewals of a lease. The lease may modified at any time by written agreement of the tenant and the PHA.

(b) *Payments due under the lease.* (1) *Tenant rent.* (i) The tenant shall pay the amount of the monthly tenant rent determined by the PHA in accordance with HUD regulations and other requirements. The amount of the tenant rent is subject to change in accordance with HUD requirements.

(ii) The lease shall specify the initial amount of the tenant rent at the beginning of the initial lease term. The PHA shall give the tenant written notice stating any change in the amount of tenant rent, and when the change is effective.

(2) *PHA charges.* The lease shall provide for charges to the tenant for maintenance and repair beyond normal wear and tear and for consumption of excess utilities. The lease shall state the basis for the determination of such charges (e.g., by a posted schedule of charges for repair, amounts charged for utility consumption in excess of the allowance stated in the lease, etc.). The imposition of charges for consumption of excess utilities is permissible only if such charges are determined by an individual check meter servicing the leased unit or result from the use of major tenant-supplied appliances.

(3) *Late payment penalties.* At the option of the PHA, the lease may provide for payment of penalties for late payment.

(4) *When charges are due.* The lease shall provide that charges assessed under paragraph (b) (2) and (3) of this section shall not be due and collectible until two weeks after the PHA gives written notice of the charges. Such notice constitutes a notice of adverse action, and must meet the requirements governing a notice of adverse action (see § 966.4(e)(8)).

(5) *Security deposits.* At the option of the PHA, the lease may provide for security deposits which shall not exceed one month's rent or such reasonable fixed amount as may be required by the PHA. Provision may be made for gradual accumulation of the security deposit by the tenant. Subject to applicable laws, interest earned on security deposits may be refunded to the tenant on vacation of the dwelling unit or used for tenant services or activities.

(c) *Redetermination of rent and family composition.* The lease shall provide for redetermination of rent and family composition which shall include:

(1) The frequency of regular rental redetermination and the basis for interim redetermination.

(2) An agreement by the tenant to furnish such information and certifications regarding family composition and income as may be necessary for the PHA to make determinations with respect to rent, eligibility, and the appropriateness of dwelling size.

(3) An agreement by the tenant to transfer to an appropriate size dwelling unit based on family composition, upon appropriate notice by the PHA that such a dwelling unit is available.

(4) When the PHA redetermines the amount of rent (Total Tenant Payment or Tenant Rent) payable by the tenant, not including determination of the PHA's schedule of Utility Allowances for families in the PHA's Public Housing Program, or determines that the tenant must transfer to another unit based on family composition, the PHA shall notify the tenant that the tenant may ask for an explanation stating the specific grounds of the PHA determination, and that if the tenant does not agree with the determination, the tenant shall have the right to request a hearing under the PHA grievance procedure.

(d) *Tenant's right to use and occupancy.* (1) The lease shall provide that the tenant shall have the right to exclusive use and occupancy of the leased unit by the members of the household authorized to reside in the unit in accordance with the lease, including reasonable accommodation of their guests. The term *guest* is defined in 24 CFR 5.100.

(2) With the consent of the PHA, members of the household may engage in legal profitmaking activities in the dwelling unit, where the PHA determines that such activities are incidental to primary use of the leased unit for residence by members of the household.

(3)(i) With the consent of the PHA, a foster child or a live-in aide may reside in the unit. The PHA may adopt reasonable policies concerning residence by a foster child or a live-in-aide, and defining the circumstances in which PHA consent will be given or denied. Under such policies, the factors considered by the PHA may include:

(A) Whether the addition of a new occupant may necessitate a transfer of the family to another unit, and whether such units are available.

(B) The PHA's obligation to make reasonable accommodation for handicapped persons.

(ii) *Live-in aide* means a person who resides with an elderly, disabled or handicapped person and who:

(A) Is determined to be essential to the care and well-being of the person;

(B) Is not obligated for the support of the person; and

(C) Would not be living in the unit except to provide the necessary supportive services.

(e) *The PHA's obligations.* The lease shall set forth the PHA's obligations under the lease which shall include the following:

(1) To maintain the dwelling unit and the project in decent, safe and sanitary condition;

(2) To comply with requirements of applicable building codes, housing codes, and HUD regulations materially affecting health and safety;

(3) To make necessary repairs to the dwelling unit;

(4) To keep project buildings, facilities and common areas, not otherwise assigned to the tenant for maintenance and upkeep, in a clean and safe condition;

(5) To maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and other facilities and appliances, including elevators, supplied or required to be supplied by the PHA;

(6) To provide and maintain appropriate receptacles and facilities (except containers for the exclusive use of an individual tenant family) for the deposit of ashes, garbage, rubbish and other waste removed from the dwelling unit by the tenant in accordance with paragraph (f)(7) of this section;

(7) To supply running water and reasonable amounts of hot water and reasonable amounts of heat at appropriate times of the year (according to local custom and usage) except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or where heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct utility connection; and

(8)(i) To notify the tenant of the specific grounds for any proposed adverse action by the PHA. (Such adverse action includes, but is not limited to, a proposed lease termination, transfer of

the tenant to another unit, or imposition of charges for maintenance and repair, or for excess consumption of utilities.)

(ii) When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning a proposed adverse action:

(A) The notice of proposed adverse action shall inform the tenant of the right to request such hearing. In the case of a lease termination, a notice of lease termination in accordance with paragraph (l)(3) of this section, shall constitute adequate notice of proposed adverse action.

(B) In the case of a proposed adverse action other than a proposed lease termination, the PHA shall not take the proposed action until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed.

(f) *Tenant's obligations.* The lease shall provide that the tenant shall be obligated:

(1) Not to assign the lease or to sublease the dwelling unit;

(2) Not to provide accommodations for boarders or lodgers;

(3) To use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose;

(4) To abide by necessary and reasonable regulations promulgated by the PHA for the benefit and well-being of the housing project and the tenants which shall be posted in the project office and incorporated by reference in the lease;

(5) To comply with all obligations imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(6) To keep the dwelling unit and such other areas as may be assigned to the tenant for the tenant's exclusive use in a clean and safe condition;

(7) To dispose of all ashes, garbage, rubbish, and other waste from the dwelling unit in a sanitary and safe manner;

(8) To use only in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appurtenances including elevators;

(9) To refrain from, and to cause the household and guests to refrain from destroying, defacing, damaging, or removing any part of the dwelling unit or project;

(10) To pay reasonable charges (other than for wear and tear) for the repair of damages to the dwelling unit, or to the project (including damages to project buildings, facilities or common areas) caused by the tenant, a member of the household or a guest.

(11) To act, and cause household members or guests to act, in a manner which will not disturb other residents' peaceful enjoyment of their accommodations and will be conducive to maintaining the project in a decent, safe and sanitary condition;

(12) (i) To assure that no tenant, member of the tenant's household, or guest engages in:

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

(B) Any drug-related criminal activity on or off the premises;

(ii) To assure that no other person under the tenant's control engages in:

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

(B) Any drug-related criminal activity on the premises;

(iii) To assure that no member of the household engages in an abuse or pattern of abuse of alcohol that affects the health, safety, or right to peaceful enjoyment of the premises by other residents.

(g) *Tenant maintenance.* The lease may provide that the tenant shall perform seasonal maintenance or other maintenance tasks, as specified in the lease, where performance of such tasks by tenants of dwellings units of a similar design and construction is customary: *Provided,* That such provision is included in the lease in good faith and not for the purpose of evading the obligations of the PHA. The PHA shall exempt tenants who are unable to perform such tasks because of age or disability.

(h) *Defects hazardous to life, health, or safety.* The lease shall set forth the rights and obligations of the tenant and the PHA if the dwelling unit is damaged to the extent that conditions are created which are hazardous to life, health, or safety of the occupants and shall provide that:

(1) The tenant shall immediately notify project management of the damage;

(2) The PHA shall be responsible for repair of the unit within a reasonable time: *Provided,* That if the damage was caused by the tenant, tenant's household or guests, the reasonable cost of the repairs shall be charged to the tenant;

(3) The PHA shall offer standard alternative accommodations, if available, where necessary repairs cannot be made within a reasonable time; and

(4) Provisions shall be made for abatement of rent in proportion to the seriousness of the damage and loss in value as a dwelling if repairs are not made in accordance with paragraph (h)(2) of this section or alternative accommodations not provided in accordance with paragraph (h)(3) of this section, except that no abatement of rent shall occur if the tenant rejects the alternative accommodation or if the damage was caused by the tenant, tenant's household or guests.

(i) *Pre-occupancy and pre-termination inspections.* The lease shall provide that the PHA and the tenant or representative shall be obligated to inspect the dwelling unit prior to commencement of occupancy by the tenant. The PHA will furnish the tenant with a written statement of the condition of the dwelling unit, and the equipment provided with the unit. The statement shall be signed by the PHA and the tenant, and a copy of the statement shall be retained by the PHA in the tenant's folder. The PHA shall be further obligated to inspect the unit at the time the tenant vacates the unit and to furnish the tenant a statement of any charges to be made in accordance with paragraph (b)(2) of this section. Provision shall be made for the tenant's participation in the latter inspection, unless the tenant vacates without notice to the PHA.

(j) *Entry of dwelling unit during tenancy.* The lease shall set forth the circumstances under which the PHA may enter the dwelling unit during the tenant's possession thereof, which shall include provision that:

(1) The PHA shall, upon reasonable advance notification to the tenant, be permitted to enter the dwelling unit during reasonable hours for the purpose of performing routine inspections and maintenance, for making improvement or repairs, or to show the dwelling unit for re-leasing. A written statement specifying the purpose of the PHA entry delivered to the dwelling unit at least two days before such entry shall be considered reasonable advance notification;

(2) The PHA may enter the dwelling unit at any time without advance notification when there is reasonable cause to believe that an emergency exists; and

(3) If the tenant and all adult members of the household are absent from the dwelling unit at the time of entry, the PHA shall leave in the dwelling unit a written statement specifying the date, time and purpose of entry prior to leaving the dwelling unit.

(k) *Notice procedures.* (1) The lease shall provide procedures to be followed by the PHA and the tenant in giving notice one to the other which shall require that:

(i) Except as provided in paragraph (j) of this section, notice to a tenant shall be in writing and delivered to the tenant or to an adult member of the tenant's household residing in the dwelling or sent by prepaid first-class mail properly addressed to the tenant; and

(ii) Notice to the PHA shall be in writing, delivered to the project office or the PHA central office or sent by prepaid first-class mail properly addressed.

(2) If the tenant is visually impaired, all notices must be in an accessible format.

(l) *Termination of tenancy and eviction.*—(1) *Procedures.* The lease shall state the procedures to be followed by the PHA and by the tenant to terminate the tenancy.

(2) *Grounds for termination of tenancy.* The PHA may terminate the tenancy only for:

(i) Serious or repeated violation of material terms of the lease, such as the following:

(A) Failure to make payments due under the lease;

(B) Failure to fulfill household obligations, as described in paragraph (f) of this section;

(ii) Being over the income limit for the program, as provided in 24 CFR 960.261.

(iii) Other good cause. Other good cause includes, but is not limited to, the following:

(A) Criminal activity or alcohol abuse as provided in paragraph (1)(5) of this section;

(B) Discovery after admission of facts that made the tenant ineligible;

(C) Discovery of material false statements or fraud by the tenant in connection with an application for assistance or with reexamination of income;

(D) Failure of a family member to comply with service requirement provisions of part 960, subpart F, of this chapter—as grounds only for non-renewal of the lease and termination of tenancy at the end of the twelve-month lease term; and

(E) Failure to accept the PHA's offer of a lease revision to an existing lease: that is on a form adopted by the PHA in accordance with § 966.3; with written notice of the offer of the revision at least 60 calendar days before the lease revision is scheduled to take effect; and with the offer specifying a reasonable time limit within that period for acceptance by the family.

(3) *Lease termination notice.* (i) The PHA must give written notice of lease termination of:

(A) 14 days in the case of failure to pay rent;

(B) A reasonable period of time considering the seriousness of the situation (but not to exceed 30 days):

(1) If the health or safety of other residents, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or

(2) If any member of the household has engaged in any drug-related criminal activity or violent criminal activity; or

(3) If any member of the household has been convicted of a felony;

(C) 30 days in any other case, except that if a State or local law allows a shorter notice period, such shorter period shall apply.

(ii) The notice of lease termination to the tenant shall state specific grounds for termination, and shall inform the tenant of the tenant's right to make such reply as the tenant may wish. The notice shall also inform the tenant of the right (pursuant to § 966.4(m)) to examine PHA documents directly relevant to the termination or eviction. When the PHA is required to afford the tenant the opportunity for a grievance hearing, the notice shall also inform the tenant of the tenant's right to request a hearing in accordance with the PHA's grievance procedure.

(iii) A notice to vacate which is required by State or local law may be combined with, or run concurrently with, a notice of lease termination under paragraph (l)(3)(i) of this section.

(iv) When the PHA is required to afford the tenant the opportunity for a hearing under the PHA grievance procedure for a grievance concerning the lease termination (see § 966.51(a)(1)), the tenancy shall not terminate (even if any notice to vacate under State or local law has expired) until the time for the tenant to request a grievance hearing has expired, and (if a hearing was timely requested by the tenant) the grievance process has been completed.

(v) When the PHA is not required to afford the tenant the opportunity for a hearing under the PHA administrative grievance procedure for a grievance concerning the lease termination (see § 966.51(a)(2)), and the PHA has decided to exclude such grievance from the PHA grievance procedure, the notice of lease termination under paragraph (l)(3)(i) of this section shall:

(A) State that the tenant is not entitled to a grievance hearing on the termination.

(B) Specify the judicial eviction procedure to be used by the PHA for eviction of the tenant, and state that HUD has determined that this eviction procedure provides the opportunity for a hearing in court that contains the

basic elements of due process as defined in HUD regulations.

(C) State whether the eviction is for a criminal activity as described in §966.51(a)(2)(i)(A) or for a drug-related criminal activity as described in §966.51(a)(2)(i)(B).

(4) *How tenant is evicted.* The PHA may evict the tenant from the unit either:

(i) By bringing a court action or;

(ii) By bringing an administrative action if law of the jurisdiction permits eviction by administrative action, after a due process administrative hearing, and without a court determination of the rights and liabilities of the parties. In order to evict without bringing a court action, the PHA must afford the tenant the opportunity for a pre-eviction hearing in accordance with the PHA grievance procedure.

(5) *PHA termination of tenancy for criminal activity or alcohol abuse.*

(i) *Evicting drug criminals.* (A) *Methamphetamine conviction.* The PHA must immediately terminate the tenancy if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

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

(ii) *Evicting other criminals.* (A) *Threat to other residents.* The lease must provide that any criminal activity by a covered person that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents (including PHA management staff residing on the premises) or threatens the health, safety, or right to peaceful enjoyment of their residences by persons residing in the immediate vicinity of the premises is grounds for termination of tenancy.

(B) *Fugitive felon or parole violator.* The PHA may terminate the tenancy if a tenant is fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or violating a condition of probation or parole imposed under Federal or State law.

(iii) *Eviction for criminal activity.* (A) *Evidence.* The PHA may evict the tenant by judicial action for criminal activity in accordance with this section if the PHA determines that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction.

(B) *Notice to Post Office.* When a PHA evicts an individual or family for criminal activity, the PHA must notify the local post office serving the dwelling unit that the individual or family is no longer residing in the unit.

(iv) *Use of criminal record.* If the PHA seeks to terminate the tenancy for criminal activity as shown by a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the tenant with a copy of the criminal record before a PHA grievance hearing or court trial concerning the termination of tenancy or eviction. The tenant must be given an opportunity to dispute the accuracy and relevance of that record in the grievance hearing or court trial.

(v) *Cost of obtaining criminal record.* The PHA may not pass along to the tenant the costs of a criminal records check.

(vi) *Evicting alcohol abusers.* The PHA must establish standards that allow termination of tenancy if the PHA determines that a household member has:

(A) Engaged in abuse or pattern of abuse of alcohol that threatens the

health, safety, or right to peaceful enjoyment of the premises by other residents; or

(B) Furnished false or misleading information concerning illegal drug use, alcohol abuse, or rehabilitation of illegal drug users or alcohol abusers.

(vii) *PHA action, generally.* (A) *Assessment under PHAS.* Under the Public Housing Assessment System (PHAS), PHAs that have adopted policies, implemented procedures and can document that they appropriately evict any public housing residents who engage in certain activity detrimental to the public housing community receive points. (See 24 CFR 902.43(a)(5).) This policy takes into account the importance of eviction of such residents to public housing communities and program integrity, and the demand for assisted housing by families who will adhere to lease responsibilities.

(B) *Consideration of circumstances.* In a manner consistent with such policies, procedures and practices, the PHA may consider all circumstances relevant to a particular case such as the seriousness of the offending action, the extent of participation by the leaseholder in the offending action, the effects that the eviction would have on family members not involved in the offending activity and the extent to which the leaseholder has shown personal responsibility and has taken all reasonable steps to prevent or mitigate the offending action.

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

(D) *Consideration of rehabilitation.* In determining whether to terminate tenancy for illegal drug use or a pattern of illegal drug use by a household member who is no longer engaging in such use, or for abuse or a pattern of abuse of alcohol by a household member who is no longer engaging in such abuse, the PHA may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13662). For this purpose, the PHA may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

(E) *Length of period of mandatory prohibition on admission.* If a statute requires that the PHA prohibit admission of persons for a prescribed period of time after some disqualifying behavior or event, the PHA may apply that prohibition for a longer period of time.

(F) *Nondiscrimination limitation.* The PHA's eviction actions must be consistent with fair housing and equal opportunity provisions of § 5.105 of this title.

(m) *Eviction: Right to examine PHA documents before hearing or trial.* The PHA shall provide the tenant a reasonable opportunity to examine, at the tenant's request, before a PHA grievance hearing or court trial concerning a termination of tenancy or eviction, any documents, including records and regulations, which are in the possession of the PHA, and which are directly relevant to the termination of tenancy or eviction. The tenant shall be allowed to copy any such document at the tenant's expense. A notice of lease termination pursuant to § 966.4(l) (3) shall inform the tenant of the tenant's right to examine PHA documents concerning the termination of tenancy or eviction. If the PHA does not make documents available for examination upon request by the tenant (in accordance with this § 966.4(m)), the PHA may not proceed with the eviction.

(n) *Grievance procedures.* The lease shall provide that all disputes concerning the obligations of the tenant or the PHA shall (except as provided in § 966.51(a)(2)) be resolved in accordance with the PHA grievance procedures. The grievance procedures shall comply with subpart B of this part.

(o) *Provision for modifications.* The lease shall provide that modification of the lease must be accomplished by a written rider to the lease executed by both parties, except for paragraph (c) of this section and § 966.5.

(p) *Signature clause.* The lease shall provide a signature clause attesting

that the lease has been executed by the parties.

[56 FR 51576, Oct. 11, 1991, as amended at 61 FR 13273, Mar. 26, 1996; 65 FR 16730, Mar. 29, 2000; 66 FR 28802, May 24, 2001; 66 FR 32875, June 18, 2001; 66 FR 33134, June 20, 2001; 69 FR 68791, Nov. 26, 2004]

§ 966.5 Posting of policies, rules and regulations.

Schedules of special charges for services, repairs and utilities and rules and regulations which are required to be incorporated in the lease by reference shall be publicly posted in a conspicuous manner in the Project Office and shall be furnished to applicants and tenants on request. Such schedules, rules and regulations may be modified from time to time by the PHA provided that the PHA shall give at least 30-day written notice to each affected tenant setting forth the proposed modification, the reasons therefor, and providing the tenant an opportunity to present written comments which shall be taken into consideration by the PHA prior to the proposed modification becoming effective. A copy of such notice shall be:

(a) Delivered directly or mailed to each tenant; or

(b) Posted in at least three (3) conspicuous places within each structure or building in which the affected dwelling units are located, as well as in a conspicuous place at the project office, if any, of if none, a similar central business location within the project.

§ 966.6 Prohibited lease provisions.

Lease clauses of the nature described below shall not be included in new leases between a PHA and a tenant and shall be deleted from existing leases either by amendment thereof or execution of a new lease:

(a) *Confession of judgment.* Prior consent by the tenant to any lawsuit the landlord may bring against him in connection with the lease and to a judgment in favor of the landlord.

(b) *Distraint for rent or other charges.* Agreement by the tenant that landlord is authorized to take property of the tenant and hold it as a pledge until the tenant performs the obligation which the landlord has determined the tenant has failed to perform.

(c) *Exculpatory clauses.* Agreement by the tenant not to hold the landlord or landlord's agent liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representatives or agents.

(d) *Waiver of legal notice by tenant prior to actions for eviction or money judgments.* Agreements by the tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed, thus preventing the tenant from defending against the lawsuit.

(e) *Waiver of legal proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

(f) *Waiver of jury trial.* Authorization of the landlord's lawyer to appear in court for the tenant and waive the right to a trial by jury.

(g) *Waiver of right to appeal judicial error in legal proceeding.* Authorization to the landlord's lawyer to waive the right to appeal for judicial error in any suit or to waive the right to file a suit in equity to prevent the execution of a judgment.

(h) *Tenant chargeable with cost of legal actions regardless of outcome.* Provision that the tenant agrees to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court determines that the tenant prevails in the action. Prohibition of this type of provision does not mean that the tenant as a party to the lawsuit may not be obligated to pay attorney's fees or other costs if he loses the suit.

§ 966.7 Accommodation of persons with disabilities.

(a) For all aspects of the lease and grievance procedures, a handicapped person shall be provided reasonable accommodation to the extent necessary to provide the handicapped person with an opportunity to use and occupy the dwelling unit equal to a non-handicapped person.

(b) The PHA shall provide a notice to each tenant that the tenant may, at

any time during the tenancy, request reasonable accommodation of a handicap of a household member, including reasonable accommodation so that the tenant can meet lease requirements or other requirements of tenancy.

[56 FR 51579, Oct. 11, 1991]

Subpart B—Grievance Procedures and Requirements

SOURCE: 40 FR 33406, Aug. 7, 1975, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

§ 966.50 Purpose and scope.

The purpose of this subpart is to set forth the requirements, standards and criteria for a grievance procedure to be established and implemented by public housing agencies (PHAs) to assure that a PHA tenant is afforded an opportunity for a hearing if the tenant disputes within a reasonable time any PHA action or failure to act involving the tenant's lease with the PHA or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.

[56 FR 51579, Oct. 11, 1991]

§ 966.51 Applicablity.

(a)(1) The PHA grievance procedure shall be applicable (except as provided in paragraph (a)(2) of this section) to all individual grievances as defined in § 966.53 of this subpart between the tenant and the PHA.

(2)(i) The term *due process determination* means a determination by HUD that law of the jurisdiction requires that the tenant must be given the opportunity for a hearing in court which provides the basic elements of due process (as defined in § 966.53(c)) before eviction from the dwelling unit. If HUD has issued a due process determination, a PHA may exclude from the PHA administrative grievance procedure under this subpart any grievance concerning a termination of tenancy or eviction that involves:

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

(B) Any violent or drug-related criminal activity on or off such premises; or

(C) Any criminal activity that resulted in felony conviction of a household member.

(iii) For guidance of the public, HUD will publish in the FEDERAL REGISTER a notice listing the judicial eviction procedures for which HUD has issued a due process determination. HUD will make available for public inspection and copying a copy of the legal analysis on which the determinations are based.

(iv) If HUD has issued a due process determination, the PHA may evict the occupants of the dwelling unit through the judicial eviction procedures which are the subject of the determination. In this case, the PHA is not required to provide the opportunity for a hearing under the PHA's administrative grievance procedure.

(b) The PHA grievance procedure shall not be applicable to disputes between tenants not involving the PHA or to class grievances. The grievance procedure is not intended as a forum for initiating or negotiating policy changes between a group or groups of tenants and the PHA's Board of Commissioners.

[40 FR 33406, Aug. 7, 1975. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51579, Oct. 11, 1991; 61 FR 13273, Mar. 26, 1996; 66 FR 28804, May 24, 2001]

§ 966.52 Requirements.

(a) Each PHA shall adopt a grievance procedure affording each tenant an opportunity for a hearing on a grievance as defined in § 966.53 in accordance with the requirements, standards, and criteria contained in this subpart.

(b) The PHA grievance procedure shall be included in, or incorporated by reference in, all tenant dwelling leases pursuant to subpart A of this part.

(c) The PHA shall provide at least 30 days notice to tenants and resident organizations setting forth proposed changes in the PHA grievance procedure, and providing an opportunity to present written comments. Subject to requirements of this subpart, comments submitted shall be considered by the PHA before adoption of any grievance procedure changes by the PHA.

(d) The PHA shall furnish a copy of the grievance procedure to each tenant and to resident organizations.

[56 FR 51579, Oct. 11, 1991]

§ 966.53 Definitions.

For the purpose of this subpart, the following definitions are applicable:

(a) *Grievance* shall mean any dispute which a tenant may have with respect to PHA action or failure to act in accordance with the individual tenant's lease or PHA regulations which adversely affect the individual tenant's rights, duties, welfare or status.

(b) *Complainant* shall mean any tenant whose grievance is presented to the PHA or at the project management office in accordance with §§966.54 and 966.55(a).

(c) *Elements of due process* shall mean an eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are required:

(1) Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;

(2) Right of the tenant to be represented by counsel;

(3) Opportunity for the tenant to refute the evidence presented by the PHA including the right to confront and cross-examine witnesses and to present any affirmative legal or equitable defense which the tenant may have;

(4) A decision on the merits.

(d) *Hearing officer* shall mean a person selected in accordance with §966.55 of this subpart to hear grievances and render a decision with respect thereto.

(e) *Hearing panel* shall mean a panel selected in accordance with §966.55 of this subpart to hear grievances and render a decision with respect thereto.

(f) *Tenant* shall mean the adult person (or persons) (other than a live-in aide):

(1) Who resides in the unit, and who executed the lease with the PHA as lessee of the dwelling unit, or, if no such person now resides in the unit,

(2) Who resides in the unit, and who is the remaining head of household of the tenant family residing in the dwelling unit.

(g) *Resident organization* includes a resident management corporation.

[40 FR 33406, Aug. 7, 1975. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51579, Oct. 11, 1991]

§ 966.54 Informal settlement of grievance.

Any grievance shall be personally presented, either orally or in writing, to the PHA office or to the office of the project in which the complainant resides so that the grievance may be discussed informally and settled without a hearing. A summary of such discussion shall be prepared within a reasonable time and one copy shall be given to the tenant and one retained in the PHA's tenant file. The summary shall specify the names of the participants, dates of meeting, the nature of the proposed disposition of the complaint and the specific reasons therefor, and shall specify the procedures by which a hearing under §966.55 may be obtained if the complainant is not satisfied.

§ 966.55 Procedures to obtain a hearing.

(a) *Request for hearing.* The complainant shall submit a written request for a hearing to the PHA or the project office within a reasonable time after receipt of the summary of discussion pursuant to §966.54. For a grievance under the expedited grievance procedure pursuant to §966.55(g) (for which §966.54 is not applicable), the complainant shall submit such request at such time as is specified by the PHA for a grievance under the expedited grievance procedure. The written request shall specify:

(1) The reasons for the grievance; and

(2) The action or relief sought.

(b) *Selection of Hearing Officer or Hearing Panel.* (1) A grievance hearing shall be conducted by an impartial person or persons appointed by the PHA, other than a person who made or approved the PHA action under review or a subordinate of such person.

(2) The method or methods for PHA appointment of a hearing officer or hearing panel shall be stated in the PHA grievance procedure. The PHA may use either of the following methods to appoint a hearing officer or panel:

(i) A method approved by the majority of tenants (in any building, group of buildings or project, or group of projects to which the method is applicable) voting in an election or meeting of tenants held for the purpose.

(ii) Appointment of a person or persons (who may be an officer or employee of the PHA) selected in the manner required under the PHA grievance procedure.

(3) The PHA shall consult the resident organizations before PHA appointment of each hearing officer or panel member. Any comments or recommendations submitted by the tenant organizations shall be considered by the PHA before the appointment.

(c) *Failure to request a hearing.* If the complainant does not request a hearing in accordance with this paragraph, then the PHA's disposition of the grievance under §966.54 shall become final: *Provided,* That failure to request a hearing shall not constitute a waiver by the complainant of his right thereafter to contest the PHA's action in disposing of the complaint in an appropriate judicial proceeding.

(d) *Hearing prerequisite.* All grievances shall be personally presented either orally or in writing pursuant to the informal procedure prescribed in §966.54 as a condition precedent to a hearing under this section: *Provided,* That if the complainant shall show good cause why he failed to proceed in accordance with §966.54 to the hearing officer or hearing panel, the provisions of this subsection may be waived by the hearing officer or hearing panel.

(e) *Escrow deposit.* (1) Before a hearing is scheduled in any grievance involving the amount of rent (as defined in §966.4(b)) that the PHA claims is due, the family must pay an escrow deposit to the PHA. When a family is required to make an escrow deposit, the amount is the amount of rent the PHA states is due and payable as of the first of the month preceding the month in which the family's act or failure to act took place. After the first deposit, the family must deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer or hearing panel.

(2) A PHA must waive the requirement for an escrow deposit where required by §5.630 of this title (financial hardship exemption from minimum rent requirements) or §5.615 of this title (effect of welfare benefits reduction in calculation of family income). Unless the PHA waives the requirement, the family's failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest in any appropriate judicial proceeding the PHA's disposition of the grievance.

(f) *Scheduling of hearings.* Upon complainant's compliance with paragraphs (a), (d) and (e) of this section, a hearing shall be scheduled by the hearing officer or hearing panel promptly for a time and place reasonably convenient to both the complainant and the PHA. A written notification specifying the time, place and the procedures governing the hearing shall be delivered to the complainant and the appropriate PHA official.

(g) *Expedited grievance procedure.* (1) The PHA may establish an expedited grievance procedure for any grievance concerning a termination of tenancy or eviction that involves:

(i) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA, or

(ii) Any drug-related criminal activity on or near such premises.

(2) In the case of a grievance under the expedited grievance procedure, §966.54 (informal settlement of grievances) is not applicable.

(3) Subject to the requirements of this subpart, the PHA may adopt special procedures concerning a hearing under the expedited grievance procedure, including provisions for expedited notice or scheduling, or provisions for expedited decision on the grievance.

[40 FR 33406, Aug. 7, 1975, as amended at 42 FR 5573, Jan. 28, 1977. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51579, Oct. 11, 1991; 65 FR 16731, Mar. 29, 2000]

§ 966.56 Procedures governing the hearing.

(a) The hearing shall be held before a hearing officer or hearing panel, as appropriate.

(b) The complainant shall be afforded a fair hearing, which shall include:

(1) The opportunity to examine before the grievance hearing any PHA documents, including records and regulations, that are directly relevant to the hearing. (For a grievance hearing concerning a termination of tenancy or eviction, see also § 966.4(m).) The tenant shall be allowed to copy any such document at the tenant's expense. If the PHA does not make the document available for examination upon request by the complainant, the PHA may not rely on such document at the grievance hearing.

(2) The right to be represented by counsel or other person chosen as the tenant's representative, and to have such person make statements on the tenant's behalf;

(3) The right to a private hearing unless the complainant requests a public hearing;

(4) The right to present evidence and arguments in support of the tenant's complaint, to controvert evidence relied on by the PHA or project management, and to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies; and

(5) A decision based solely and exclusively upon the facts presented at the hearing.

(c) The hearing officer or hearing panel may render a decision without proceeding with the hearing if the hearing officer or hearing panel determines that the issue has been previously decided in another proceeding.

(d) If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer or hearing panel may make a determination to postpone the hearing for not to exceed five business days or may make a determination that the party has waived his right to a hearing. Both the complainant and the PHA shall be notified of the determination by the hearing officer or hearing panel: *Provided,* That a determination that the complainant has waived his right to a hearing shall not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

(e) At the hearing, the complainant must first make a showing of an entitlement to the relief sought and thereafter the PHA must sustain the burden of justifying the PHA action or failure to act against which the complaint is directed.

(f) The hearing shall be conducted informally by the hearing officer or hearing panel and oral or documentary evidence pertinent to the facts and issues raised by the complaint may be received without regard to admissibility under the rules of evidence applicable to judicial proceedings. The hearing officer or hearing panel shall require the PHA, the complainant, counsel and other participants or spectators to conduct themselves in an orderly fashion. Failure to comply with the directions of the hearing officer or hearing panel to obtain order may result in exclusion from the proceedings or in a decision adverse to the interests of the disorderly party and granting or denial of the relief sought, as appropriate.

(g) The complainant or the PHA may arrange, in advance and at the expense of the party making the arrangement, for a transcript of the hearing. Any interested party may purchase a copy of such transcript.

(h) *Accommodation of persons with disabilities.* (1) The PHA must provide reasonable accommodation for persons with disabilities to participate in the hearing. Reasonable accommodation may include qualified sign language interpreters, readers, accessible locations, or attendants.

(2) If the tenant is visually impaired, any notice to the tenant which is required under this subpart must be in an accessible format.

[40 FR 33406, Aug. 7, 1975. Redesignated at 49 FR 6714, Feb. 23, 1984, and amended at 56 FR 51580, Oct. 11, 1991]

§ 966.57 Decision of the hearing officer or hearing panel.

(a) The hearing officer or hearing panel shall prepare a written decision, together with the reasons therefor, within a reasonable time after the hearing. A copy of the decision shall be sent to the complainant and the PHA. The PHA shall retain a copy of the decision in the tenant's folder. A copy of

such decision, with all names and identifying references deleted, shall also be maintained on file by the PHA and made available for inspection by a prospective complainant, his representative, or the hearing panel or hearing officer.

(b) The decision of the hearing officer or hearing panel shall be binding on the PHA which shall take all actions, or refrain from any actions, necessary to carry out the decision unless the PHA Board of Commissioners determines within a reasonable time, and promptly notifies the complainant of its determination, that

(1) The grievance does not concern PHA action or failure to act in accordance with or involving the complainant's lease on PHA regulations, which adversely affect the complainant's rights, duties, welfare or status;

(2) The decision of the hearing officer or hearing panel is contrary to applicable Federal, State or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA.

(c) A decision by the hearing officer, hearing panel, or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial *de novo* or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

PART 968—PUBLIC HOUSING MODERNIZATION

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AUTHORITY: 42 U.S.C. 1437d, 1437*l*, and 3535(d).

SOURCE: 54 FR 52689, Dec. 21, 1989, unless otherwise noted.

Subpart A—General

§ 968.101 Purpose and applicability.

(a) *Purpose.* The purpose of this part is to set forth the policies and procedures for the Modernization program authorizing HUD to provide financial assistance to Public Housing Agencies (PHAs).

(b) *Applicability.* (1) Subpart A of this part applies to all modernization under this part. Subpart B of this part sets

forth the requirements and procedures for the Comprehensive Improvement Assistance Program (CIAP) for PHAs that own or operate fewer than 250 public housing units. Subpart C of this part sets forth the requirements and procedures for the Comprehensive Grant Program (CGP) for PHAs that own or operate 250 or more units. A PHA that qualifies for participation in the CGP is not eligible to participate in the CIAP. A PHA that has already qualified to participate in the CGP may elect to continue to participate in the CGP so long as it owns or operates at least 200 units.

(2) This part applies to PHA-owned low-income public housing developments (including developments managed by a resident management corporation pursuant to a contract with the PHA); conveyed Lanham Act and Public Works Administration (PWA) developments; and to Section 23 Leased Housing Bond-Financed developments. Rental developments which are planned for conversion to homeownership under sections 5(h), 21, or 301 of the Act, but which have not yet been sold by a PHA, continue to qualify for assistance under this part. This part does not apply to developments under the Section 23 Leased Housing Non-Bond Financed program, the Section 10(c) Leased program, or the Section 23 or Section 8 Housing Assistance Payments programs.

(3) A section 23 Leased Housing Bond-Financed development is eligible for modernization only if HUD determines that the development has met the following conditions:

(i) The development was financed by the issuance of bonds;

(ii) Clear title to the development will be conveyed to or vested in the PHA at the end of the section 23 lease term;

(iii) There are no legal obstacles affecting the PHA's use of the property as public housing during the 20-year period of the modernization;

(iv) After completion of the modernization, the development will have a remaining useful life of at least 20 years and it is in the financial interest of the Federal Government to improve the development; and

(v) The development is covered by a cooperation agreement between the PHA and local governing body during the 20-year period of the modernization.

(4) A section 23 Leased Housing Bond-Financed development which has been conveyed to the PHA after the bonds have been retired is similarly eligible for modernization if the conditions specified under paragraph (b)(3) of this section have been satisfied.

(5) A development/building/unit which is assisted under section 5(j)(2) of the Act (Major Reconstruction of Obsolete Projects) (MROP) is eligible for section 14 funding (CIAP or CGP) where it received MROP funding after FFY 1988 and has reached Date of Full Availability (DOFA) or where it received MROP funding during FFYs 1986–1988 and all MROP funds have been expended.

(c) *Transition.* Any amount that HUD has approved for a PHA must be used for the purposes for which the funding was provided, or:

(1) For a CGP PHA, for purposes consistent with an approved Annual Statement or Five-Year Action Plan submitted by the PHA, as the PHA determines to be appropriate; or

(2) For a CIAP PHA, in accordance with a revised CIAP budget.

(d) *Approved information collections.* The following sections of this subpart have been approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 and assigned OMB approval number 2577–0044: §§ 968.135, 968.145, 968.210, 968.215, 968.225, and 968.230. The following sections of this subpart have been similarly approved and assigned approval number 2577.0157: §§ 968.310, 968.315, 968.325, and 968.330.

[57 FR 5570, Feb. 14, 1992, as amended at 58 FR 13930, Mar. 15, 1993; 61 FR 8737, Mar. 5, 1996]

§ 968.102 Special requirements for Turnkey III developments.

(a) *Modernization Costs.* Modernization work on a Turnkey III unit shall not increase the purchase price or amortization period of the home.

(b) *Eligibility of paid-off and conveyed units for assistance.*—(1) *Paid-off units.* A Turnkey III unit that is paid off but

has not been conveyed at the time the CIAP application or CGP Annual Submission is submitted, is eligible for any physical improvement under § 968.112(d).

(2) *Conveyed units.* Where modernization work has been approved before conveyance, the PHA may complete the work even if title to the unit is subsequently conveyed before the work is completed. However, once conveyed, the unit is not eligible for additional or future assistance. A PHA shall not use funds provided under this part for the purpose of modernizing units if the modernization work was not approved before conveyance of title.

(c) *Other.* The homebuyer family must be in compliance with its financial obligations under its homebuyer agreement in order to be eligible for non-emergency physical improvements, with the exception of work necessary to meet statutory and regulatory requirements, (e.g., accessibility for persons with disabilities and lead-based paint activities) and the correction of development deficiencies. Notwithstanding the above requirement, a PHA may, with prior HUD approval, complete non-emergency physical improvements on any homeownership unit where the PHA demonstrates that, due to economies of scale or geographic constraints, substantial cost savings may be realized by completing all necessary work in a development at one time.

[59 FR 44837, Aug. 30, 1994, as amended at 61 FR 8737, Mar. 5, 1996; 62 FR 27126, May 16, 1997; 64 FR 50229, Sept. 15, 1999]

§ 968.103 Allocation of funds under section 14.

(a) *General.* This section describes the process for allocating modernization funds to the aggregate of PHAs and IHAs participating in the CIAP and to individual PHAs and IHAs participating in the CGP.

(b) *Set-aside for emergencies and disasters.* For each FFY, HUD shall reserve from amounts approved in the appropriation act for grants under this part and part 950 of this title, an amount not to exceed $75 million (which shall include unused reserve amounts carried over from previous FFYs), which shall be made available to PHAs and IHAs for modernization needs resulting from natural and other disasters, and from emergencies. HUD shall replenish this reserve at the beginning of each FFY. Any unused funds from previous years may remain in the reserve until allocated. The requirements governing the reserve for disasters and emergencies and the procedures by which a PHA may request such funds, are set forth in § 968.104.

(c) *Set-aside for credits for mod troubled PHAs under subpart C of this part.* After deducting an amount for the reserve for natural and other disasters and for emergencies under paragraph (b) of this section, HUD shall set aside from the funds remaining no more than five percent for the purpose of providing credits to PHAs that were formerly designated as mod troubled agencies under the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901). The purpose of this set-aside is to compensate these PHAs for amounts previously withheld by HUD because of a PHA's prior designation as a mod troubled agency. Since part 901 of this chapter does not apply to IHAs, they are not classified as ''mod troubled'' and they do not participate in the set-aside credits established under paragraph (c) of this section.

(d) *Formula allocation based on relative needs.* After determining the amounts to be reserved under paragraphs (b) and (c) of this section, HUD shall allocate the amount remaining pursuant to the formula set forth in paragraphs (e) and (f) of this section, which is designed to measure the relative backlog and accrual needs of PHAs and IHAs.[1]

(e) *Allocation for backlog needs.* HUD shall allocate half of the formula amount under paragraph (d) of this section based on the relative backlog needs of PHAs and IHAs, as follows:

(1) *Determination of backlog need:*

(i) *Statistically reliable data are available.* Where HUD determines that the

[1] In construing all terms used in the statutory indicators for estimating backlog and accrual need, HUD shall use the meanings cited in Appendix B of the HUD Report to the Congress on Alternative Methods for Funding Public Housing Modernization (April 1990). Copies of the HUD Report to Congress may be obtained by contacting the HUD User at 1–800–245–2691.

data concerning the categories of backlog need identified under paragraph (e)(4) of this section are statistically reliable for individual IHAs and PHAs with 250 or more units, or for the aggregate of IHAs and PHAs with fewer than 250 units, which are not participating in the formula funding portion of the modernization program, it will base its allocation on direct estimates of the statutory categories of backlog need, based on the most recently available, statistically reliable data;

(ii) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning the categories of backlog need identified under paragraph (e)(4) of this section are not available for individual PHAs and IHAs with 250 or more units, it will base its allocation of funds under this section on estimates of the categories of backlog need using:

(A) The most recently available data on the categories of backlog need under paragraph (e)(4) of this section;

(B) Objectively measurable data concerning the following PHA or IHA, community and development characteristics:

(*1*) The average number of bedrooms in the units in a development. (Weighted at 2858.7);

(*2*) The proportion of units in a development available for occupancy by very large families. (Weighted at 7295.7);

(*3*) The extent to which units for families are in high-rise elevator developments. (Weighted at 5555.8);

(*4*) The age of the developments, as determined by the DOFA date (date of full availability). In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction, in which case HUD will use the actual date of construction (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50 year cap. (Weighted at 206.5);

(*5*) In the case of a large agency, the number of units with 2 or more bedrooms. (Weighted at .433);

(*6*) The cost of rehabilitating property in the area. (Weighted at 27544.3);

(*7*) For family developments, the extent of population decline in the unit of general local government determined on the basis of the 1970 and 1980 censuses. (Weighted at 759.5);

(C) An equation constant of 1412.9.

(2) *Calibration of backlog need for developments constructed prior to 1985.* The estimated backlog need, as determined under either paragraph (e)(1)(i) or (e)(1)(ii) of this section, shall be adjusted upward for developments constructed prior to 1985 by a constant ratio of 1.5 to more accurately reflect the costs of modernizing the categories of backlog need under paragraph (e)(4) of this section for the public housing stock as of 1991.

(3) Replacement factor to reflect backlog need for developments with demolition, disposition, or conversion occurring on or after October 1, 1996. (i) PHAs that have a reduction in units attributable to demolition, disposition, or conversion of units during the period (reflected in data maintained by HUD) that lowers the formula unit count for the Comprehensive Grant formula calculations qualify for application of a replacement housing factor, subject to satisfaction of criteria stated in paragraph (e)(3)(ii) of this section. The factor will be added, where applicable, for the first 5 years after such reduction, and consists of 50 percent of the published Total Development Cost for a two-bedroom unit in a walkup type structure for the period April 3, 1996 through April 30, 1997, multiplied times the number of units to be demolished, disposed of, or converted. The total relative backlog need of the PHA resulting from application of this replacement factor cannot exceed the share it would have had if the demolition, disposition, or conversion had not taken place.

(ii) A PHA is eligible for application of this factor only if the PHA satisfies the following criteria:

(A) The PHA requests the application of the replacement factor;

(B) The restored funding that results from the use of the replacement factor is used to provide replacement housing (in any year in which replacement housing is an eligible activity) or accelerated renovation of vacant but viable units, in accordance with the PHA's five-year action plan, approved by HUD (see §968.315);

(C) The PHA does not receive funding under the public housing development; Major Reconstruction of Obsolete Public Housing, or HOPE VI programs for the units developed or modernized with funds received under this replacement housing factor;

(D) A PHA that has been determined by HUD to be troubled or mod-troubled that is not already under the direction of HUD or a court-appointed receiver, in accordance with part 901 of this chapter, must use an Alternative Management Entity as defined in § 901.5 of this chapter for development of replacement housing and must comply with any applicable provisions of its Memorandum of Agreement executed with HUD under that part; and

(E) Any development of replacement housing by any PHA must be done in accordance with part 941 of this chapter.

(iii) If the PHA does not use the restored funding that results from the use of the replacement factor to provide replacement housing or renovate vacant units in a timely fashion, in accordance with § 968.125 and § 941.501 of this chapter, and make reasonable progress on such use of the funding, in accordance with § 968.335(a)(3) and § 941.501, HUD may require appropriate corrective action under § 968.335 and § 941.501; may recapture and reallocate the funds; or may use other remedies available to HUD.

(4) *Deduction for prior modernization:* HUD shall deduct from the estimated backlog need, as determined under either paragraph (e)(1)(i) or (e)(1)(ii) of this section, amounts previously provided to a PHA or IHA for modernization, using one of the following methods:

(i) *Standard deduction for prior CIAP and MROP.* HUD shall deduct 60 percent of the CIAP funds made available on a PHA-wide or IHA-wide basis from FFY 1984 to 1991, and 40 percent of the funds made available on a development-specific basis for the Major Reconstruction of Obsolete Projects (MROP) (not to exceed the estimated formula need for the development), subject to a maximum fifty percent deduction of a PHA's or IHA's total need for backlog funding;

(ii) *Newly constructed units.* Units with a DOFA date of October 1, 1991 or thereafter will be considered to have a zero backlog; or

(iii) *Acquired developments.* Developments acquired by a PHA with a DOFA date of October 1, 1991 or thereafter will be considered by HUD to have a zero backlog.

(5) *Categories of backlog need.* The most recently available data used under either paragraph (e)(1)(i) or (e)(1)(ii) of this section must pertain to the following categories of backlog need:

(i) Backlog of needed repairs and replacements of existing physical systems in public housing developments;

(ii) Items that must be added to developments to meet HUD's modernization standards under § 968.115, and State and local codes; and

(iii) Items that are necessary or highly desirable for the long-term viability of a development, in accordance with HUD's modernization standards.

(f) *Allocation for accrual needs.* HUD shall allocate the other half remaining under the formula allocation under paragraph (d) of this section based upon the relative accrual needs of PHAs and IHAs, determined as follows:

(1) *Statistically reliable data are available.* Where HUD determines that statistically reliable data are available concerning the categories of need identified under paragraph (f)(3) of this section for individual PHAs and IHAs with 250 or more units, and for the aggregate of PHAs and IHAs with fewer than 250 units, it shall base its allocation of assistance under this section on the needs that are estimated to have accrued since the date of the last objective measurement of backlog needs under paragraph (e)(1)(i) of this section;

(2) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning the categories of need identified under paragraph (f)(3) of this section are not available for individual PHAs and IHAs with 250 or more units, it shall base its allocation of assistance under this section on estimates of accrued need using:

(i) The most recently available data on the categories of accrual need under paragraph (f)(3) of this section;

(ii) Objectively measurable data concerning the following PHA or IHA, community, and development characteristics:

(A) The average number of bedrooms in the units in a development. (Weighted at 100.1);

(B) The proportion of units in a development available for occupancy by very large families. (Weighted at 356.7);

(C) The age of the developments. (Weighted 10.4);

(D) The extent to which the buildings in developments of an agency average fewer than 5 units. (Weighted at 87.1);

(E) The cost of rehabilitating property in the area. (Weighted at 679.1);

(F) The total number of units of each PHA or IHA that owns or operates 250 or more units. (weighted at .0144);

(iii) An equation constant of 602.1.

(3) *Categories of need*. The data to be provided under either paragraph (f)(1) or (2) of this section must pertain to the following categories of need:

(i) Backlog of needed repairs and replacements of existing physical systems in public housing developments; and

(ii) Items that must be added to developments to meet HUD's modernization standards under §968.115, and State and local codes.

(4) *Replacement factor to reflect accrual need for developments with demolition, disposition, or conversion occurring on or after October 1, 1996*. (i) PHAs that have a reduction in units attributable to demolition, disposition, or conversion of units during the period (reflected in data maintained by HUD) that lowers the formula unit count for the Comprehensive Grant formula calculations qualify for application of a replacement housing factor, subject to satisfaction of criteria stated in paragraph (f)(4)(ii) of this section. The factor will be added, where applicable, for the first five years after such reduction, and consists of two percent of the published Total Development Cost for a two-bedroom unit in a walkup type structure for the period April 3, 1996 through April 30, 1997, multiplied times the number of units to be demolished, disposed of, or converted. The total relative accrual need of the PHA resulting from application of this replacement factor cannot exceed the share it would have had if the demolition, disposition, or conversion had not taken place.

(ii) A PHA is eligible for application of this factor only if the PHA satisfies the following criteria:

(A) The PHA requests the application of the replacement factor;

(B) The restored funding that results from the use of the replacement factor is used to provide replacement housing (in any year in which replacement housing is an eligible activity) or accelerated renovation of vacant but viable units, in accordance with the PHA's five-year action plan, approved by HUD (see §968.315);

(C) The PHA does not receive funding under the public housing development, Major Reconstruction of Obsolete Public Housing, or HOPE VI programs for the units developed or modernized with funding received under this replacement housing factor;

(D) A PHA that has been determined by HUD to be troubled or mod-troubled, in accordance with part 901 of this chapter that is not already under the direction of HUD or a court-appointed receiver, must use an Alternative Management Entity as defined in §901.5 of this chapter for development of replacement housing and must comply with any applicable provisions of its Memorandum of Agreement executed with HUD under that part; and

(E) Any development of replacement housing by any PHA must be done in accordance with part 941 of this chapter.

(iii) If the PHA does not use the restored funding that results from the use of the replacement factor to provide replacement housing or renovate vacant units in a timely fashion, in accordance with §968.125 and §941.501 of this chapter, and make reasonable progress on such use of the funding, in accordance with §968.335(a)(3) and §941.501, HUD may require appropriate corrective action under §968.335 and §941.501; may recapture and reallocate the funds; or may use other remedies available to HUD.

(g) *Allocation of CIAP*. The formula amount determined under paragraphs (e) and (f) of this section for PHAs and

IHAs with fewer than 250 units shall be allocated to PHAs in accordance with the requirements of subpart B of this part (the CIAP), and to IHAs in accordance with the requirements of 24 CFR part 950, subpart I.

(h) *Allocation for CGP.* The formula amount determined under paragraphs (e) and (f) of this section for PHAs with 250 or more units shall be allocated in accordance with the requirements of subpart C of this part (the CGP), and for IHAs in accordance with the requirements of 24 CFR part 950, subpart I. A PHA that is eligible to receive a grant under the CGP may appeal the amount of its formula allocation in accordance with the requirements set forth in § 968.310(b). A PHA that is eligible to receive modernization funds under the CGP because it owns or operates 250 or more units is disqualified from receiving assistance under the CIAP under this part.

(i) *Use of formula allocation.* Any amounts allocated to a PHA under paragraphs (e) and (f) of this section may be used for any eligible activity under this part, notwithstanding that the allocation amount is determined by allocating half based on the relative backlog needs and half based on the relative accrual needs of PHAs and IHAs.

(j) *Calculation of number of units.* For purposes of determining under this section the number of units owned or operated by a PHA or IHA, and the relative modernization needs of PHAs and IHAs, HUD shall count as one unit each existing rental and section 23 bond-financed unit under the ACC, except that it shall count as one-fourth of a unit each existing unit under the Turnkey III program. In addition, HUD shall count as one unit each existing unit under the Mutual Help program. New development units that are added to an PHA's or IHA's inventory will be added to the overall unit count so long as they are under ACC amendment and have reached DOFA by the first day in the FFY in which the formula is being run. Any increase in units (reaching DOFA and under ACC amendment) as of the beginning of the FFY shall result in an adjustment upwards in the number of units under the formula. New units reaching DOFA after this date will be counted for formula purposes as of the following FFY.

(k) *Demolition, disposition and conversion of units*—(1) *General.* Where an existing unit under an ACC is demolished, disposed of, or converted into a larger or smaller unit, including the substantial rehabilitation of a Mutual Help or Turnkey III unit, HUD shall not adjust the amount the PHA or IHA receives under the formula, unless more than one percent of the units are affected on a cumulative basis. Where more than one percent of the existing units are demolished, disposed of, or converted, HUD shall reduce the formula amount for the PHA or IHA over a 3-year period to reflect removal of the units from the ACC;

(2) *Determination of one percent cap.* In determining whether more than one percent of the units are affected on a cumulative basis, HUD will compare the units eligible for funding in the initial year under formula funding with the number of units eligible for funding for formula funding purposes for the current year, and shall base its calculations on the following:

(i) Increases in the number of units resulting from the conversion of existing units will be added to the overall unit count so long as they are under ACC amendment by the first day in the FFY in which the formula is being run;

(ii) Units which are lost as a result of demolition, disposition or conversion shall not be offset against units subsequently added to a PHA's or IHA's inventory;

(iii) For purposes of calculating the number of converted units, HUD shall regard the converted size of the unit as the appropriate unit count (e.g., a unit that originally was counted as one unit under paragraph (j) of this section, but which later was converted into two units, shall be counted as two units under the ACC).

(3) *Phased-in reduction of units.* (i) *Reduction less than one percent.* If HUD determines that the reduction in units under paragraph (k)(2) of this section is less than one percent, the PHA or IHA will be funded as though no change had occurred;

(ii) *Reduction greater than one percent.* If HUD determines that the reduction in units under paragraph (k)(2) of this

section is greater than one percent, the number of units on which formula funding is based will be the number of units reported as eligible for funding for the current program, plus two thirds of the difference between the initial year and the current year in the first year, plus one third of the difference in the second year, and at the level of the current year in the third year;

(iii) *Exception.* A unit which is conveyed under the Mutual Help or Turnkey III programs will result in an automatic (rather than a phased-in) reduction in the unit count. Paid-off Mutual Help or Turnkey III units continue to be counted until they are conveyed.

(4) *Subsequent reductions in unit count.* (i) Once a PHA's or IHA's unit count has been fully reduced under paragraph (k)(3)(ii) of this section to reflect the new number of units under the ACC, this new number of units will serve as the base for purposes of calculating whether there has been a one percent reduction in units on a cumulative basis;

(ii) A reduction in formula funding, based upon additional reductions to the number of a PHA's or IHA's units, will also be phased in over a three-year period, as described in paragraph (k)(2) of this section.

[57 FR 5571, Feb. 14, 1992, as amended at 59 FR 30477, June 13, 1994; 59 FR 44837, Aug. 30, 1994; 61 FR 8737, Mar. 5, 1996; 63 FR 46107, Aug. 28, 1998]

§968.104 Reserve for emergencies and disasters.

(a) *Emergencies*—(1) *Eligibility for assistance.* A PHA (including a PHA that has been designated as mod troubled under PHMAP) may obtain funds at any time, for any eligible emergency work item as defined in §968.305 (for CGP PHAs) or for any eligible emergency work item (described as emergency modernization in §968.205) (for CIAP PHAs), from the reserve established under §968.103(b). However, emergency reserve funds may not be provided to a CGP PHA that has the necessary funds available from any other source, including its annual formula allocation under §968.103 (e) and (f), other unobligated modernization funds, and its replacement reserves. A PHA is not required to have an approved comprehensive plan under §968.315 before it can request emergency assistance from this reserve. Emergency reserve funds may not be provided to a CIAP PHA unless it does not have the necessary funds available from any other source, including unobligated CIAP, and no CIAP modernization funding is available from HUD for the remainder of the fiscal year.

(2) *Procedure.* To obtain emergency funds, a PHA must submit a request, in a form to be prescribed by HUD, which demonstrates that without the requested funds from the set-aside, the PHA does not have adequate funds available to correct the conditions which present an immediate threat to the health or safety of the residents. HUD will immediately process a request for such assistance and, if it determines that the PHA's request meets the requirements under paragraph (a)(1) of this section, it shall approve the request, subject to the availability of funds in the reserve;

(3) *Repayment.* A CGP PHA that receives assistance for its emergency needs from the reserve under §968.103(b) must repay such assistance from its future allocations of assistance, where available. For CGP PHAs, HUD shall deduct up to 50 percent of a PHA's succeeding year's formula allocation under §968.103 (e) and (f) to repay emergency funds previously provided by HUD to the PHA. The remaining balance, if any, shall be deducted from a PHA's succeeding years' formula allocations. A CIAP PHA is not required to repay assistance for its emergency needs from the reserve.

(b) *Natural and other disasters*—(1) *Eligibility for assistance.* A PHA (including a PHA that has been designated as mod troubled under PHMAP) may request assistance at any time from the reserve established under §968.103(b) for the purpose of permitting the PHA to address a natural or other disaster. To qualify for assistance, the disaster must pertain to an extraordinary event affecting only one or a few PHAs, such as an earthquake or hurricane. Any disaster declared by the President (or which HUD determines would qualify for a Presidential declaration if it were

on a larger scale) qualifies for assistance under this paragraph. A PHA may receive funds from the reserve regardless of the availability of other modernization funds or reserves, but only to the extent that its needs are in excess of its insurance coverage or other Federal assistance. A CGP PHA is not required to have an approved comprehensive plan under § 968.315 before it can request assistance from the reserve under § 968.103(b);

(2) *Procedure.* To obtain funding for natural or other disasters under § 968.103(b), a PHA must submit a request, in a form to be prescribed by HUD, which demonstrates that the PHA meets the requirements of paragraph (b)(1) of this section. HUD will immediately process a request for such assistance and, if it determines that the request meets the requirements under paragraph (b)(1) of this section, it shall approve the request, subject to the availability of funds in the reserve;

(3) *Repayment.* Funds provided to a PHA under § 968.103(b) for natural and other disasters are not required to be repaid.

[57 FR 5575, Feb. 14, 1992, as amended at 59 FR 44838, Aug. 30, 1994. Redesignated and amended at 61 FR 8738, Mar. 5, 1996]

§ 968.105 Definitions.

The terms *HUD* and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

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

Annual contributions contract (ACC). A contract under the Act between HUD and the PHA containing the terms and conditions under which the Department assists the PHA in providing decent, safe, and sanitary housing for low-income families. The ACC must be in a form prescribed by HUD under which HUD agrees to provide assistance in the development, modernization, and/or operation of a low-income housing project under the Act, and the PHA agrees to develop, modernize, and operate the project in compliance with all provisions of the ACC and the Act, and all HUD regulations and implementing requirements and procedures.

CGP. The Comprehensive Grant Program, which provides modernization funds on a formula basis to PHAs with 250 or more public housing units.

CIAP. The Comprehensive Improvement Assistance Program, which provides modernization funds on a competitive basis to PHAs with fewer than 250 public housing units.

Development. The term *development* has the same meaning as that provided for *low-income housing project,* as that term is defined in section 3(b)(1) of the Act.

FFY. Federal fiscal year.

Force account labor. Labor employed directly by the PHA on either a permanent or a temporary basis. See § 968.120.

Hard costs. The physical improvement costs in development accounts 1450 through 1475 of the Low-Rent Housing Accounting Handbook 7510.1, as revised, which include: Account 1450 Site Improvements; Account 1460 Dwelling Structures; Account 1465.1 Dwelling Equipment—Nonexpendable; Account 1470 Nondwelling Structures; and Account 1475 Nondwelling Equipment.

Homebuyer agreement. A Turnkey III Homebuyer Ownership Opportunity Agreement.

Modernization funds. Funds derived from an allocation of budget authority for the purpose of funding physical and management improvements.

Modernization program. A PHA's program for carrying out modernization, as set forth in the approved CIAP budget or CGP Annual Statement.

Modernization project. The improvement of one or more existing public housing developments under a unique number designated for that modernization program. For each modernization project, HUD and the PHA shall enter into an ACC amendment, requiring low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). The terms ''modernization project number'' and ''comprehensive grant number'' are used interchangeably.

Non-routine maintenance. Work items that ordinarily would be performed on a regular basis in the course of upkeep of property, but have become substantial in scope because they have been put off, and involve expenditures that would otherwise materially distort the

level trend of maintenance expenses. Replacement of equipment and materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does qualify, but reconstruction, substantial improvement in the quality or kind of original equipment and materials, or remodeling that alters the nature or type of housing units does not qualify.

Partnership process. A specific and ongoing process that is designed to ensure that residents, resident groups, and the PHA work in a cooperative and collaborative manner to develop, implement and monitor the CIAP or CGP. At a minimum, a PHA shall ensure that the partnership process incorporates full resident participation in each of the required program components.

PHMAP. The Public Housing Management Assessment Program (PHMAP) is a process designed to allow HUD and the PHA to identify PHA management capabilities and deficiencies, and to lead to overall better management of the public housing program, in accordance with 24 CFR part 901.

Reasonable cost. Total unfunded hard cost needs for a development that do not exceed 90 percent of the computed Total Development Cost (TDC) for a new development with the same structure type and number and size of units in the market area.

Soft costs. The non-physical improvement costs which exclude any costs in development accounts 1450 through 1475.

[54 FR 52689, Dec. 21, 1989, as amended at 56 FR 922, Jan. 9, 1991; 57 FR 5573, Feb. 14, 1992; 58 FR 13931, Mar. 15, 1993; 61 FR 5216, Feb. 9, 1996; 61 FR 8738, Mar. 5, 1996]

§ 968.108 Displacement, relocation, and real property acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, PHAs must assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* Residents who will not be required to move permanently, but who must relocate temporarily (e.g., to permit rehabilitation), shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent/utility costs; and

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary housing to be made available for the temporary period;

(iii) The terms and conditions under which the resident may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the project; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A ''displaced person'' (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. A ''displaced person'' shall be advised of his/her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a development is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the PHA's determination concerning whether the person qualifies as a ''displaced person,'' or the amount of the relocation assistance for which the

person is eligible, may file a written appeal of that determination with the PHA. A lower-income person who is dissatisfied with the PHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of PHA.* (1) The PHA shall certify that it will comply (i.e., provide assurance of compliance, as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section and shall ensure such compliance, notwithstanding any third party's contractual obligation to the PHA to comply with these provisions.

(2) The PHA shall maintain records in sufficient detail to demonstrate compliance with these provisions. The PHA shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project, including any permanent move from the building/complex that is made:

(i) On or after the date of the ''initiation of negotiations'' (defined in § 968.108(h)), if the person is the resident of a dwelling and any one of the following three situations occurs:

(A) The resident has not been provided, before the move, a written notice offering the resident the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the total tenant payment, as determined under 24 CFR 913.107; or

(B) The resident is required to relocate temporarily, does not return to the building/complex, and either:

(*1*) The resident is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or

(*2*) Other conditions of the temporary relocation are not reasonable; or

(C) The resident is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable; or

(ii) Before the ''initiation of negotiations,'' if the PHA or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project;

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a ''displaced person'' (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the PHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the Annual Statement (CGP) or application (CIAP) and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., that the person may be displaced or temporarily relocated) and the fact that he or she would not qualify as a ''displaced person'' (or for assistance under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The PHA may ask HUD, at any time, to determine whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a

resident who is displaced by rehabilitation or demolition, the term *initiation of negotiations* means 45 calendar days before (1) the issuance of the invitation for bids for the project or (2) the start of force account work, whichever is applicable.

(Approved by the Office of Management and Budget under OMB Control Number 2506–0121)

[58 FR 13931, Mar. 15, 1993, as amended at 61 FR 8738, Mar. 5, 1996]

§ 968.110 Other program requirements.

In addition to the Federal requirements set forth in 24 CFR part 5, the PHA shall comply with the following program requirements:

(a) *Nondiscrimination and equal opportunity.* The PHA shall comply with Title II of the Americans with Disabilities Act and 28 CFR part 35; section 504 of the Rehabilitation Act of 1973 and 41 CFR part 60–471; and the Architectural Barriers Act of 1968 (42 U.S.C. 4151–4157) and 24 CFR part 40.

(b) [Reserved]

(c) *Environmental clearance.* Before approving a proposed project, HUD will comply with the requirements of 24 CFR part 50, implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4332 et seq.) and related requirements of 24 CFR 50.4.

(d) *Flood insurance.* HUD will not approve for acquisition, construction, or improvement, a building located in an area that has been identified by the Federal Emergency Management Agency as having special flood hazards, unless the following conditions are met:

(1) Flood insurance on the building is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.); and

(2) The community in which the area is situated is participating in the National Flood Insurance Program in accord with 44 CFR parts 59–79, or less than one year has passed since FEMA notification regarding flood hazards.

(e) *Wage rates.* (1) *Davis-Bacon.* With respect to modernization work or contracts over $2,000 (except for nonroutine maintenance work), all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed by the PHA or its contractors shall be paid not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act (40 U.S.C. 276a–276a–5).

(2) *HUD-determined.* With respect to all nonroutine maintenance work or contracts, all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed by the PHA or its contractors shall be paid not less than the wages prevailing in the locality, as determined or adopted by HUD pursuant to section 12 of the United States Housing Act of 1937.

(3) *State.* Prevailing wage rates determined under State law are inapplicable under the circumstances set forth in § 965.101 of this chapter.

(f) *Technical wage rates.* All architects, technical engineers, draftsmen and technicians (other than volunteers under the conditions set out in 24 CFR part 70) who are employed in the development of a project shall be paid not less than the wages prevailing in the locality, as determined or adopted (subsequent to a determination under applicable State or local law) by HUD.

(g)–(j) [Reserved]

(k) *Lead-based paint poisoning prevention.* The PHA shall comply with the relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, L, and R of this title.

(l) [Reserved]

(m) *Coastal barriers.* In accordance with the Coastal Barriers Resources Act, 16 U.S.C. 3501, no financial assistance under this part may be made available within the Coastal Barrier Resources System.

[54 FR 52689, Dec. 21, 1989, as amended at 56 FR 922, Jan. 9, 1991; 56 FR 15175, Apr. 15, 1991; 57 FR 5573, Feb. 14, 1992; 57 FR 14761, Apr. 22, 1992; 58 FR 13932, Mar. 15, 1993; 61 FR 5216, Feb. 9, 1996; 61 FR 8738, Mar. 5, 1996; 64 FR 33637, June 23, 1999; 64 FR 50229, Sept. 15, 1999]

§ 968.112 Eligible costs.

(a) *General.* A PHA may use financial assistance received under this part for the following eligible costs:

(1) For a CGP PHA, the eligible costs are:

(i) Undertaking activities described in its approved Annual Statement under § 968.325 and approved Five-Year Action Plan under § 968.315(e)(5);

(ii) Carrying out emergency work, whether or not the need is indicated in the PHA's approved Comprehensive Plan, including Five-Year Action Plan, or Annual Statement;

(iii) Funding a replacement reserve to carry out eligible activities in future years, subject to the restrictions set forth in paragraph (f) of this section;

(iv) Preparing the Comprehensive Plan and Five-Year Action Plan under § 968.315 and the Annual Submission under § 968.325, including reasonable costs necessary to assist residents to participate in a meaningful way in the planning, implementation and monitoring process; and

(v) Carrying out an audit, in accordance with 24 CFR part 44.

(2) For a CIAP PHA, the eligible costs are activities approved by HUD and included in an approved CIAP budget.

(b) *Demonstration of viability.* Except in the case of emergency work, a PHA shall only expend funds on a development for which the PHA has determined, and HUD agrees, that the completion of the improvements and replacements (for CGP PHAs, as identified in the Comprehensive Plan) will reasonably ensure the long-term physical and social viability of the development at a reasonable cost (as defined in § 968.105), or for essential non-routine maintenance needed to keep the property habitable until the demolition or disposition application is approved and residents are relocated.

(c) *Physical improvements.* Eligible costs include alterations, betterments, additions, replacements, and non-routine maintenance that are necessary to meet the modernization and energy conservation standards prescribed in § 968.115. These mandatory standards may be exceeded when a PHA (and HUD in the case of CIAP PHAs) determines that it is necessary or highly desirable for the long-term physical and social viability of the individual development. Development specific work includes work items that are modest in design and cost, but still blend in with the design and architecture of the surrounding community by including amenities, quality materials and design and landscaping features that are customary for the locality and culture. The Field Office has the authority to approve nondwelling space where such space is needed to administer, and is of direct benefit to, the public housing program. If demolition or disposition is proposed, a PHA shall comply with 24 CFR part 970. Additional dwelling space may be added to existing units.

(d) *Turnkey III developments.* (1) *General.* Eligible physical improvement costs for existing Turnkey III developments are limited to work items that are not the responsibility of the homebuyer families and that are related to health and safety, correction of development deficiencies, physical accessibility, energy audits and cost-effective energy conservation measures, or LBP testing, interim containment, professional risk assessment and abatement. In addition, management improvements are eligible costs.

(2) *Ineligible costs.* Routine maintenance or replacements, and items that are the responsibility of the homebuyer families are ineligible costs.

(3) *Exception for vacant or non-homebuyer-occupied Turnkey III units.*

(i) Notwithstanding the requirements of paragraph (d)(1) of this section, a PHA may substantially rehabilitate a Turnkey III unit whenever the unit becomes vacant or is occupied by a non-homebuyer family in order to return the unit to the inventory or make the unit suitable for homeownership purposes. A PHA that intends to use funds under this paragraph must identify in its CIAP application or CGP annual submission the estimated number of units proposed for substantial rehabilitation and subsequent sale. In addition, a PHA must demonstrate, for each of the Turnkey III units proposed to be substantially rehabilitated, that it has homebuyers who both are eligible for homeownership, in accordance with the requirements of 24 CFR part 904, and have demonstrated their intent to be placed into the unit.

(ii) Before a PHA may be approved for substantial rehabilitation of a unit

under this paragraph, it must first deplete any Earned Home Payments Account (EHPA) or Non-Routine Maintenance Reserve (NRMR) pertaining to the unit, and request the maximum amount of operating subsidy. Any increase in the value of a unit caused by its substantial rehabilitation under this paragraph shall be reflected solely by its subsequent appraised value, and not by an automatic increase in its selling price.

(e) *Demolition and conversion costs.* Eligible costs include:

(1) Demolition of dwelling units or non-dwelling facilities, where the demolition is approved by HUD under 24 CFR part 970, and related costs, such as clearing and grading the site after demolition and subsequent site improvement to benefit the remaining portion of the existing development; and

(2) Conversion of existing dwelling units to different bedroom sizes or to non-dwelling use.

(f) *Replacement reserve costs* (for CGP only). (1) Funding a replacement reserve to carry out eligible activities in future years is an eligible cost, subject to the following restrictions:

(i) Annual CGP funds are not needed for existing needs, as identified by the PHA in its needs assessments; or

(ii) A physical improvement requires more funds than the PHA would receive under its annual formula allocation; or

(iii) A management improvement requires more funds than the PHA may use under its 20% limit for management improvements (except as provided in paragraph (n)(2)(i) of this section), and the PHA needs to save a portion of its annual grant, in order to combine it with a portion of subsequent year(s) grants to fund the work item.

(2) The PHA shall invest replacement reserve funds so as to generate a return equal to or greater than the average 91-day Treasury bill rate.

(3) Interest earned on funds in the replacement reserve will not be added to the PHA's income in the determination of a PHA's operating subsidy eligibility, but must be used for eligible modernization costs.

(4) To the extent that its annual formula allocation and any unobligated balances of modernization funds are not adequate to meet emergency needs, a PHA must first use its replacement reserve, where funded, to meet emergency needs, before requesting funds from the reserve under §968.104. Use of the replacement reserve is not required for emergencies if the amount that otherwise would be used from that reserve is an accumulation from application of the replacement housing factor (§968.103(e) (3) and (f)(4)) that is necessary so that replacement housing can be provided efficiently and effectively.

(5) A PHA is not required to use its replacement reserve for costs related to natural and other disasters.

(g) *Management improvement costs.* (1) *General.* Management improvements that are development-specific or PHA-wide in nature are eligible costs where needed to upgrade the operation of the PHA's developments, sustain physical improvements at those developments or correct management deficiencies. A PHA's ongoing operating expenses are ineligible management improvement costs. For CIAP PHAs, management improvements may be funded as a single work item.

(2) *Eligible costs.* Eligible costs include:

(i) *General management improvement costs.* Eligible costs include general management improvement costs, such as: management, financial, and accounting control systems of the PHA; adequacy and qualifications of PHA personnel, including training; resident programs and services through the coordination of the provision of social services from tribal or local government or other public and private entities; resident and development security; resident selection and eviction; occupancy; rent collection; maintenance; and equal opportunity.

(ii) *Economic development costs.* Eligible costs include job training for residents and resident business development activities, for the purpose of carrying out activities related to the modernization-funded management and physical improvements. HUD encourages PHAs, to the greatest extent feasible, to hire residents as trainees, apprentices, or employees to carry out

the modernization program under this part, and to contract with resident-owned businesses for modernization work.

(iii) *Resident management costs.* Eligible costs include technical assistance to a resident council or resident management corporation (RMC), as defined in part 964, in order to: determine the feasibility of resident management to carry out management functions for a specific development or developments; train residents in skills directly related to the operations and management of the development(s) for potential employment by the RMC; train RMC board members in community organization, board development, and leadership; and assist in the formation of an RMC.

(iv) *Resident homeownership costs.* Eligible costs are limited to the study of the feasibility of converting rental to homeownership units and the preparation of an application for conversion to homeownership or sale of units.

(v) *Preventive maintenance system.* Eligible costs include the establishment of a preventive maintenance system or improvement of an existing system. A preventive maintenance system must provide for regular inspections of building structures, systems and units and distinguish between work eligible for operating funds (routine maintenance) and work eligible for modernization funding (non-routine maintenance).

(h) *Drug elimination costs.* Eligible costs include drug elimination activities involving management or physical improvements, as specified by HUD.

(i) *Lead-based paint costs.* Eligible costs include lead-based paint activities, such as insurance coverage and cleanup and disposal, in accordance with part 35 of this title.

(j) *Administrative costs.* Administrative costs necessary for the planning, design, implementation and monitoring of the physical and management improvements are eligible costs and include the following:

(1) *Salaries.* The salaries of non-technical and technical PHA personnel assigned full-time or part-time to modernization are eligible costs only where the scope and volume of the work are beyond that which could be reasonably expected to be accomplished by such personnel in the performance of their non-modernization duties. A PHA shall properly apportion to the appropriate program budget any direct charges for the salaries of assigned full- or part-time staff (*e.g.*, to the CIAP, CGP or operating budget);

(2) *Employee benefit contributions.* PHA contributions to employee benefit plans on behalf of non-technical and technical PHA personnel are eligible costs in direct proportion to the amount of salary charged to the CIAP or CGP, as appropriate;

(3) *Preparation of CIAP or CGP required documents;*

(4) *Resident participation.* Eligible costs include those associated with ensuring the meaningful participation of residents in the development of the CIAP Application or the CGP Annual Submission and Comprehensive Plan and the implementation and monitoring of the approved modernization program; and

(5) *Other administrative costs,* such as telephone and facsimile, as specified by HUD.

(k) *Audit costs (CGP only).* Eligible costs are limited to the portion of the audit costs that are attributable to the modernization program.

(l) *Architectural/engineering and consultant fees.* Eligible costs include fees for planning, identification of needs, detailed design work, preparation of construction and bid documents and other required documents, LBP professional risk assessments and testing, and inspection of work in progress.

(m) *Relocation costs.* Eligible costs include relocation and other assistance for permanent and temporary relocation, as a direct result of rehabilitation, demolition or acquisition for a modernization-funded activity, where this assistance is required by 49 CFR part 24 or § 968.108.

(n) *Cost limitations.* (1) *CIAP costs.* (i) *Management improvement costs.* Management improvement costs shall not exceed a percentage of the CIAP funds available to a Field Office in a particular FFY, as specified by HUD.

(ii) *Planning costs.* Planning costs are costs incurred *before* HUD approval of

the CIAP application *and* which are related to developing the CIAP application or carrying out eligible modernization planning, such as detailed design work, preparation of solicitations, and LBP professional risk assessment and testing. Planning costs may be funded as a single work item. If a PHA incurs planning costs without prior HUD approval, a PHA does so with the full understanding that the costs may not be reimbursed upon approval of the CIAP application. Planning costs shall not exceed 5 percent of the CIAP funds available to a Field Office in a particular FFY.

(2) *CGP costs.* (i) *Management improvement costs.* Notwithstanding the full fungibility of work items, a PHA shall not use more than a total of 20 percent of its annual grant for management improvement costs in account 1408, unless specifically approved by HUD or the PHA has been designated as both an over-all high performer and mod-high performer under the PHMAP.

(ii) *Administrative costs.* Notwithstanding the full fungibility of work items, a PHA shall not use more than a total of 10 percent of its annual grant on administrative costs in account 1410, excluding any costs related to lead-based paint or asbestos testing (whether conducted by force account employees or by a contractor), in-house architectural/engineering (A/E) work, or other special administrative costs required by State or local law, unless specifically approved by HUD.

(3) *Program benefit.* Where the physical or management improvement, including administrative cost, will benefit programs other than Public Housing, such as Section 8 or local revitalization programs, eligible costs are limited to the amount directly attributable to the public housing program.

(4) *No duplication.* Any eligible cost for an activity funded by CIAP or CGP shall not also be funded by any other HUD program.

(o) *Ineligible costs.* Ineligible costs include:

(1) Luxury improvements;

(2) Indirect administrative costs (overhead), as defined in OMB Circular A–87;

(3) Public housing operating assistance;

(4) Direct provision of social services, through either force account or contract labor, from FFY 1996 and future FFYs funds, unless otherwise provided by law; and

(5) Other ineligible activities, as specified by HUD.

(p) *Expanded eligibility for FFY 1995 and prior year modernization funds.* The FFY 1995 Rescissions Act expanded the eligible activities that may be funded with CIAP or CGP assistance provided from FFY 1995 and prior FFY funds. Such activities include, but are not limited to:

(1) New construction or acquisition of additional public housing units, including replacement units;

(2) Modernization activities related to the public housing portion of housing developments held in partnership, or cooperation with non-public housing entities; and

(3) Other activities related to public housing, including activities eligible under the Urban Revitalization Demonstration (HOPE VI).

[61 FR 8738, Mar. 5, 1996, as amended at 62 FR 27126, May 16, 1997; 63 FR 46108, Aug. 28, 1998; 64 FR 50229, Sept. 15, 1999]

§ 968.115 Modernization and energy conservation standards.

All improvements funded under this part shall:

(a) Meet the modernization standards as prescribed by HUD;

(b) Incorporate cost-effective energy conservation measures, identified in the PHA's most recently updated energy audit, conducted pursuant to part 965, subpart C;

(c) Where changing or installing a new utility system, conduct a life-cycle cost analysis, reflecting installation and operating costs; and

(d) Provide decent, safe, and sanitary living conditions in PHA-owned and PHA-operated public housing.

[61 FR 8740, Mar. 5, 1996]

§ 968.120 Force account.

(a) For both CIAP and CGP, a PHA may undertake the activities using force account labor, only where specifically approved by HUD in the CIAP budget or CGP Annual Statement, except no prior HUD approval is required where the PHA is designated as both an

overall high performer and Modernization high performer under the PHMAP.

(b) If the entirety of modernization activity (including the planning and architectural design of the rehabilitation) is administered by the RMC, the PHA shall not retain for any administrative or other reason, any portion of the modernization funds provided, unless the PHA and the RMC provide otherwise by contract.

[61 FR 8740, Mar. 5, 1996]

§ 968.125 Initiation of modernization activities.

After HUD has approved the modernization program and entered into an ACC amendment with the PHA, a PHA shall undertake the modernization activities and expenditures set forth in its approved CIAP budget or CGP Annual Statement/Five-Year Action Plan in a timely, efficient and economical manner. All approved funding must be obligated within two years of approval and expended within three years of approval unless HUD approves a longer time period in the PHA's implementation schedule, as set forth in the CIAP budget or CGP Annual Statement. HUD may approve a longer time period for such reasons as the large size of the grant or the complexity of the work.

[61 FR 8741, Mar. 5, 1996]

§ 968.130 Fund requisitions.

To draw down modernization funds against the approved CIAP budget or CGP Annual Statement, a PHA shall comply with requirements prescribed by HUD.

[61 FR 8741, Mar. 5, 1996]

§ 968.135 Contracting requirements.

In addition to the requirements specified in 24 CFR parts 5, 85, and 965, subpart A, and § 968.110(e), the following provisions apply:

(a) *Architect/engineer and other professional services contracts.* For CIAP only and notwithstanding 24 CFR 85.36(g), a PHA shall comply with the following HUD requirements:

(1) Where the proposed contract amount exceeds the HUD-established threshold, submit the contract for prior HUD approval before execution or issuance; or

(2) Where the proposed contract amount does not exceed the HUD-established threshold, certify that the scope of work is consistent with the originally approved modernization program, and that the amount is appropriate and does not result in the total HUD-approved CIAP budget being exceeded.

(b) *Assurance of completion.* For both CIAP and CGP and notwithstanding 24 CFR 85.36(h), for each construction contract over $100,000, the contractor shall furnish a bid guarantee from each bidder equivalent to 5% of the bid price; and one of the following:

(1) A performance and payment bond for 100 percent of the contract price; or

(2) Separate performance and payment bonds, each for 50% or more of the contract price; or

(3) A 20% cash escrow; or

(4) a 25% irrevocable letter of credit.

(c) *Construction solicitations.* For CIAP only and notwithstanding 24 CFR 85.36(g), a PHA shall comply with HUD requirements to either:

(1) Where the estimated contract amount exceeds the HUD-established threshold, submit a complete construction solicitation for prior HUD approval before issuance; or

(2) Where the estimated contract amount does not exceed the HUD-established threshold, certify receipt of the required architect's/engineer's certification that the construction documents accurately reflect HUD-approved work and meet the modernization and energy conservation standards and that the construction solicitation is complete and includes all mandatory items.

(d) *Contract awards.* (1) For CIAP only, a PHA shall obtain HUD approval of the proposed award of a contract if the contract work is inconsistent with the originally approved modernization program or the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv). In all other instances, a PHA shall make the award without HUD approval after the PHA has certified that:

(i) The solicitation and award procedures were conducted in compliance with State or local laws and Federal requirements;

(ii) The award does not meet the criteria in 24 CFR 85.36(g)(2)(i) through (iv) for prior HUD approval; and

(iii) The contractor is not on the Lists of Parties Excluded from Federal Procurement or Nonprocurement Programs;

(2) For CGP only, a PHA shall obtain HUD approval of the proposed award of a contract if the procurement meets the criteria set forth in 24 CFR 85.36(g)(2)(i) through (iv).

(e) *Contract modifications.* For CIAP only and notwithstanding 24 CFR 85.36(g), except in an emergency endangering life or property, a PHA shall comply with HUD requirements to either:

(1) Where the proposed contract modification exceeds the HUD-established threshold, submit the proposed modification for prior HUD approval before issuance; or

(2) Where the proposed contract modification does not exceed the HUD-established threshold, certify that the proposed modification is within the scope of the contract and that any additional costs are within the total HUD-approved CIAP budget amount.

(f) *Construction requirements.* Where indicated by poor performance, a PHA may be required to submit to HUD periodic progress reports and, for prior HUD approval, construction completion documents above a HUD-specified amount. For CGP only, a PHA is notified of additional construction requirements by a notice of deficiency or a corrective action order.

(g) *Reward for high performers.* For CIAP only, if a PHA is both an overall high performer and a modernization high performer under the Public Housing Management Assessment Program (PHMAP), HUD will not establish thresholds, and the PHA is not required to obtain prior HUD approval, under paragraphs (a), (c), and (e) of this section.

[61 FR 8741, Mar. 5, 1996]

§ 968.140 On-site inspections.

It is the responsibility of the PHA, not HUD, to provide, by contract or otherwise, adequate and competent supervisory and inspection personnel during modernization, whether work is performed by contract or force account labor and with or without the services of an architect/engineer, to ensure work quality and progress.

[58 FR 13938, Mar. 15, 1993. Redesignated at 61 FR 8741, Mar. 5, 1996]

§ 968.145 Fiscal closeout.

(a) *Actual modernization cost certificate (AMCC).* Upon expenditure by the PHA of all funds, or termination by HUD of the activities funded in a modernization program, a PHA shall submit the AMCC, in a form prescribed by HUD, to HUD for review and approval for audit. After audit verification, HUD shall approve the AMCC.

(b) *Audit.* The audit shall follow the guidelines prescribed in 24 CFR part 44, Non-Federal Government Audit Requirements. If the pre-audit or post-audit AMCC indicates that there are excess funds, a PHA shall immediately remit the excess funds as directed by HUD. If the pre-audit or post-audit AMCC discloses unauthorized or ineligible expenditures, a PHA shall immediately take such corrective actions as HUD may direct.

[61 FR 8741, Mar. 5, 1996]

Subpart B—Comprehensive Improvement Assistance Program (For PHAs That Own or Operate Fewer Than 250 Units)

SOURCE: 61 FR 8741, Mar. 5, 1996, unless otherwise noted.

§ 968.205 Definitions.

In addition to the definitions in § 968.105, the following definitions apply to this subpart:

Emergency Modernization (CIAP). A type of modernization program for a development that is limited to physical work items of an emergency nature that poses an immediate threat to the health or safety of residents or is related to fire safety, *and* that must be corrected within one year of CIAP funding approval.

Management capability. A PHA has management capability if it is:

(1) Not designated as Troubled under part 901 of this chapter, Public Housing

Management Assessment Program (PHMAP); or

(2) Designated as Troubled, but has a reasonable prospect of acquiring management capability through CIAP-funded management improvements and administrative support. A Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under § 901.140 of this chapter or has obtained alternative oversight of its management functions.

Modernization capability. A PHA has modernization capability if it is:

(1) Not designated as Modernization Troubled under part 901 of this chapter, PHMAP; or

(2) Designated as Modernization Troubled, but has a reasonable prospect of acquiring modernization capability through CIAP-funded management improvements and administrative support, such as hiring staff or contracting for assistance. A Modernization Troubled PHA is eligible for Emergency Modernization only, unless it is making reasonable progress toward meeting the performance targets established in its memorandum of agreement or equivalent under § 901.140 of this chapter or has obtained alternative oversight of its modernization functions. Where a PHA does not have a funded modernization program in progress, the Field Office shall determine whether the PHA has a reasonable prospect of acquiring modernization capability through hiring staff or contracting for assistance.

Other Modernization (modernization other than emergency). A type of modernization program for a development that includes one or more physical work items, where HUD determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the development, and/or one or more development specific or PHA-wide management work items (including planning costs), and/or lead-based paint activities.

Work item. Any separately identifiable unit of work constituting a part of a modernization program.

[61 FR 8741, Mar. 5, 1996, as amended at 64 FR 50229, Sept. 15, 1999]

§ 968.210 Procedures for obtaining approval of a modernization program.

(a) *HUD notification.* After modernization funds for a particular FFY become available, HUD will notify PHAs of the time frame for submission of the CIAP application and other pertinent information.

(b) *Distribution of funding.* HUD will distribute the available funding under this subpart to every eligible PHA that responds to the notice issued pursuant to paragraph (a) of this section based on two equally-weighted factors: a PHA's share of the total number of units eligible for CIAP; and a PHA's share of the total number of bedrooms in units eligible for CIAP (with studio units counted as one-bedroom units). HUD will also provide a vacancy preference, consisting of an additional increment of funding, to PHAs that have modernization capability and demonstrate that at least 25% of their units are vacant, substandard units (where vacancies are not due to insufficient demand). A PHA has modernization capability if it has previously received CIAP funding and meets the requirements of *Modernization capability* as defined at § 968.205.

(c) *ACC amendment.* HUD and the PHA shall enter into an ACC amendment in order for the PHA to draw down modernization funds. The ACC amendment shall require low-income use of the housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC). The PHA Executive Director, where authorized by the Board of Commissioners and permitted by State law, may sign the ACC amendment on behalf of the PHA. HUD has the authority to condition an ACC amendment (e.g., to require a PHA to hire a modernization coordinator or contract administrator to administer its modernization program).

(d) *Declaration of trust.* As HUD may require, the PHA shall execute and file for record a Declaration of Trust, as

provided under the ACC, to protect the rights and interests of HUD throughout the 20-year period during which the PHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements.

[64 FR 33637, June 23, 1999]

§ 968.215 Resident and homebuyer participation.

A PHA shall establish a Partnership Process, as defined in § 968.105, to develop, implement and monitor the CIAP. Before submission of the CIAP application, a PHA shall consult with the residents, the resident organization, or the resident management corporation (see part 964, subpart C of this chapter) (herein referred to as the resident) of the development(s) being proposed for modernization, regarding its intent to submit an application and to solicit resident comments. A PHA shall give residents a reasonable opportunity to present their views on the proposed modernization and alternatives to it and shall give full and serious consideration to resident recommendations. A PHA shall respond in writing to the residents, indicating its acceptance or rejection of resident recommendations, consistent with HUD requirements and the PHA's own determination of efficiency, economy, and need. After HUD approval of the modernization program, a PHA shall inform the residents of the approved work items and its progress during implementation. Where HUD does not approve the modernization program, a PHA shall so inform the residents.

§ 968.225 Budget revisions.

(a) A PHA shall not incur any modernization cost in excess of the total HUD-approved CIAP budget. A PHA shall submit a budget revision, in a form prescribed by HUD, if the PHA plans to deviate from the originally approved modernization program, as it was competitively funded, by deleting or substantially revising approved work items or adding new work items that are unrelated to the originally approved modernization program, or to change the method of accomplishment from contract to force account labor, except as provided in paragraph (b)(4) of this section.

(b) In addition to the requirements of paragraph (a) of this section, a PHA shall comply with the following requirements:

(1) A PHA is not required to obtain prior HUD approval if, in order to complete the originally approved modernization program, the PHA needs to delete or revise approved work items or add new related work items consistent with the original modernization program. In such case, a PHA shall certify that the revisions are necessary to carry out the approved work and do not result in substantial changes to the competitively funded modernization program.

(2) A PHA shall not incur any modernization cost on behalf of any development that is not covered by the original CIAP application.

(3) Where there are funds leftover after completion of the originally approved modernization program, a PHA may, without prior HUD approval, use the remaining funds to carry out eligible modernization activities at developments covered by the original CIAP application.

(4) If a PHA is both an overall high performer and a modernization high performer under the Public Housing Management Assessment Program (PHMAP), the PHA is not required to obtain prior HUD approval to change the method of accomplishment from contract to force account labor.

§ 968.230 Progress reports.

For each six-month period ending March 31 and September 30, until completion of the modernization program or expenditure of all funds, a PHA shall submit to HUD a progress report, in a form prescribed by HUD. Where HUD determines that a PHA is having implementation problems, HUD may require more frequent reporting.

§ 968.235 Time extensions.

A PHA shall not obligate or expend funds after the obligation or expenditure deadline date approved by HUD in the original implementation schedule without a time extension, as follows:

(a) *Certification.* A PHA may extend an obligation or expenditure deadline

date no later than 30 calendar days after the existing deadline date, without prior HUD approval, for a period commensurate with the delay, where the PHA certifies that the delay is due to reasons outside of the PHA's control, such as:

(1) Need to use leftover funds from a completed modernization program for additional work;

(2) Unforeseen delays in contracting or contract administration;

(3) Litigation; and

(4) Delay by HUD or other institutions. Delay by the PHA's staff or Board of Commissioners or a change in the Executive Director is not considered to be outside of the PHA's control.

(b) *Prior HUD approval.* Where a PHA is unable to meet an obligation or expenditure deadline date and the delay is due to reasons within the PHA's control, the PHA may request HUD approval of a time extension no later than 30 calendar days after the deadline date, to avoid recapture of funds. The request shall include an explanation of the delay, steps take to prevent future delay, and the requested extension.

§ 968.240 HUD review of PHA performance.

HUD shall periodically review PHA performance in carrying out its approved modernization program to determine compliance with HUD requirements, the adequacy of a PHA's inspections as evidenced by the quality of work, and the timeliness of the work. HUD's review may be conducted either in-office or on-site. Where conducted in-office, a PHA shall forward any requested documents to HUD for post-review. Where deficiencies are noted, a PHA shall take such corrective actions as HUD may direct.

Subpart C—Comprehensive Grant Program (for PHAs That Own or Operate 250 or More Public Housing Units)

SOURCE: 57 FR 5575, Feb. 14, 1992, unless otherwise noted.

§ 968.305 Definitions.

In addition to the definitions in § 968.105, the following definitions apply to this subpart:

Action plan. A plan of the actions to be funded by a PHA over a period of five years (including a PHA's proposed allocation of its modernization funds to a reserve established under § 968.112(f)) to make the necessary physical and management improvements identified in the PHA's comprehensive plan. The plan shall be based upon HUD's and the PHA's best estimates of the funding reasonably expected to become available under the next five-year period. The action plan is updated annually to reflect a rolling five-year base. (See § 968.315(e)(5).)

Annual Statement. A work statement covering the first year of the Five-Year Action Plan and setting forth the major work categories and costs by development or PHA-wide for the current FFY grant, as well as a summary of costs by development account and implementation schedules for obligation and expenditure of the funds.

Annual Submission. A collective term for all documents which the PHA must submit to HUD for review and approval before accessing the current FFY grant funds. Such documents include the Annual Statement, Work Statements for years two through five of the Five-Year Action Plan, local government statement, PHA Board Resolution, materials demonstrating the partnership process and any other documents as prescribed by HUD.

Chief executive officer (CEO). The CEO of a unit of general local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the CEO of a unit of general local government are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; or the official designated pursuant to law by the governing body of a unit of general local government (e.g., city manager).

Comprehensive plan. A plan prepared by a PHA and approved by HUD setting

forth all of the physical and management improvement needs of the PHA and its public housing developments, indicating the relative urgency of needs and which includes the PHA's action plan, cost estimates, and required local government and PHA certifications. The comprehensive plan may be revised, as necessary, but must be revised at least every sixth year. (See §968.315(e).)

Emergency work. Physical work items of an emergency nature, posing an immediate threat to the health or safety of residents, which must be completed within one year of CGP funding. Management improvements are not eligible as emergency work and, therefore, must be covered by the comprehensive plan (including the action plan) before the PHA may carry them out.

Fungibility. Fungibility is a concept which permits a PHA to substitute any work item from the latest approved Five-Year Action Plan to any previously approved CIAP budget or CGP Annual Statement and to move work items among approved budgets without prior HUD approval.

Improvement plan. A document developed by the PHA and approved by HUD specifying the actions to be taken, including timetables, to correct deficiencies identified as a result of an assessment, either under PHMAP or pursuant to HUD monitoring or audit findings.

Memorandum of Agreement (MOA). A binding contractual agreement between HUD and a troubled PHA, or a mod troubled PHA, which is designed to bring about significant, expeditious and long-lasting improvements in the PHA's management of its PHA-owned units. A MOA is required for each PHA designated as troubled or mod troubled.

Resident groups. Democratically elected resident groups such as PHA-wide resident groups, area-wide resident groups, single development resident groups, or RMCs.

Substantial rehabilitation. A modernization program for a development which provides for all physical and management improvements needed to meet the modernization and energy conservation standards and to ensure its long-term physical and social viability.

Work Statements. Work Statements cover the second through the fifth years of the Five-Year Action Plan and set forth the major work categories and costs by development or PHA-wide which the PHA intends to undertake in each year of years two through five. In preparing these Work Statements, the PHA shall assume that the current FFY formula amount will be available in each year of years two through five.

[57 FR 5575, Feb. 14, 1992, as amended at 58 FR 13931, Mar. 15, 1993; 59 FR 44837, Aug. 30, 1994; 61 FR 8744, Mar. 5, 1996]

§968.310 Determination of formula amount.

(a) *Submission of formula characteristics report*—(1) *Formula characteristics report.* In its first year of participation in the CGP, each PHA shall verify and provide data to HUD, in a form and at a time to be prescribed by HUD, concerning PHA and development characteristics so that HUD can develop the PHA's annual funding allocation in accordance with §968.103 (e) and (f). If a PHA fails to submit to HUD the formula characteristics report by the prescribed deadline, HUD will use the data which it has available concerning PHA and development characteristics for purposes of calculating the PHA's formula share. After its first year of participation in the CGP, a PHA is not required to submit formula characteristics data to HUD, but is required to respond to data transmitted by HUD if there have been changes to its inventory from that previously reported, or where requested by HUD. On an annual basis, HUD will transmit to the PHA, the formula characteristics report which reflects the data that will be used to determine the PHA's formula share. The PHA will have at least 30 calendar days to review and advise HUD of errors in this HUD report. Necessary adjustments will be made to the PHA's data before the formula is run for the current FFY.

(2) *PHA Board Resolution.* The PHA must include with its formula characteristics report under paragraph (a)(1) of this section, a resolution adopted by the PHA Board of Commissioners approving the report, and certifying that

the data contained in the formula characteristics report are accurate.

(b) *HUD notification of formula amount; appeal rights*—(1) *Formula amounts notification.* After HUD determines a PHA's formula allocation under § 968.103 (e) and (f) based upon the PHA, development, and community characteristics, it shall notify the PHA of its formula amount and provide instructions on the Annual Submission in accordance with §§ 968.315 and 968.325;

(2) *Appeal based upon unique circumstances.* A PHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of ''unique circumstances.'' The PHA must indicate what is unique, and specify the manner in which it is different from all other PHAs participating in the CGP, and provide any necessary supporting documentation. HUD shall render a written decision on an PHA's appeal under this paragraph within 60 calendar days of the date of its receipt of the PHA's request for an appeal. HUD shall publish in the FEDERAL REGISTER a description of the facts supporting any successful appeals based upon ''unique circumstances.'' Any adjustments resulting from successful appeals in a particular FFY under this paragraph shall be made from subsequent years' allocation of funds under this part;

(3) *Appeal based upon error.* A PHA may appeal in writing HUD's determination of its formula amount within 60 calendar days of the date of HUD's determination on the basis of an error. The PHA may appeal on the basis of error the correctness of data in the formula characteristics report. The PHA must describe the nature of the error, and provide any necessary supporting documentation. HUD shall respond to the PHA's request within 60 calendar days of the date of its receipt of the PHA's request for an appeal. Any adjustment resulting from successful appeals in a particular FFY under this paragraph shall be made from subsequent years' allocation of funds under this part;

(c) *Reduced formula allocation for PHAs designated as mod troubled under PHMAP*—(1) *Notification.* After a PHA is designated as a mod troubled agency under PHMAP (24 CFR part 901), HUD shall inform the PHA that its funding may be limited under this subpart because of its designation as a mod troubled PHA. HUD shall also provide the PHA with information concerning the PHA's funding levels for CGP, CIAP and MROP for each of the preceding three FFYs for purposes of determining the PHA's reduced formula allocation, in accordance with paragraph (c)(2)(ii) of this section. In addition, HUD will provide the PHA with information on its full formula allocation under § 968.103 (e) and (f), and the amount which represents 25 percent of the difference between the average amounts provided to the PHA in each of the preceding three FFYs and its full formula allocation.

(2) *Calculation of funding for mod troubled PHAs.* HUD shall calculate the funding level for mod troubled PHAs in accordance with paragraph (c)(1) of this section in the following manner:

(i) The average of the amount that the mod troubled PHA received for modernization activities under this part, and for Major Reconstruction of Obsolete Projects (MROP), for each of the preceding three FFYs, which average shall be adjusted to take into account changes in the cost of rehabilitating property based upon the Means Construction Cost Index; plus

(ii) Twenty five percent of the difference between the amount determined under paragraph (c)(1)(i) of this section, and the amount that would have been allocated to the PHA for the FFY if it were not designated as a mod troubled PHA.

(3) *Right of appeal.* The notice under paragraph (c)(1) of this section shall also specify that a PHA may petition HUD within 30 calendar days of its receipt of HUD's notice to increase the amount of its fund allocation. HUD shall determine whether to increase the amount of assistance to be provided a PHA under this paragraph based upon the PHA's demonstrated progress in meeting goals and targets set forth in the PHA's Memorandum of Agreement (MOA) under PHMAP, and toward achieving satisfactory performance under the mod troubled indicator/standard under PHMAP. In its appeal request, a PHA must specify how it is

achieving or making progress toward achieving the goals and objectives set forth in the MOA. The request must be submitted to HUD within 30 calendar days of the date of HUD's notice under this paragraph. HUD shall render a decision in writing on the PHA's request within 60 calendar days of the date of its receipt of the PHA's appeal and any supporting documentation.

(4) *Maximum allowable allocation to mod troubled PHAs.* The maximum amount that HUD may provide to a PHA under this paragraph is the amount that would have been allocated to the PHA for the FFY if it had not been designated as a mod troubled PHA under PHMAP. Where the full formula allocation is less than the average of funding received by the PHA for modernization and MROP for each of the preceding three FFYs, the PHA will receive its full formula amount, and not its average funding level for the preceding three FFYs, plus 25 percent of the difference between that figure and its full formula amount.

(5) *Reallocation of funds withheld from mod troubled PHAs.* Any amounts which are not provided to a PHA under paragraph (c)(1) of this section because the PHA is designated as a mod troubled agency under PHMAP, shall be reallocated by HUD to other PHAs under this subpart which are not designated as either troubled or mod troubled agencies under PHMAP, and to IHAs under 24 CFR part 950 (subpart I) which are not determined to be high risk under §950.135 of this chapter, the ACA, and the Field Office Monitoring of IHAs Handbook. Such funds shall be reallocated in the next FFY based upon the relative needs of these PHAs and IHAs, as determined under the formula.

(6) *Credits for PHAs designated as mod troubled*—(i) *Accrual of credits.* A PHA that has received a reduced formula allocation under paragraph (c)(1) of this section because it was designated as a mod troubled agency under PHMAP may accrue credits under this paragraph, for up to three consecutive FFYs, representing the difference between:

(A) The amount the PHA would have been allocated for the FFY under §968.103(e) and (f) if it were not designated as a mod troubled PHA under PHMAP; and

(B) The reduced funding amount actually provided to the PHA under paragraph (c)(2) of this section because it was designated as a mod troubled PHA under PHMAP.

(ii) *Failure to remove mod troubled designation.* After a three-year period during which the mod troubled PHA has accrued credits under paragraph (c)(6)(i) of this section, the credits accrued by the PHA shall be:

(A) Decreased by 10 percent of the total accumulated credits if the PHA's designation as a mod troubled agency under PHMAP is not removed before the end of the first FFY following the three-year accrual period;

(B) Decreased by an additional 20 percent of the original total accumulated credits if the PHA's designation as a mod troubled agency under PHMAP is not removed before the end of the second FFY following the three-year accrual period;

(C) Decreased by an additional 30 percent of the original total accumulated credits if the PHA's designation as a mod troubled agency under PHMAP is not removed before the end of the third FFY following the three-year accrual period; and

(D) Eliminated if the PHA's designation as a mod troubled agency under PHMAP is not removed before the end of the fourth FFY following the three-year accrual period.

(iii) *Obtaining credits.* HUD shall reserve under §968.103(c) up to five percent of the total formula funds available for allocation in any FFY for the purpose of providing PHAs that were formerly designated as mod troubled PHAs under PHMAP with additional assistance after HUD determines that a PHA is no longer a mod troubled agency. HUD shall make the determination that a PHA is no longer a mod troubled agency based upon its achieving satisfactory performance under the mod indicator/standard that was initially used to designate the agency as mod troubled under PHMAP. The additional assistance shall be provided to the formerly mod troubled PHA in the FFY following the year in which the PHA is removed from the mod troubled list. Such assistance shall be provided to

the PHA in addition to a PHA's regular formula allocation under § 968.103(e) and (f), and shall consist of:

(A) The total amount of credits accumulated by the PHA under paragraph (c)(6)(i) of this section; minus

(B) Any reductions under paragraph (c)(6)(ii) of this section to the total accumulated credits, based upon the length of time that the PHA has taken to remove its mod troubled designation; and

(C)(*1*) Adjusted by HUD to take into account the PHA's ability to expeditiously expend the accrued credit amounts. HUD shall consult with the PHA to determine the rate at which the PHA shall be provided access to its credits under this section. As a general guideline, HUD intends to provide a PHA with 10% of its accrued credits in the first year; an additional 20% of its accrued credits in the second year; an additional 30% of its accrued credits in the third year; and the remaining 40% of its accrued credits in the fourth year;

(*2*) In any FFY where formerly mod troubled PHAs are entitled to credits exceeding the five percent reserve, HUD shall apply a pro rata reduction for each formerly mod troubled PHA for such FFY. A PHA shall remain entitled to receive its outstanding balance of credits, including any credits not actually received because of such pro rata reduction, in future FFYs, depending upon the availability of funds in the set-aside under § 968.103(c).

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§ 968.315 Comprehensive Plan (including five-year action plan).

(a) *Submission.* As soon as possible after modernization funds first become available for allocation under this subpart, HUD shall notify PHAs in writing of their formula amount. For planning purposes, PHAs may use the amount they received under CGP in the prior year in developing their comprehensive plan, or they may wait for the annual HUD notification of formula amount under § 968.310(b)(1).

(b)(1) *Resident participation.* A PHA is required to develop, implement, monitor and annually amend portions of its comprehensive plan in consultation with residents of the developments covered by the comprehensive plan. In addition, the PHA shall consult with resident management corporations (RMCs) to the extent that an RMC manages a development covered by the comprehensive plan. The PHA, in partnership with the residents, must develop and implement a process for resident participation that ensures that residents are involved in a meaningful way in all phases of the CGP. Such involvement shall involve implementing the Partnership Process as a critical element of the CGP.

(2) *Establishment of Partnership Process.* The PHA, in partnership with the residents of the developments covered by the plan (and which may include resident leaders, resident councils, resident advisory councils/boards, and RMCs) must establish a Partnership Process to develop and implement the goals, needs, strategies and priorities identified in the comprehensive plan. After residents have organized to participate in the CGP, they may decide to establish a volunteer advisory group of experts in various professions to assist them in the CGP Partnership Process. The Partnership Process shall be designed to achieve the following:

(i) To ensure that residents are fully briefed and involved in developing the content of, and monitoring the implementation of, the comprehensive plan including, but not limited to, the physical and management needs assessments, viability analysis, Five-Year Action Plan, and Annual Statement. If necessary, the PHA shall develop and implement capacity building strategies to ensure meaningful resident participation in CGP. Such technical assistance efforts for residents are eligible management improvement costs under CGP;

(ii) To enable residents to participate, on a PHA-wide or area-wide basis, in ongoing discussions of the comprehensive plan and strategies for its implementation, and in all meetings necessary to ensure meaningful participation.

(3) *Public notice.* Within a reasonable amount of time before the advance meeting for residents under paragraph (b)(4) of this section and the public hearing under paragraph (b)(5) of this section, the PHA shall provide public notice of the advance meeting and the public hearing in a manner determined by the PHA that ensures notice to all duly elected resident councils.

(4) *Advance meeting for residents.* The PHA shall hold, within a reasonable amount of time before the public hearing under paragraph (b)(5) of this section, a meeting for residents and duly elected resident councils at which the PHA shall explain the components of the comprehensive plan. The meeting shall be open to all residents and duly elected resident councils.

(5) *Public hearing.* The PHA shall hold at least one public hearing, and any appropriate number of additional hearings, to present information on the comprehensive plan/annual submission and the status of prior approval programs. The public hearing shall provide ample opportunity for residents, local government officials, and other interested parties to express their priorities and concerns. The PHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties.

(c) *Local government participation.* A PHA shall consult with and provide information to appropriate local government officials with respect to the development of the comprehensive plan to ensure that there is coordination between the actions taken under the consolidated plan (see 24 CFR part 91) for project and neighborhood improvements where public housing units are located or proposed for construction and/or modernization and improvement and to coordinate meeting public and human service needs of the public and assisted housing projects and their residents. In the case of a PHA with developments in multiple jurisdictions, the PHA may meet this requirement by consulting with an advisory group representative of all the jurisdictions. At a minimum, such consultation must include providing such officials with:

(1) Advance written notice of the public hearing required under paragraph (b)(5) of this section;

(2) A copy of the summary of total preliminary estimated costs to address physical needs by each development and management/operations needs PHA-wide and a specific description of the PHA's process for maximizing the level of participation by residents and a summary of the general issues raised on the plan by residents and others during the public comment process and the PHA's response to the general issues. PHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the PHA's files and made available to residents, resident organizations, and other interested parties upon request; and

(3) An opportunity to express their priorities and concerns to ensure due consideration in the PHA's planning process;

(d) *Participation in coordinating entities.* To the extent that coordinating entities are set up to plan and implement the consolidated plans (under 24 CFR part 91), the PHA shall participate in these entities to ensure coordination with broader community development strategies.

(e) *Contents of comprehensive plan.* The comprehensive plan shall identify all of the physical and management improvements needed for a PHA and all of its developments, and that represent needs eligible for funding under §968.112. The plan also shall include preliminary estimates of the total cost of these improvements. The plan shall set forth general strategies for addressing the identified needs, and highlight any special strategies, such as major redesign or partial demolition of a development, that are necessary to ensure the long-term physical and social viability of the development. Where long-term physical and social viability of the development is dependent upon revitalization of the surrounding neighborhood in the provision of or coordination of public services, or the consolidation or coordination of drug prevention and other human service initiatives, the PHA shall identify these needs and strategies. In addition, the PHA shall identify the funds or other resources in the consolidated

plan that are to be used to help address these needs and strategies and the activities in the comprehensive plan that strengthen the consolidated plan. Each comprehensive plan shall contain the following elements:

(1) *Executive summary.* A PHA shall include as part of its comprehensive plan an executive summary to facilitate review and comprehension by development residents and by the public. The executive summary shall include the following:

(i) A summary of total preliminary estimated costs to address physical needs by each development and PHA-wide physical and management needs; and

(ii) A specific description of the PHA's process for maximizing the level of participation by residents during the development, implementation and monitoring of the Comprehensive Plan, a summary of the general issues raised on the plan by residents and others during the public comment process and the PHA's response to the general issues. PHA records, such as minutes of planning meetings or resident surveys, shall be maintained in the PHA's files and made available to residents, duly elected resident councils, and other interested parties, upon request;

(2) *Physical needs assessment*—(i) *Requirements.* The physical needs assessment identifies all of the work that a PHA would need to undertake to bring each of its developments up to the modernization and energy conservation standards, as required by the Act, to comply with the lead-based paint requirements in part 35, subparts A, B, L, and R of this title, and to comply with other program requirements under § 968.110. The physical needs assessment is completed without regard to the availability of funds, and shall include the following:

(A) A brief summary of the physical improvements necessary to bring each such development to a level at least equal to applicable HUD standards with respect to modernization standards, energy conservation and life-cycle cost effective performance standards, lead-based paint testing and abatement standards. This summary must indicate the relative urgency of need. If the PHA has no physical improvement needs at a particular development at the time it completes its comprehensive plan, it must so indicate. Similarly, if the PHA intends to demolish, partially demolish, convert, or dispose of a development (or units within a development) it must so indicate in the summary of physical improvements;

(B) The replacement needs of equipment systems and structural elements that will be required to be met (assuming routine and timely maintenance is performed) during the period covered by the action plan;

(C) A preliminary estimate of the cost to complete the physical work;

(D) Any physical disparities between buildings occupied predominantly by one racial or ethnic group and, in such cases, the physical improvements required to correct the conditions; and

(E) In addition, with respect to vacant or non-homebuyer occupied Turnkey III units, the estimated number of units that the PHA is proposing for substantial rehabilitation and subsequent sale, in accordance with § 968.112(d)(3).

(ii) *Source of data.* The PHA shall identify in its needs assessment the sources from which it derived data to develop the physical needs assessment under this paragraph (e)(2) and shall retain such source documents in its files;

(3) *Management needs assessment*—(i) *Requirements.* The plan shall include a comprehensive assessment of the improvements needed to upgrade the management and operation of the PHA and of each viable development so decent, safe, and sanitary living conditions will be provided. The management needs assessment shall include the following, with the relative urgency of need indicated:

(A) An identification of the most current needs related to the following areas (to the extent that any of these needs is addressed in a HUD-approved memorandum of agreement or improvement plan, the PHA may simply include a cross-reference to these documents):

(*1*) The management, financial, and accounting control systems of the PHA;

(*2*) The adequacy and qualifications of personnel employed by the PHA in

its management and operation, for each significant category of employment;

(*3*) The adequacy and efficacy of:

(*i*) Resident programs and services;

(*ii*) Resident and development security;

(*iii*) Resident selection and eviction;

(*iv*) Occupancy;

(*v*) Maintenance;

(*vi*) Resident management and resident capacity building programs;

(*vii*) Resident opportunities for employment and business development and other self-sufficiency opportunities for residents; and

(*viii*) Homeownership opportunities for residents;

(B) Any additional deficiencies identified through PHMAP, audits and HUD monitoring reviews that are not addressed under paragraph (e)(3)(i)(A) of this section. To the extent that any of these is addressed in a HUD-approved memorandum of agreement or improvement plan, the PHA may include a cross-reference to these documents;

(C) Any other management and operations needs that the PHA wants to address at the PHA-wide or development level; and

(D) A PHA-wide preliminary cost estimate for addressing all the needs identified in the management needs assessment, without regard to the availability of funds;

(ii) *Sources of funds.* The PHA shall identify in its needs assessment the sources from which it derived data to develop the management needs assessment under this paragraph (e)(3) and shall retain such source documents in its files;

(4) *Demonstration of long-term physical and social viability.* (i) *General.* The plan shall include, on a development-by-development basis, an analysis of whether completion of the improvements and replacements identified under paragraphs (e)(2) and (e)(3) of this section will reasonably ensure the long-term physical and social viability, including achieving structural/system soundness and full occupancy, of the development at a reasonable cost. For cost reasonableness, the PHA shall determine whether the unfunded hard costs satisfy the definition of ''reasonable cost.'' Where the PHA wishes to fund a development, for other than emergencies, where hard costs exceed that reasonable cost, the PHA shall submit written justification to the Field Office. If the Field Office agrees with the PHA's request, the Field Office shall forward its recommendation to Headquarters for final decision. Where the estimated per unit unfunded hard cost is equal to or less than the per unit TDC for the smallest bedroom size at the development, no further computation of the TDC limit is required. The PHA shall keep documentation in its files to support all cost determinations. The Field Office will review cost reasonableness as part of its review of the annual submission and the performance and evaluation report. As necessary, HUD will review the PHA's documentation in support of its cost reasonableness, taking into account broader efforts to revitalize the neighborhoods in which the development is located;

(ii) *Determination of non-viability.* Where a PHA's analysis of a development under paragraph (e) of this section establishes that completion of the identified improvements and replacements will not result in the long-term physical and social viability of the development at a reasonable cost, the PHA shall not expend CGP funds for the development, except for emergencies and essential non-routine maintenance necessary to maintain habitability until residents can be relocated. The PHA shall specify in its comprehensive plan the actions it proposes to take with respect to the non-viable development (e.g., demolition or disposition under 24 CFR part 970);

(5) *Five-year action plan.* (i) *General.* The comprehensive plan shall include a rolling five-year action plan to carry out the improvements and replacements (or a portion thereof) identified under paragraphs (e)(2) and (e)(3) of this section. In developing its five-year action plan, the PHA shall assume that the current year funding or formula amount will be available for each year of its five-year action plan, whichever the PHA is using for planning purposes, plus the PHA's estimate of the funds that will be available from other sources, such as state and local governments. All activities specified in a

PHA's five-year action plan are contingent upon the availability of funds;

(ii) *Requirements.* Under the action plan, a PHA must indicate how it intends to use the funds available to it under the CGP to address, over a five-year period, the deficiencies (or a portion of the deficiencies) identified in its physical and management needs assessments, as follows:

(A) *Physical condition.* With respect to the physical condition of a PHA's developments, a PHA must indicate in its action plan how it intends to address, over a five-year period, the deficiencies (or a portion of the deficiencies) identified in its physical needs assessment so as to bring each of its developments up to a level at least equal to the modernization and energy conservation standards. This includes specifying the work to be undertaken by the PHA in major work categories (e.g., kitchens, electrical systems, etc.); establishing priorities among the major work categories by development and year, based upon the relative urgency of need; and estimating the cost of each of the identified major work categories. In developing its action plan, a PHA shall give priority to the following:

(*1*) Activities required to correct emergency conditions;

(*2*) Activities required to meet statutory or other legally mandated requirements (e.g., compliance with a court-ordered desegregation plan or voluntary compliance agreement);

(*3*) Activities required to meet the needs identified in the Section 504 needs assessment within the regulatory timeframe; and

(*4*) Activities required to complete lead-based paint testing and abatement requirements;

(B) *Management and operations.* A PHA must address in its action plan the management and operations deficiencies (or a portion of the deficiencies) identified in its management needs assessment, as follows:

(*1*) With respect to the management and operations needs of the PHA, the PHA must identify how it intends to address with CGP funds, if necessary, the deficiencies (or a portion thereof) identified in its management needs assessment, including work identified through PHMAP, audits, HUD monitoring reviews, and self-assessments. The action plan must indicate the relative urgency of need;

(*2*) A preliminary PHA-wide cost estimate, by major work category.

(iii) *Procedure for maintaining current five-year action plan.* The PHA shall maintain a current five-year action plan by annually amending its five-year action plan, in conjunction with the annual submission;

(6) *Local government statement.* The comprehensive plan shall include a statement signed by the chief executive officer of the unit of general local government (or, in the case of a PHA with developments in multiple jurisdictions, from the CEO of each such jurisdiction) certifying to the following:

(i) The PHA developed the comprehensive plan/five-year action plan or amendments thereto in consultation with officials of the appropriate governing body and with development residents covered by the comprehensive plan/five-year action plan, in accordance with the requirements of paragraphs (b) and (c) of this section;

(ii) The comprehensive plan/five-year action plan or amendments thereto are consistent with the appropriate governing body's assessment of its low income housing needs (as evidenced by its consolidated plan under 24 CFR part 91, if applicable), and that the appropriate governing body will cooperate in providing resident programs and services; and

(iii) The PHA's proposed drug elimination activities are coordinated with, and supportive of, local drug elimination strategies and neighborhood improvement programs, if applicable; and

(7) *PHA resolution.* The plan shall include a resolution, in a form prescribed by HUD, adopted by the PHA Board of Commissioners, and signed by the Board Chairman of the PHA, approving the comprehensive plan or any amendments.

(f) *Amendments to the comprehensive plan*—(1) *Extension of time for performance.* A PHA shall have the right to amend its comprehensive plan (including the action plan) to extend the time for performance whenever HUD has not provided the amount of assistance set forth in the comprehensive plan or has

not provided the assistance in a timely manner;

(2) *Amendments to needs assessments.* The PHA shall amend its plan by revising its needs assessments whenever it proposes to carry out activities in its five-year action plan or annual statement that are not reflected in its current needs assessments (except in the case of emergencies). The PHA may propose an amendment to its needs assessments, in connection with the submission of its annual submission (see §968.325) or at any other time. These amendments shall be reviewed by HUD in accordance with §968.320.

(3) *Six-year revision of comprehensive plan.* Every sixth year following the initial year of participation, the PHA shall submit to HUD, with its annual submission, a complete update of its comprehensive plan. A PHA may elect to revise some or all parts of the comprehensive plan more frequently.

(4) *Annual revision of five-year action plan.* Annually, the PHA shall submit to HUD, with its annual submission, an update of its five-year action plan, eliminating the previous year and adding an additional year. The PHA shall identify changes in work categories (other than those included in the new fifth year) from the previous year five-year action plan when making this annual submission.

(5) *Required submissions.* Any amendments to the comprehensive plan under this section must be submitted with the PHA resolution under §968.315(e)(7).

(g) *Prerequisite for receiving assistance*—(1) *Prohibition of assistance.* No financial assistance, except for emergency work to be funded under §§968.103(b) and 968.112(a)(1)(ii), and for modernization needs resulting from disasters under §968.103(b), may be made available under this subpart unless HUD has approved a comprehensive plan submitted by the PHA that meets the requirements of this section. A PHA that has failed to obtain approval of its comprehensive plan by the end of the FFY shall have its formula allocation for that year (less any formula amounts provided to the PHA for emergencies) added to the subsequent year's appropriation of funds for grants under this part. HUD shall allocate such funds to PHAs and IHAs participating in the CGP in accordance with the formula under §968.103(e) and (f) in the subsequent FFY. A PHA that elects in any FFY not to participate in the CGP may participate in the CGP in subsequent FFYs;

(2) *Requests for emergency assistance.* A PHA may receive funds from its formula allocation to address emergency modernization needs where HUD has not approved a PHA's comprehensive plan. To request such assistance, a PHA shall submit to HUD a request for funds in such form as HUD may prescribe, including any documentation necessary to support its claim that an emergency exists. HUD shall review the request and supporting documentation to determine if it meets the definition of ''emergency work'' as set forth in §968.305.

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[61 FR 8744, Mar. 5, 1996, as amended at 64 FR 50229, Sept. 15, 1999]

§968.320 HUD review and approval of comprehensive plan (including five-year action plan).

(a) *Submission of comprehensive plan.* (1) Upon receipt of a comprehensive plan from a PHA, HUD shall determine whether:

(i) The plan contains each of the required components specified at §968.315(e); and

(ii) Where applicable, the PHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate PHA performance, audit findings, or civil rights compliance findings;

(2) *Acceptance for review.* If the PHA has submitted a comprehensive plan (including the action plan) which meets the criteria of paragraph (a)(1) of this section, HUD shall accept the comprehensive plan for review, within 14 calendar days of its receipt in the field office. The PHA shall be notified in writing that the comprehensive plan has been accepted by HUD for review, and that the 75-day review period is proceeding;

(3) *Time period for review.* A comprehensive plan that is accepted by HUD for review shall be considered to be approved unless HUD notifies the

PHA in writing, postmarked within 75 calendar days of the date of HUD's receipt of the comprehensive plan for review, that HUD has disapproved the plan. HUD shall not disapprove a comprehensive plan on the basis that it cannot complete its review within the 75-day deadline;

(4) *Rejection of comprehensive plan.* If a PHA has submitted a comprehensive plan (including the action plan), which does not meet the requirements of paragraph (a)(1) of this section, HUD shall notify the PHA within 14 calendar days of its receipt that HUD has rejected the plan for review. In such case, HUD shall indicate the reasons for rejection, the modifications required to qualify the comprehensive plan for HUD review, and the deadline date for receipt of any modifications.

(b) *HUD approval of comprehensive plan (including action plan).* (1) A comprehensive plan (including the action plan) that is accepted by HUD for review in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the PHA in writing, postmarked within 75 days of the date of HUD's receipt of the comprehensive plan for review, that HUD has disapproved the plan, indicating the reasons for disapproval, and the modifications required to make the comprehensive plan approvable. The PHA must re-submit the comprehensive plan to HUD, in accordance with the deadline established by HUD, which may allow up to 75 calendar days before the end of the FFY for HUD review. If the revised plan is disapproved by HUD following its resubmission, or if the PHA fails to resubmit by the deadline established by HUD, any funds that would have been allocated to the PHA shall be added to the subsequent year's appropriation of funds for grants under this part. HUD shall allocate such funds to PHAs and IHAs participating in the CGP in accordance with the formula under § 968.103(e) and (f). HUD shall not disapprove a comprehensive plan on the basis that the Department cannot complete its review under this section within the 75-day deadline;

(2) HUD shall approve the Comprehensive Plan except where it makes a determination in accordance with one or more of the following:

(i) Comprehensive Plan is incomplete in significant matters;

(ii) Identified needs are plainly inconsistent with facts and data;

(A) Identified physical improvements and replacements are inadequate;

(B) Identified management improvements are inadequate;

(C) Proposed physical and management improvements fail to address identified needs;

(iii) Action plan is plainly inappropriate to meeting identified needs;

(iv) Inadequate demonstration of long-term viability at reasonable cost; and

(v) Contradiction of local government certification or PHA resolution.

(c) *Effect of HUD approval of Comprehensive Plan.* After HUD approves the Comprehensive Plan (including the Five-Year Action Plan), or any amendments to the plan, it shall be binding upon HUD and the PHA, until such time as the PHA submits, and HUD approves, an amendment to its plan. The PHA is expected to undertake the work set forth in the Annual Statement. However, the PHA may undertake any of the work identified in any of the other four years of the latest approved Five-Year Action Plan, current approved Annual Statement or previously approved CIAP budgets, without further HUD approval. Actual uses of the funds are to be reflected in the PHA annual Performance and Evaluation Report for each grant. See § 968.330. The PHA is encouraged to inform the residents of significant changes (such as changes in scope of work or whenever it moves items within the approved Five-Year Action Plan). Documentation of that information shall be retained in PHA files. If HUD determines as a result of an audit or monitoring findings that a PHA has provided false or substantially inaccurate data in its Comprehensive Plan/Annual Submission or has circumvented the intent of the program, HUD may condition the receipt of assistance, in accordance with § 968.335. Moreover, in accordance with 18 U.S.C. 1001, any individual or entity who knowingly and willingly makes or uses a document or writing containing any false, fictitious or fraudulent statement or entry, in any matter within the jurisdiction of any

department or agency of the United States, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

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[57 FR 5575, Feb. 14, 1992, as amended at 59 FR 44841, Aug. 30, 1994. Redesignated and amended at 61 FR 8747, Mar. 5, 1996]

§968.325 Annual submission of activities and expenditures.

(a) *General.* The Annual Submission is a collective term for all documents which the PHA must submit to HUD for review and approval before accessing the current FFY grant funds. Such documents include the Annual Statement, Work Statements for years two through five of the Five-Year Action Plan, local government statement, PHA Board Resolution, materials demonstrating the partnership process and any other documents as prescribed by HUD. For planning purposes, a PHA may use either the amount of funding received in the current year or the actual formula amount provided in HUD's notification under §968.310(b)(1) in developing the Five-Year Action Plan for presentation at the resident meetings and public hearing. Work Statements cover the second through the fifth years of the Five-Year Action Plan and set forth the major work categories and costs by development or PHA-wide which the PHA intends to undertake in each year of years two through five. In preparing these Work Statements, the PHA shall assume that the current FFY formula amount will be available in each year of years two through five, as discussed in §968.315(d)(5)(i). The Work Statements for all five years will be at the same level of detail so that the PHA may interchange work items. A PHA may budget up to 8% of its annual grant in a contingency account for cost overruns.

(b) *Submission.* After receiving HUD notification of the formula amount and estimating how much funding will be available from other sources, such as State and local governments, and determining its activities and costs based on the current FFY formula amount, the PHA shall submit its Annual Submission.

(c) *Acceptance for review.* (1) Upon receipt of an Annual Submission from a PHA, HUD shall determine whether:

(i) The Annual Submission contains each of the required components; and

(ii) The PHA has submitted any additional information or assurances required as a result of HUD monitoring, findings of inadequate PHA performance, audit findings, and civil rights compliance findings.

(2) If the PHA has submitted a complete Annual Submission and all required information and assurances, HUD will accept the submission for review, as of the date of receipt. If the PHA has not submitted all required material, HUD will promptly notify the PHA that it has disapproved the submission, indicating the reasons for disapproval, the modifications required to qualify the Annual Submission for HUD review, and the date by which such modifications must be received by HUD.

(d) *Resident and local government participation.* A PHA is required to develop its Annual Submission, including any proposed amendments to its Comprehensive Plan as provided in §968.315 (b) and (c), in consultation with officials of the appropriate governing body (or, in the case of a PHA with developments in multiple jurisdictions, in consultation with the CEO of each such jurisdiction or with an advisory group representative of all jurisdictions) and with residents and duly elected resident councils of the developments covered by the Comprehensive Plan, as follows:

(1) *Public notice.* Within a reasonable amount of time before the advance meeting for residents under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section, the PHA shall annually provide public notice of the advance meeting and the public hearing in a manner determined by the PHA and which ensures notice to all duly elected resident councils;

(2) *Advance Meeting with residents.* The PHA shall at least annually hold a meeting open to all residents and duly elected resident councils. The advance meeting shall be held within a reasonable amount of time before the public hearing under paragraph (d)(3) of this

section. The PHA will provide residents with information concerning the contents of the PHA's Five-Year Action Plan (and any proposed amendments to the PHA's Comprehensive Plan to be submitted with the Annual Submission) so that residents can comment adequately at the public hearing on the contents of the Five-Year Action Plan and any proposed amendments to the Comprehensive Plan.

(3) *Public hearing.* The PHA shall annually hold at least one public hearing, and any appropriate number of additional hearings, to present information on the Annual Submission and the status of prior approved programs. The public hearing shall provide ample opportunity for residents of the developments covered by the Comprehensive Plan, officials of the appropriate governing body, and other interested parties, to express their priorities and concerns. The PHA shall give full consideration to the comments and concerns of residents, local government officials, and other interested parties in developing its Five-Year Action Plan, or any amendments to its Comprehensive Plan.

(4) *Expedited scheduling.* PHAs are encouraged to hold the meeting with residents and duly elected resident councils under paragraph (d)(2) of this section, and the public hearing under paragraph (d)(3) of this section between July 1 (*i.e.,* after the end of the program year—June 30) and September 30, using the formula amount for the current FFY. If a PHA elects to use such expedited scheduling, it must explain at the meeting with residents and duly elected resident councils and at the public hearing that the current FFY amount is not the actual grant amount for the subsequent year, but is rather the amount used for planning purposes. It must also explain that the Five-Year Action Plan will be adjusted when HUD provides notification of the actual formula amount, and explain which major work categories at which developments may be added or deleted to adjust for the actual formula amount and that any added work categories/developments will come from the Comprehensive Plan.

(e) *Contents of Annual Submission.* The Annual Statement for each year must include, for each development or on a PHA-wide basis for management improvements or certain physical improvements for which work is to be funded out of that year's grant:

(1) A list of development accounts with an identification of major work categories;

(2) The cost for each major work category, as well as a summary of cost by development account;

(3) The PHA-wide or development-specific management improvements to be undertaken during the year;

(4) For each development and for any management improvements not covered by a HUD-approved memorandum of agreement or management improvement plan, a schedule for the use of current year funds, including target dates for the obligation and expenditure of the funds (see § 968.125);

(5) A summary description of the actions to be taken with non-CGP funds to meet physical and management improvement needs which have been identified by a PHA in its needs assessments;

(6) Any documentation that HUD needs to assist it in carrying out its responsibilities under the National Environmental Policy Act and other related authorities in accordance with § 968.110(c) and (d);

(7) Other information, as specified by HUD and as approved by OMB under the Paperwork Reduction Act; and

(8) A PHA resolution approving the Annual Submission or any amendments thereto, as set forth in § 968.315(e)(7).

(f) *Additional submissions with Annual Submission.* A PHA shall submit with the Annual Submission any amendments to the Comprehensive Plan, as set forth in § 968.315(f), and such additional information as may be prescribed by HUD. HUD shall review any proposed amendments to the Comprehensive Plan in accordance with review standards under § 968.320(b).

(g) *HUD review and approval of Annual Submission*—(1) *General.* An Annual Submission accepted in accordance with paragraph (a) of this section shall be considered to be approved, unless HUD notifies the PHA in writing, postmarked within 75 calendar days of the date that HUD receives the Annual

Submission for review under paragraph (c) of this section, that HUD has disapproved the Annual Submission, indicating the reasons for disapproval, the modifications required to make the Annual Submission approvable, and the date by which such modifications must be received by HUD. HUD may request additional information (e.g., for eligibility determinations) to facilitate review and approval of the Annual Submission during the 75-day review period. HUD shall not disapprove an Annual Submission on the basis that the Department cannot complete its review under this section within the 75-day deadline;

(2) *Bases for disapproval for Annual Submission.* HUD shall approve the Annual Submission, except where:

(i) *Plainly inconsistent with Comprehensive Plan.* HUD determines that the activities and expenditures proposed in the Annual Submission are plainly inconsistent with the PHA's approved Comprehensive Plan;

(ii) *Contradiction of PHA resolution.* HUD has evidence which tends to challenge, in a substantial manner, the certifications contained in the board resolution, as required by §968.315(e)(7).

(h) *Amendments to Annual Statement.* The PHA shall advise HUD of all changes to the PHA's approved Annual Statement in its Performance and Evaluation Report submitted under §968.330. The PHA shall submit to HUD for prior approval any additional work categories (except for emergency work) which are not within the PHA's approved Five-Year Action Plan.

(i) *Failure to obligate formula funds and extension of time for performance*—(1) *Failure to obligate formula funds.* If the PHA fails to obligate formula funds within the approved or extended time period, the PHA may be subject to an alternative management strategy which may involve third-party oversight or administration of the modernization function. HUD would only require such action after a corrective action order had been issued under §968.335 and the PHA failed to comply with the order. HUD could then require an alternative management strategy in a corrective action order. A PHA may appeal in writing the corrective action order requiring an alternative management strategy within 30 calendar days of that order. HUD Headquarters shall render a written decision on a PHA's appeal within 30 calendar days of the date of its receipt of the PHA's appeal.

(2) *Extension of time for performance.* A PHA may extend the target dates for fund obligation and expenditure in the approved Annual Statement whenever any delay outside the PHA's control occurs, as specified by HUD, and the extension is made in a timely manner. Such revision is subject to HUD review under §968.345(a)(2) as to the PHA's continuing capacity. HUD shall not review as to a PHA's continuing capacity any revisions to a PHA's Comprehensive Plan and related statements where the basis for the revision is that HUD has not provided the amount of assistance set forth in the Annual Submission, or has not provided such assistance in a timely manner.

(j) *ACC Amendment.* After HUD approval of each year's Annual Submission, HUD and the PHA shall enter into an ACC amendment in order for the PHA to draw down modernization funds. The ACC amendment shall require low-income use of housing for not less than 20 years from the date of the ACC amendment (subject to sale of homeownership units in accordance with the terms of the ACC).

(k) *Declaration of trust.* As HUD may require, the PHA shall execute and file for record a Declaration of Trust as provided under the ACC to protect the rights and interests of HUD throughout the 20-year period during which the PHA is obligated to operate its developments in accordance with the ACC, the Act, and HUD regulations and requirements.

(Approved by the Office of Management and Budget under control number 2577–0157)

[57 FR 5575, Feb. 14, 1992, as amended at 59 FR 44841, Aug. 30, 1994. Redesignated and amended at 61 FR 8748, Mar. 5, 1996]

§968.330 PHA performance and evaluation report.

For any FFY in which a PHA has received assistance under this subpart, the PHA shall submit a Performance and Evaluation Report, in a form and

at a time to be prescribed by HUD, describing its use of assistance in accordance with the approved Annual Statement. The PHA shall make reasonable efforts to notify residents and officials of the appropriate governing body of the availability of the draft report, make copies available to residents in the development office, and provide residents with at least 30 calendar days in which to comment on the report.

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[57 FR 5575, Feb. 14, 1992, as amended at 59 FR 44843, Aug. 30, 1994. Redesignated and amended at 61 FR 8748, Mar. 5, 1996]

§ 968.335 HUD review of PHA performance.

(a) *HUD determination.* At least annually, HUD shall carry out such reviews of the performance of each PHA as may be necessary or appropriate to make the determinations required by this paragraph, taking into consideration all available evidence.

(1) *Conformity with comprehensive plan.* HUD will determine whether the PHA has carried out its activities under this subpart in a timely manner and in accordance with its comprehensive plan.

(2) *Continuing capacity.* HUD will determine whether the PHA has a continuing capacity to carry out its comprehensive plan in a timely manner. After the first full operational year of CGP, CIAP experience will not be taken into consideration except where the PHA has not yet had comparable experience under the CGP.

(3) *Reasonable progress.* HUD shall determine whether the PHA has satisfied, or has made reasonable progress towards satisfying, the following performance standards:

(i) Conformity with its comprehensive plan, including its annual statement and latest HUD-approved five-year action plan, and other statutory and regulatory requirements;

(ii) Continuing capacity to carry out its comprehensive plan in a timely manner and expend the annual grant funds; and

(iii) Reasonable progress toward bringing all of its developments to the modernization and energy conservation standards and toward implementing the work specified in the annual statement or five-year action plan designed to address management deficiencies.

(b) *Notice of deficiency.* Based on HUD reviews of PHA performance and findings of any of the deficiencies in paragraph (d) of this section, HUD may issue to the PHA a notice of deficiency stating the specific program requirements which the PHA has violated and requesting the PHA to take any of the actions in paragraph (e) of this section.

(c) *Corrective action order.* (1) Based on HUD reviews of PHA performance and findings of any of the deficiencies in paragraph (d) of this section, HUD may issue to the PHA a corrective action order, whether or not a notice of deficiency has previously been issued in regard to the specific deficiency on which the corrective action order is based. HUD may order corrective action at any time by notifying the PHA of the specific program requirements which the PHA has violated, and specifying that any of the corrective actions listed in paragraph (e) of this section must be taken. HUD shall design corrective action to prevent a continuation of the deficiency, mitigate any adverse effects of the deficiency to the extent possible, or prevent a recurrence of the same or similar deficiencies;

(2) Before ordering corrective action, HUD will notify the PHA and give it an opportunity to consult with HUD regarding the proposed action;

(3) Any corrective action ordered by HUD shall become a condition of the grant agreement;

(4) If HUD orders corrective action by a PHA in accordance with this section, the PHA's Board of Commissioners must notify affected residents of HUD's determination, the bases for the determination, the conditioning requirements imposed under this paragraph, and the consequences to the PHA if it fails to comply with HUD's requirements.

(d) *Basis for corrective action.* HUD may order a PHA to take corrective action only if HUD determines:

(1) The PHA has not submitted a performance and evaluation report, in accordance with § 968.330;

(2) The PHA has not carried out its activities under the CGP program in a timely manner and in accordance with

its comprehensive plan or HUD requirements, as determined in paragraph (a)(1) of this section;

(3) The PHA does not have a continuing capacity to carry out its comprehensive plan in a timely manner or in accordance with its comprehensive plan or HUD requirements, as determined in paragraph (a)(2) of this section;

(4) The PHA has not satisfied, or has not made reasonable progress towards satisfying, the performance standards specified in paragraph (a)(3) of this section;

(5) An audit conducted in accordance with 24 CFR part 44, or pursuant to other HUD reviews (including monitoring findings) reveals deficiencies that HUD reasonably believes require corrective action; or

(6) The PHA has failed to repay HUD for amounts awarded under the CGP program that were improperly expended.

(e) *Types of corrective action.* HUD may direct a PHA to take one or more of the following corrective actions:

(1) Submit additional information:

(i) Concerning the PHA's administrative, planning, budgeting, accounting, management, and evaluation functions, to determine the cause for a PHA not meeting the standards in paragraph (a)(1), (a)(2), or (a)(3) of this section;

(ii) Explaining any steps the PHA is taking to correct the deficiencies;

(iii) Documenting that PHA activities were not inconsistent with the PHA's annual statement or other applicable laws, regulations, or program requirements; and

(iv) Demonstrating that the PHA has a continuing capacity to carry out the comprehensive plan in a timely manner;

(2) Submit detailed schedules for completing the work identified in its Annual Statements and report periodically on its progress on meeting the schedules;

(3) Notwithstanding 24 CFR 85.36(g), submit to HUD the following documents for prior approval, which may include, but are not limited to:

(i) Proposed agreement with the architect/engineer (prior to execution);

(ii) Complete construction and bid documents (prior to soliciting bids);

(iii) Proposed award of contracts, including construction and equipment contracts and management contracts; or

(iv) Proposed contract modifications prior to issuance, including modifications to construction and equipment contracts, and management contracts;

(4) Submit additional material in support of one or more of the statements, resolutions, and certifications submitted as part of the PHA's Comprehensive Plan, Five-Year Action Plan, or Performance and Evaluation Report;

(5) Not incur financial obligations, or to suspend payments for one or more activities;

(6) Reimburse, from non-HUD sources, one or more program accounts for any amounts improperly expended;

(7) Submit to an alternative management strategy which may involve third-party oversight or administration of the modernization function; and

(8) Take such other corrective actions HUD determines appropriate to correct PHA deficiencies.

(f) *Failure to take corrective action.* In cases where HUD has ordered corrective action and the PHA has failed to take the required actions within a reasonable time, as specified by HUD, HUD may take one or more of the following steps;

(1) Withhold some or all of the PHA's grant;

(2) Declare a breach of the ACC grant amendment with respect to some or all of the PHA's functions; or

(3) Any other sanction authorized by law or regulation.

(g) *Reallocation of funds that have been withheld.* Where HUD has withheld for a prescribed period of time some or all of a PHA's annual grant, HUD may reallocate such amounts to other PHAs/IHAs under the CGP program, subject to approval in appropriations acts. The reallocation shall be made to IHAs which HUD has determined to be administratively capable under §950.135, and to PHAs under the CGP program which are not designated as either troubled or mod troubled under the PHMAP at 24 CFR part 901, based upon the relative needs of these IHAs and PHAs, as determined under the formula at §968.103(e) and (f).

(h) *Right to appeal.* Before withholding some or all of the PHA's annual grant, declaring a breach of the ACC grant amendment, or reallocating funds that have been withheld, HUD will notify the PHA and give it an opportunity, within a prescribed period of time, to present to the Assistant Secretary for Public and Indian Housing any arguments or additional facts and data concerning the proposed action.

(i) *Notification of residents.* The PHA's Board of Commissioners must notify affected residents of HUD's final determination to withhold funds, declare a breach of the ACC grant amendment, or reallocate funds, as well as the basis for, and the consequences resulting from, such a determination.

(j) *Recapture.* In addition, HUD may recapture for good cause any grant amounts previously provided to an PHA, based upon a determination that the PHA has failed to comply with the requirements of the CGP program. Before recapturing any grant amounts, HUD will notify the PHA and give it an opportunity to appeal in accordance with paragraph (h) of this section. Any reallocation of recaptured amounts will be reallocated in accordance with paragraph (g) of this section. The PHA's board of Commissioners must notify affected residents of HUD's final determination to recapture any funds.

(k) *Cumulative remedies.* The authority to condition, withhold, reallocate or recapture a PHA's grant, as provided in this section, is in addition to the authority contained in § 968.310(c) to reduce a PHA's formula allocation based upon its designation as a mod troubled PHA.

(Approved by the Office of Management and Budget under control number 2577–0157)

[57 FR 5575, Feb. 14, 1992, as amended at 59 FR 44843, Aug. 30, 1994. Redesignated and amended at 61 FR 8748, Mar. 5, 1996; 62 FR 27126, May 16, 1997]

Subpart D—Vacancy Reduction Program

SOURCE: 59 FR 30478, June 13, 1994, unless otherwise noted.

§ 968.416 Fund requisitions.

To request funds against the total approved vacancy reduction program budget, a PHA must submit a request to HUD in accordance with HUD requirements.

§ 968.419 Grantee's oversight responsibilities.

Each grantee shall provide, by contract or otherwise, adequate and competent supervisory and inspection personnel to assure work quality and progress during modernization, whether work is performed by contract or force account labor and with or without the services of an architect/engineer.

§ 968.422 Progress reports and completion schedule.

(a) *Reports required.* Until completion of the activities funded under the vacancy reduction program, the grantee shall submit to HUD, in a form and at a time prescribed by HUD, the following:

(1) A report on modernization fund expenditures;

(2) A narrative report that includes an accounting of the grantee's progress against the milestones established in its vacancy reduction plan. The report shall include the number of both funded and regular turn-over units that have been made ready for occupancy; and

(3) Any additional information as HUD may require.

(b) *Completion schedule.* HUD expects that most work items funded under this program will be completed within one year. Work items must be completed within two years from the date of funding, or by some other time as may be specified in the Notice of Funding Availability, unless prior approval is obtained from HUD.

(Approved by the Office of Management and Budget under control number 2577–0181)

§ 968.425 HUD review of grantee performance.

(a) *Performance reviews.* HUD shall carry out such reviews of the performance of each funded PHA as may be necessary or appropriate to determine

compliance with the PHA's vacancy reduction plan and related HUD requirements. In these reviews HUD will determine whether the PHA has:

(1) Carried out its vacancy reduction activities in a timely manner and in accordance with its vacancy reduction plan;

(2) Completed, or made reasonable progress toward completing, the physical items funded under the vacancy reduction plan, and whether the work items being carried out conform with the modernization and energy standards in §968.115 of this chapter;

(3) Implemented, or made reasonable progress toward implementing, the management improvements funded under the vacancy reduction program; and

(4) Made reasonable progress in meeting the goals established in its vacancy reduction plan.

(b) *Notice of deficiency.* If HUD finds any deficiency in a review of a grantee's performance under this part, HUD may issue to the grantee a notice of deficiency stating the specific program requirements that the grantee has violated and requesting the grantee to take corrective action.

(c) *Corrective action order.* (1) *Issuance.* If HUD finds any of the deficiencies listed in paragraph (c)(3) of this section in its review of the grantee's performance, HUD may issue to the grantee a corrective action order, whether or not a notice of deficiency has previously been issued on the specific deficiency. The corrective action order shall notify the grantee of the specific program requirements that the grantee has violated and shall specify the corrective action.

(2) *Consultation with grantee.* Before ordering corrective action, HUD will give the grantee an opportunity to consult with HUD regarding the proposed action.

(3) *Bases for corrective action.* HUD may order a grantee to take corrective action only if HUD determines:

(i) The grantee has not submitted a performance report as required by HUD;

(ii) The grantee has not carried out activities under its vacancy reduction program in a timely manner and in accordance with HUD requirements;

(iii) The grantee does not have continuing capacity to carry out activities in its vacancy reduction plan; or

(iv) An audit conducted in accordance with 24 CFR part 44, or pursuant to other HUD reviews, reveals deficiencies that HUD reasonably believes require corrective action.

(d) *Nature of corrective action.* (1) HUD shall design corrective action to prevent a continuation or recurrence of the same or a similar deficiency or to mitigate to the greatest extent feasible any adverse effects of the deficiency.

(2) HUD may order a grantee to take the corrective action that HUD determines appropriate for carrying out the elements of the vacancy reduction plan. Corrective action may include, but is not limited to, suspension of grantee's authority to incur costs against the vacancy reduction funding and reimbursement, from sources other than HUD funds, of any amount spent improperly.

(e) *Failure to take corrective action.* In cases where HUD has ordered corrective action and the grantee has failed to take the required action within a reasonable time, as specified by HUD, HUD may take one or more of the following steps:

(1) Withhold vacancy reduction funds from the grantee;

(2) Declare a breach of the ACC by the grantee; and

(3) Any other sanctions authorized by law or regulation.

§968.428 Program closeout.

(a) *Requirements for grantees.* Upon completion of the activities funded in accordance with this part, the grantee shall submit to HUD, and in a form prescribed by HUD, the actual modernization cost certificate for HUD's review, audit verification, and approval. The grantee shall immediately remit any excess funds provided by HUD. If the audited modernization cost certificate discloses unauthorized expenditures, the grantee shall take such corrective actions as HUD may direct.

(b) *Audit.* The audit shall follow the guidelines prescribed in 24 CFR part 44, Non-Federal Government Audit Requirements.

(Approved by the Office of Management and Budget under control number 2577–0181)

§ 968.435 Other program requirements.

In addition to the program requirements applicable to this subpart under § 968.110, each PHA participating in the vacancy reduction program under this subpart shall:

(a) Certify that any modernization, reconstruction, or rehabilitation activities that are funded under this subpart will be undertaken in accordance with modernization standards, as set forth in HUD Handbook 7485.2, as revised;

(b) Certify that activities undertaken within vacant units will bring the affected units into compliance with the Housing Quality Standards, as set forth in § 982.401 of this title, except that § 982.401(j) of this title shall not apply; the applicable lead-based paint requirements in part 35 subparts A, B, L and R, of this title shall apply.

(c) Provide for resident involvement, in a manner to be determined by the Secretary, in the process of applying for any funding available under this part.

[59 FR 30478, June 13, 1994, as amended at 64 FR 50229, Sept. 15, 1999]

PART 969—PHA-OWNED PROJECTS—CONTINUED OPERATION AS LOW-INCOME HOUSING AFTER COMPLETION OF DEBT SERVICE

Sec.

969.101 Purpose.
969.102 Applicability.
969.103 Definitions.
969.104 Continuing eligibility for operating subsidy.
969.105 Extension of ACC upon payment of operating subsidy.
969.106 ACC extension in absence of current operating subsidy.
969.107 HUD approval of demolition or disposition before ACC expiration.

AUTHORITY: United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

SOURCE: 45 FR 52372, Aug. 7, 1980, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

§ 969.101 Purpose.

This part provides a basis for maintaining the low-income nature of a public housing project after the completion of debt service on the project, specifying methods for extending the effective period of those provisions of the Annual Contributions Contract (ACC) which relate to project operation. Such an extension provides a contractual basis for the continued operation of the project under the Low-Income Public Housing Program, including continued eligibility for Operating Subsidy.

§ 969.102 Applicability.

This part applies to any low-income public housing project that is owned by a Public Housing Agency (PHA), including any Turnkey III housing, and is subject to an ACC under section 5 of the United States Housing Act of 1937 (Act). This part does not apply to the Section 8 and Section 23 Housing Assistance Payments Programs, the Section 10(c) and Section 23 Leased Housing Programs, Lanham Act and Public Works projects that remain under administration contracts, or Indian Housing projects.

[56 FR 922, Jan. 9, 1991]

§ 969.103 Definitions.

(a) ''ACC expiration date'' means the last day of the term during which a particular public housing project is subject to all or any of the provisions of the ACC. The ACC term for a particular project expires at the latest of:

(1) The end of the ''Debt Service Completion Date,'' which is the last day of a one-year period beginning with, and inclusive of, the last debt service Annual Contribution Date for the project, as determined under the ACC (e.g., if the last debt service Annual Contribution Date is June 15, 1983, the one-year period continues through the end of the day on June 14, 1984, which is the Debt Service Completion Date); or

(2) The end of the date of full repayment of any indebtedness of the PHA to the Federal government in connection with the project; or

(3) The end of the last date of an extension of the term of the ACC provisions related to project operation, as effected under § 969.105 or § 969.106.

(b) ''Operating subsidy'' means additional annual contributions for operations under section 9 of the Act.

§969.104 Continuing eligibility for operating subsidy.

Until and after the Debt Service Completion Date for any project, HUD shall pay Operating Subsidy with respect to such project only in accordance with an ACC amendment providing for extension of the term of the ACC provisions related to project operation, pursuant to §969.105 or §969.106. The ACC amendment shall be in the form prescribed by HUD and shall specify the particular provisions of the ACC which relate to continued project operation and, therefore, remain in effect for the extended ACC term. These provisions shall include a requirement that the PHA execute and file for public record an appropriate document evidencing the PHA's covenant not to convey, encumber or make any other disposition of the project before the end of the project's ACC Expiration Date, without HUD approval.

§969.105 Extension of ACC upon payment of operating subsidy.

(a) *ACC amendment.* As a condition for the first HUD approval for payment of Operating Subsidy with respect to the projects under a particular ACC for a PHA fiscal year beginning after the effective date of this part, the PHA and HUD shall enter into an amendment to the ACC for all projects under the ACC. This ACC amendment shall provide that the ACC provisions related to project operation shall continue in effect with respect to each project under the ACC for a period of 10 years after the end of the last PHA fiscal year for which Operating Subsidy is paid with respect to the project.

(b) *Consolidated ACC.* Where a single ACC covers more than one project (Consolidated ACC), each annual Operating Subsidy payable under that ACC is a lump-sum amount, which is not divided into discrete amounts for the individual projects which are subject to the Consolidated ACC (see 24 CFR part 990). Accordingly, if a PHA, before submitting a request for Operating Subsidy pursuant to paragraph (a) of this section, determines that any project(s) under the Consolidated ACC will not require Operating Subsidy and should not be subject to the provisions of paragraph (a), of this section the PHA shall accompany its request with a resolution certifying that no Operating Subsidy shall be utilized with respect to such project(s) after the effective date of this rule and that all financial records and accounts shall be kept separately for such project(s). In such case, the removal of the project(s) from the request for Operating Subsidy shall be reflected by the exclusion of that number of unit months available for the project(s) when making the calculations, under 24 CFR part 990, for determination of the total amount of Operating Subsidy payable under the Consolidated ACC. In any event, no Operating Subsidy payable under a Consolidated ACC or otherwise shall be used to pay, directly or indirectly, any costs attributable to a project which is ineligible or otherwise excluded from Operating Subsidy under §969.104. Even if no Operating Subsidy is received with respect to a project, the PHA remains obligated to maintain and operate the project in accordance with the provisions of the ACC related to project operation so long as those ACC provisions remain in effect.

§969.106 ACC extension in absence of current operating subsidy.

Where Operating Subsidy under an ACC is not approved for payment during a time period which results in extension of the term of the ACC provisions related to project operation, with respect to a particular project, pursuant to §969.105, the PHA shall, at least one year before the anticipated ACC Expiration Date for the project, notify HUD as to whether or not the PHA desires to maintain a basis for receiving Operating Subsidy with respect to the project after the anticipated ACC Expiration Date. This notification shall be submitted to the appropriate HUD Field Office in the form of a resolution of the PHA's Board of Commissioners. If the PHA does not desire to maintain a basis for Operating Subsidy payments with respect to the project after the anticipated ACC Expiration Date, the

resolution shall certify that no Operating Subsidy shall be utilized with respect to the project after the effective date of this rule and that all financial records and accounts for such a project shall be kept separately. If the PHA does desire to maintain a basis for such Operating Subsidy payments, the resolution shall include the PHA's request for extension of the term of the ACC provisions related to project operation, for a period of not less than one nor more than 10 years. Upon HUD's receipt of the request, HUD and the PHA shall enter into an ACC amendment effecting the extension for the period requested by the PHA, unless HUD finds that continued operation of the project cannot be justified under the standards set forth in 24 CFR part 970 (HUD's regulation on demolition or disposition of public housing).

§ 969.107 HUD approval of demolition or disposition before ACC expiration.

This part is not intended to preclude or restrict the demolition or disposition of a project pursuant to HUD approval in accordance with 24 CFR part 970. Subject to the requirements of 24 CFR part 970, HUD may authorize a PHA to demolish or dispose of public housing at any time before the ACC Expiration Date.

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

Sec.

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AUTHORITY: 42 U.S.C. 1437p and 3535(d).

SOURCE: 50 FR 50894, Dec. 13, 1985, unless otherwise noted.

§ 970.1 Purpose.

This part sets forth requirements for HUD approval of a public housing agency's application for demolition or disposition (in whole or in part) of public housing projects assisted under Title I of the U.S. Housing Act of 1937 (the ''Act''). The rules and procedures contained in 24 CFR part 85 are inapplicable.

[53 FR 8067, Mar. 11, 1988, as amended at 56 FR 923, Jan. 9, 1991]

§ 970.2 Applicability.

(a) This part applies to public housing projects that are owned by public housing agencies (PHAs) and that are subject to Annual Contributions Contracts (ACCs) under the Act. It also applies to Section 23 bond-financed projects that have received modernization (i.e., Comprehensive Improvement Assistance Program (CIAP) or Comprehensive Grant funds (CGP)). This part does not apply to the following:

(1) PHA-owned Section 8 housing, or housing leased under section 10(c) or section 23 of the Act, except for section 23 bond-financed projects that have received modernization funding under the CIAP or the Comprehensive Grant Programs;

(2) Demolition or disposition before the End of the Initial Operating Period (EIOP), as determined under the ACC, of property acquired incident to the development of a public housing project; (however, this exception shall not apply to dwelling units);

(3) The conveyance of public housing for the purpose of providing homeownership opportunities for lower income families under section 21 of the Act, the Turnkey III/IV or Mutual Help Homeownership Opportunity Programs, or other homeownership programs established under sections 5(h) or 6(c)(4)(D) of the Act and in existence before February 5, 1988, the date of enactment of the 1987 Act. (Where a plan

submitted by the PHA for homeownership includes a component of demolition, the plan must meet the requirements of section 18 and this part.);

(4) The leasing of dwelling or nondwelling space incident to the normal operation of the project for public housing purposes, as permitted by the ACC;

(5) The reconfiguration of the interior space of buildings (e.g., moving or removing interior walls to change the design, sizes, or number of units) without ''demolition'', as defined in §970.3. (This includes the conversion of bedroom size, occupancy type, changing the status of unit from dwelling to nondwelling.);

(6) Easements, rights-of-way and transfers of utility systems incident to the normal operation of the development for public housing purposes, as permitted by the ACC;

(7) A whole or partial taking by a public or quasi-public entity through the exercise of its power of eminent domain; however, HUD requirements with respect to the replacement housing requirement for one-for-one dwelling units shall be followed (see HUD Handbook 7486.1, Demolition, Disposition and Conversion);

(8) Disposition of a public housing project in accordance with an approved homeownership program under title III of the United States Housing Act of 1937 (42 U.S.C. 1437p) (Hope 1);[1]

(9) Demolition after conveyance of a public housing project to a non-PHA entity in accordance with an approved homeownership program under title III of the United States Housing Act of 1937 (42 U.S.C. 1437p) (HOPE 1);

(10) Units leased for non-dwelling purposes for one year or less;

(11) A public housing development that is conveyed by a PHA to an owner entity pursuant to an approved proposal under 24 CFR part 941, subpart F and prior to the determination of the Actual Development Cost to enable an owner entity to develop the project using the mixed-finance development method; and

(12) Public housing units that are developed pursuant to the mixed-finance development method at 24 CFR part 941, subpart F, and that are reconveyed by the owner entity to the PHA.

(b) Demolition or disposition that was approved by HUD before February 5, 1988, but not carried out by that date, may be carried out according to the terms of such approval, without reference to subsequent amendments to this part and without obtaining any further HUD approval.

[60 FR 3716, Jan. 18, 1995; as amended at 61 FR 19719, May 2, 1996]

§970.3 Definitions.

Act means the United States Housing Act of 1937.

Chief Executive Officer of a unit of general local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. Examples of the ''chief executive officer of a unit of general local government'' are: the elected mayor of a municipality; the elected county executive of a county; the chairperson of a county commission or board in a county that has no elected county executive; and the official designated pursuant to law by the governing body of a unit of general local government.

Demolition means the razing, in whole or in part, of one or more permanent buildings of a public housing project.

Disposition means the conveyance or other transfer by the PHA, by sale or other transaction, of any interest in the real estate of a public housing

[1] In keeping with section 412(b) of the National Affordable Housing Act (Pub.L. 101–625), the provisions of this part do not apply to the disposition of a public housing project in accordance with an approved homeownership program under title III of the United States Housing Act of 1937, as added by section 411 of that legislation, (HOPE 1 for Public and Indian Housing Homeownership). In the case of a HOPE 1 proposal from a PHA involving partial or total demolition of units, this part does apply. HOPE 3 proposals involving public housing units approved prior to the 1992 Act are likewise covered by the requirements of section 18. [The 1992 Act took scattered-site single family public housing from under the requirements of HOPE 3 and moved it to HOPE 1.]

project, subject to the exceptions stated in § 970.2.

[50 FR 50894, Dec. 13, 1985, as amended at 60 FR 3716, Jan. 18, 1995]

§ 970.4 General requirements for HUD approval of applications for demolition or disposition.

HUD will not approve an application for demolition or disposition unless:

(a) The application has been developed in consultation with tenants of the project involved, any tenant organizations for the project, and any PHA-wide tenant organizations that will be affected by the demolition or disposition;

(b) *Environmental review.* Activities under this part are subject to HUD environmental regulations in part 58 of this title. However, HUD may make a finding in accordance with § 58.11(d) and may itself perform the environmental review under the provisions of part 50 of this title if a PHA objects in writing to the responsible entity's performing the review under part 58.

(c) [Reserved]

(d) The public housing agency has developed a replacement housing plan, in accordance with § 970.11, and has obtained a commitment for the funds necessary to carry out the plan over the approved schedule of the plan. To the extent such funding is not provided from other sources (*e.g.,* State or local programs or proceeds of disposition), HUD approval of the application for demolition or disposition is conditioned on HUD's agreement to commit the necessary funds (subject to availability of future appropriations).

(e) The PHA has complied with the offering to resident organizations, as required under § 970.13.

(f) The PHA has prepared a certification regarding relocation of residents, in accordance with § 970.5(h)(1). If relocation is required, the PHA must submit a relocation plan in accordance with § 970.5.

(g) The PHA has made the appropriate certifications regarding site and neighborhood standards, in accordance with § 970.11(h) (2) and (4).

[50 FR 50894, Dec. 13, 1985, as amended at 53 FR 30987, Aug. 17, 1988; 60 FR 3717, Jan. 18, 1995; 68 FR 56131, Sept. 29, 2003]

§ 970.5 Displacement and relocation.

(a) *Relocation of displaced tenants on a nondiscriminatory basis.* Tenants who are to be displaced as a result of demolition or disposition must be offered opportunities to relocate to other comparable/suitable (see HUD Handbook 1378, Tenant Assistance, Relocation and Real Property Acquisition) decent, safe, sanitary, and affordable housing (at rents no higher than permitted under the Act,) which is, to the maximum extent practicable, housing of their choice, on a nondiscriminatory basis, without regard to race, color, religion (creed), national origin, handicap, age, familial status, or sex, in compliance with applicable Federal and State laws.

(b) *Relocation resources.* Relocation may be to other publicly assisted housing. Housing assisted under Section 8 of the Act, including housing available for lease under the Section 8 Housing Voucher Program, may also be used for relocation, provided the PHA ensures that displaced tenants are provided referrals to comparable/suitable relocation dwelling units where the family's share of the rent to owner following relocation will not exceed the total tenant payment, as calculated in accordance with § 813.107 of this title. If the PHA provides referrals to suitable/comparable relocation housing (comparable housing if the displacement is subject to the URA) and a tenant with a rental voucher elects to lease a housing unit where the family's share of rent to owner exceeds the amount calculated in accordance with § 813.107 of this title, the tenant will be responsible for the difference between the voucher payment standard and the rent to owner. If there are no units with rents at or below the voucher payment standard to which the PHA may refer families, then the PHA cannot use vouchers as a relocation housing source.

(c) *Applicability of URA rules.* (1) The displacement of any person (household, business or nonprofit organization) as a direct result of acquisition, rehabilitation, or demolition for a Federal or federally assisted project (defined in paragraph (j) of this section) is subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act

of 1970, as amended, (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. Therefore, if the PHA demolishes the property, or disposes of it to a Federal agency or to a person or entity that is acquiring the property for a federally assisted project, the demolition or acquisition is subject to the URA, and any person displaced (as described in paragraph (i) of this section) as a result of such action is eligible for relocation assistance at the levels described in, and in accordance with the requirements of 49 CFR part 24.

(2) As described in §970.11, public housing units that are demolished must be replaced. Any person displaced (see paragraph (i) of this section) as a direct result of acquisition, demolition or rehabilitation for a project receiving Federal financial assistance (e.g., ACC) that provides the required replacement housing, must be provided relocation assistance at the levels described in, and in accordance with the requirements of 49 CFR part 24.

(d) *Applicability of antidisplacement plan.* If CDBG funds (part 570 of this title), or HOME funds (part 91 of this title) are used to pay any part of the cost of the demolition or the cost of a project (defined in paragraph (j) of this section) for which the property is acquired, the transaction is subject to the Residential Antidisplacement and Relocation Assistance Plan, as described in the cited regulations.

(e) *Relocation assistance for other displaced persons.* Whenever the displacement of a residential tenant (family, individual or other household) occurs in connection with the disposition of the real property, but the conveyance is not for a Federal or federally assisted project (and is, therefore, not covered by the URA), the displaced tenant shall be eligible for the following relocation assistance:

(1) *Advance written notice of the expected displacement.* The notice shall be provided as soon as feasible, describe the assistance to be provided and the procedures for obtaining the assistance; and contain the name, address and phone number of an official responsible for providing the assistance;

(2) Other advisory services, as appropriate, including counseling and referrals to suitable, decent, safe, and sanitary replacement housing. Minority persons also shall be given, if possible, referrals to suitable decent, safe and sanitary replacement dwellings that are not located in an area of minority concentration;

(3) Payment for actual reasonable moving expenses, as determined by the PHA;

(4) The opportunity to relocate to a suitable, decent, safe and sanitary dwelling unit at a rent that does not exceed that permitted under section 3(a) of the 1937 Act. All or a portion of the assistance may be provided under section 8 of the 1937 Act; and

(5) Such other Federal, State or local assistance as may be available.

(f) *Temporary relocation.* Residential tenants who will not be required to move permanently, but who must relocate temporarily (e.g., to permit property repairs), shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs, and the cost of reinstalling telephone and cable TV service.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The suitable, decent, safe and sanitary housing to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provision for reimbursement of out-of-pocket expenses (see paragraph (f)(1) of this section).

(g) *Appeals.* A person who disagrees with the PHA's determination concerning whether the person qualifies as a ''displaced person'' or the amount of the relocation assistance for which the person is eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's determination on his or her appeal may submit a written request

for review of the PHA's determination to the HUD Field Office.

(h) *Responsibility of PHA.* (1) The PHA shall certify that it will comply with the URA, implementing regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance, notwithstanding any third party's contractual obligation to the PHA to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. (See definition of ''project'' in paragraph (j) of this section.) Such costs may also be paid for with funds available from other sources.

(3) The PHA shall maintain records in detail sufficient to demonstrate such compliance. The PHA shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.

(i) *Definition of displaced person.* (1) *General definition.* For purposes of this section, the term ''displaced person'' means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a Federal or federally assisted project.

(2) *Persons who qualify.* The term ''displaced person'' includes, but may not be limited to:

(i) A person who moves permanently from the real property after the PHA, or the person acquiring the property, issues a vacate notice to the person, or refuses to renew an expiring lease in order to evade the responsibility to provide relocation assistance, if the move occurs on or after the date of HUD approval of the demolition or disposition;

(ii) Any person who moves permanently, including a person who moves before the date of HUD approval of the demolition or disposition, if HUD or the PHA determines that the displacement resulted from the demolition or disposition of the property and is subject to the provisions of this section; or

(iii) A tenant-occupant of a dwelling who moves permanently from the building/complex on or after the date HUD approves the demolition or disposition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions shall include a monthly rent and estimated average monthly utility costs that do not exceed that permitted under section 3(a) of the 1937 Act.

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily and does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with such temporary relocation (including the cost of moving to and from the temporarily occupied unit, any increase in rent/utility costs, and the cost of reinstalling telephone and cable TV service).

(B) Other conditions of the temporary relocation are not reasonable.

(v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another unit in the same building/complex if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(3) *Persons not eligible.* Notwithstanding the provisions of paragraphs (i)(1) and (i)(2) of this section, a person does not qualify as a ''displaced person'' (and is not eligible for relocation assistance under this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the PHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application for the demolition or disposition and, before commencing occupancy, received written notice of the project, its possible impact on the person (e.g., the

person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that he or she would not qualify as a ''displaced person'' (or for assistance under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of an action covered by this section.

(j) *Definition of project.* For purposes of this section, the term ''project'' means one or more activities (e.g., real property acquisition, demolition or construction) paid for in whole or in part with Federal financial assistance. Two or more activities that are integrally related, each essential to the other(s), are considered one project, whether or not all of the component activities are federally assisted.

(k) *Definition of initiation of negotiations.* For purposes of providing the appropriate notices and determining the formula for computing a replacement housing payment under the URA to a tenant displaced from a dwelling as a direct result of demolition or private owner acquisition, the term ''initiation of negotiations'' means HUD approval of the demolition or disposition under this part.

[60 FR 3717, Jan. 18, 1995]

§ 970.6 Specific criteria for HUD approval of demolition requests.

In addition to other applicable requirements of this part, HUD will not approve an application for demolition unless HUD determines that one of the following criteria is met:

(a) In the case of demolition of all or a portion of a project, the project, or portion of the project, is obsolete as to physical condition, location, or other factors, making it unusable for housing purposes *and* no reasonable program of modifications, is feasible to return the project or portion of the project to useful life. The Department generally shall not consider a program of modifications to be reasonable if the costs of such program exceed 90 percent of total development cost (TDC). Major problems indicative of obsolescence are—

(1) As to physical condition: Structural deficiencies (e.g. settlement of earth below the building caused by inadequate structural fills, faulty structural design, or settlement of floors), substantial deterioration (e.g., severe termite damage or damage caused by extreme weather conditions), or other design or site problems (*e.g.,* severe erosion or flooding);

(2) As to location: physical deterioration of the neighborhood; change from residential to industrial or commercial development; or environmental conditions as determined by HUD environmental review in accord with part 50 of this title, which jeopardize the suitability of the site or a portion of the site and its housing structures for residential use;

(3) Other factors which have seriously affected the marketability, usefulness, or management of the property.

(b) In the case of demolition of only a portion of a project, the demolition will help to assure the useful life of the remaining portion of the project (*e.g.,* to reduce project density to permit better access by emergency, fire, or rescue services).

[60 FR 3719, Jan. 18, 1995]

§ 970.7 Specific criteria for HUD approval of disposition requests.

(a) In addition to other applicable requirements of this part, HUD will not approve a request for disposition unless HUD determines that retention is not in the best interests of the tenants and the PHA because at least one of the following criteria is met:

(1) Developmental changes is the area surrounding the project (e.g., density, or industrial or commercial development) adversely affect the health or safety of the tenants or the feasible operation of the project by the PHA.

(2) Disposition will allow the acquisition, development, or rehabilitation of other properties that will be more efficiently or effectively operated as lower income housing projects, and that will preserve the total amount of lower income housing stock available to the community. A PHA must be able to demonstrate to the satisfaction of HUD that the additional units are being provided in connection with the disposition of the property.

(3) There are other factors justifying disposition that HUD determines are consistent with the best interests of the tenants and the PHA and that are not inconsistent with other provisions of the Act. As an example, if the property meets any of the criteria for demolition under § 970.6, it may be disposed of under this criterion (§ 970.7(a)(3)), subject to conditions that HUD may impose (e.g., demolition to follow disposition in order to assure abatement of a threat to safety or health).

(b) In the case of disposition of property other than dwelling units, (1) the property is determined by HUD to be excess to the needs of the project (after EIOP), or (2) the disposition of the property is incidental to, or does not interfere with, continued operation of the remaining portion of the project.

[50 FR 50894, Dec. 13, 1985, as amended at 53 FR 30988, Aug. 17, 1988; 60 FR 3719, Jan. 18, 1995]

§ 970.8 PHA application for HUD approval.

Written approval by HUD shall be required before the PHA may undertake any transaction involving demolition or disposition. To request approval, the PHA shall submit an application to the appropriate HUD Field Office which includes the following:

(a) A description of the property involved;

(b) A description of, as well as a timetable for, the specific action proposed (including, in the case of disposition, the specific method proposed);

(c) A statement justifying the proposed demolition or disposition under one or more of the applicable criteria of § 970.6 or § 970.7;

(d) If applicable, a plan for the relocation of tenants who would be displaced by the proposed demolition or disposition (see § 970.5). The relocation plan must at least indicate:

(1) The number of tenants to be displaced;

(2) What counseling and advisory services the PHA plans to provide;

(3) What housing resources are expected to be available to provide housing for displaced tenants;

(4) An estimate of the costs for counseling and advisory services and tenant moving expenses, and the expected source for payment of these costs (see §§ 970.9); and

(5) The minimum official notice that the PHA will give tenants before they are required to move;

(e) A description of the PHA's consultations with tenants and any tenant organizations (as required under § 970.4(a)), with copies of any written comments which may have been submitted to the PHA and the PHA's evaluation of the comments;

(f) A replacement housing plan, as required under § 970.11, and approved by the unit of general local government which approval shall be provided by the chief executive officer of the jurisdiction in which the project is located (e.g., the mayor or the county executive), indicating approval of the replacement plan.

(g) Evidence of compliance with the offering to resident organizations, as required under § 970.13.

(h) A certification regarding relocation of residents, in accordance with § 970.5(h)(1).

(i) Appropriate certifications regarding site and neighborhood assessment, in accordance with §§ 970.11(h) (2), (3), and (4).

(j) Appropriate certification regarding compliance with environmental authorities, where required in accordance with § 970.4(c).

(k) The estimated balance of project debt, under the ACC, for development and modernization;

(l) In the case of disposition, an estimate of the fair market value of the property, established on the basis of one independent appraisal unless, as determined by HUD, (1) more than one appraisal is warranted, or (2) another method of valuation is clearly sufficient and the expense of an independent appraisal is unjustified because of the limited nature of the property interest involved or other available data;

(m) In the case of disposition, estimates of the gross and net proceeds to be realized, with an itemization of estimated costs to be paid out of gross proceeds and the proposed use of any net proceeds in accordance with § 970.9;

(n) A copy of a resolution by the PHA's Board of Commissioners approving the application;

(o) If determined to be necessary by HUD, an opinion by the PHA's legal counsel that the proposed action is consistent with applicable requirements of Federal, State, and local laws; and

(p) Any additional information necessary to support the application and assist HUD in making determinations under this part.

(Approved by the Office of Management and Budget under control number 2577–0075)

[50 FR 50894, Dec. 13, 1985, as amended at 60 FR 3719, Jan. 18, 1995]

§ 970.9 Disposition of property; use of proceeds.

(a) Where HUD approves the disposition of real property of a project, in whole or in part, the PHA shall dispose of it promptly by public solicitation of bids for not less than fair market value, unless HUD authorizes negotiated sale for reasons found to be in the best interests of the PHA or the Federal Government, or sale for less than fair market value (where permitted by State law), based on commensurate public benefits to the community, the PHA or the Federal Government justifying such an exception. Reasonable costs of disposition, and of relocation of displaced tenants allowable under § 970.5, may be paid by the PHA out of the gross proceeds, as approved by HUD.

(b) Net proceeds, including any interest earned on the proceeds, (after payment of HUD-approved costs of disposition and relocation under paragraph (a) of this section) shall be used, subject to HUD approval, as follows:

(1) For the retirement of outstanding obligations, if any, issued to finance original development or modernization of the project; and

(2) Thereafter, to the extent that any net proceeds remain, for the provision of housing assistance for low-income families, through such measures as modernization of low-income housing or the acquisition, development or rehabilitation of other properties to operate as low-income housing.

(c) In the case of scattered-site housing of a public housing agency, the net proceeds of a disposition shall be used for the retirement of outstanding obligations issued to finance original development or modernization of the project, in an amount that bears the same ratio to the total of such costs and obligations as the number of units disposed of bears to the total number of units of the project at the time of disposition. For example, in cases where debt has not been forgiven, if a development project of ten units that cost $100,000 has one unit disposed of for $10,000, then there would be no net proceeds after paying off the proportional cost ($100,000 divided by 10=$10,000/unit) of the project. If, however, the unit was disposed of and net proceeds were $12,000, there would be $2,000 available that the PHA would use for the provision of housing assistance for lower income families. Where debt has been forgiven, all the net proceeds may be used by the PHA for the provision of low income housing assistance.

[50 FR 50894, Dec. 13, 1985, as amended at 53 FR 30988, Aug. 17, 1988; 60 FR 3719, Jan. 18, 1995]

§ 970.10 Costs of demolition and relocation of displaced tenants.

Where HUD has approved demolition of a project, or a portion of a project, and the proposed action is part of a modernization program under the Comprehensive Improvement Assistance Program (24 CFR part 968), the costs of demolition and of relocation of displaced tenants may be included in the modernization budget.

§ 970.11 Replacement housing plan.

(a) *One-for-one replacement.* HUD may not approve an application or furnish assistance under this part unless the PHA submitting the application for demolition or disposition also submits a plan for the provision of an additional decent, safe, sanitary, and affordable rental dwelling unit (at rents no higher than permitted under the Act) for each public housing dwelling unit to be demolished or disposed of under the application, except as provided in paragraph (j) of this section. A replacement housing plan may provide for the location of the replacement housing outside the political boundaries of the locality of the PHA, provided all relevant program requirements are satisfied including the approval of the replacement housing plan

by the unit of general local government in which the project being demolished or disposed is located. In order to assure that all program requirements are satisfied, the PHA must enter into any necessary agreements, including where applicable, the execution of a Cooperation Agreement between the PHA and the locality in which the replacement housing will be located, prior to submission of the replacement housing plan to HUD for approval. In addition, the PHA must ensure that such agreements provide that the families selected for occupancy in the replacement housing will be families who would have been eligible for occupancy in the replacement housing if it had been replaced in the same locality as the project being demolished or disposed. The plan must include any one or combination of the following:

(1) The acquisition or development of additional public housing dwelling units;

(2) The use of 15-year project-based assistance under section 8, to the extent available, or if such assistance is not available, in the case of an application proposing demolition or disposition of 200 or more dwelling units in a development, the use of available project-based assistance under section 8 having a term of not less than 5 years;

(3) The use of not less than 15-year project-based assistance under other Federal programs, to the extent available, or if such assistance is not available, in the case of an application proposing the demolition or disposition of 200 or more dwelling units in a development, the use of available project-based assistance under other Federal programs having a term of not less than 5 years. (NOTE: In the case of 15-year project based assistance under other Federal programs, the Department has determined that low-income housing credits under Section 42 of the Internal Revenue Service Code is a Federal program providing 15-year project-based assistance and, therefore, qualifies as a source of replacement housing. Any replacement housing plan proposing the use of these credits must assure that the low-income housing units in the low-income housing credit project which are designated as replacement housing will be reserved for low-income families for the requisite period. Units which at the time of allocation of the credit are also receiving Federal assistance under Section 8 (except tenant-based assistance) or Section 23 of the Act, or Section 236, 221(d)(3) BMIR or Section 221(d)(5) of the National Housing Act (12 U.S.C. 1701 *et seq.*), or Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s), or other similar Federal program, are not eligible as replacement housing under paragraph (a)(3) of this section.);

(4) The acquisition or development of dwelling units assisted under a State or local government program that provides for project-based rental assistance comparable in terms of eligibility, contribution to rent, and length of assistance contract (not less than 15 years) to assistance under section (8)(b)(1) of the Act; or

(5)(i) The use of 15-year tenant-based assistance under section 8 of the Act, (excluding rental vouchers under section 8(o)), under the conditions described in paragraph (b) of this section, to the extent available, or if such assistance is not available, in the case of an application proposing the demolition or disposition of 200 or more dwelling units in a development, the use of tenant-based assistance under section 8 (excluding rental vouchers under section 8(o)) having a term of not less than 5 years.

(ii) However, in the case of an application proposing demolition or disposition of 200 or more units, not less than 50 percent of the dwelling units for replacement housing shall be provided through the acquisition or development of additional public housing dwelling units or through project-based assistance, and not more than 50 percent of the additional dwelling units shall be provided through tenant-based assistance under section 8 (excluding vouchers) having a term of not less than 5 years. The requirements of § 970.11(b) do not apply to applications for demolition or disposition of 200 or more units that propose the use of tenant-based assistance under section 8 having a term of not less than 5 years for the replacement of not more than

50 percent of the units to be demolished or disposed of.

(b) *Conditions for use of tenant-based assistance.* Fifteen-year tenant-based assistance under section 8 may be approved under the replacement plan only if provisions listed in paragraphs (b)(1) through (3) of this section are met.

(1) There is a finding by HUD that replacement with project-based assistance (including public housing, as well as other types of project-based assistance under paragraph (a) of this section) is not feasible under the feasibility standards established for project-based assistance; that the supply of private rental housing actually available to those who would receive tenant-based assistance under the plan is sufficient for the total number of rental certificates and rental vouchers available in the community after implementation of the plan; and that this available housing supply is likely to remain available for the full 15-year term of the assistance;

(2) HUD's findings under paragraph (b)(1) of this section are based on objective information, which must include rates of participation by landlords in the Section 8 program; size, condition, and rent levels of available rental housing as compared to Section 8 standards; the supply of vacant existing housing meeting the Section 8 housing quality standards with rents at or below the fair market rent or the likelihood of adjusting the fair market rent; the number of eligible families waiting for public housing or housing assistance under Section 8; the extent of discrimination practiced against the types of individuals or families to be served by the assistance; an assessment of compliance with civil rights laws and related program requirements; and such additional data as HUD may determine to be relevant in particular circumstances; and

(3) To justify a finding under paragraph (b)(1) of this section, the PHA must provide sufficient information to support both parts of the finding—why project-based assistance is infeasible and how the conditions for tenant-based assistance will be met, based on the pertinent data from the local housing market, as prescribed in paragraph (b)(2) of this section. The determination as to the lack of feasibility of project-based assistance must be based on the standards for feasibility stated in the respective regulations which govern each type of eligible project-based program identified in paragraph (a) of this section, including public housing under paragraph (a)(1) of this section as well as the other types of eligible Federal, State and local programs of project-based assistance under paragraphs (a)(2) through (4) of this section. A finding of lack of feasibility may thus be made only if the applicable feasibility standards cannot be met under any of those project-based programs, or any combination of them. For example, with regard to additional public housing development, feasibility would be determined by reference to part 941 of this chapter and any other applicable regulations and requirements, to include consideration of such factors as local needs for new construction or rehabilitation, availability of suitable properties for acquisition or sites for construction, and HUD determinations under cost containment policies. With regard to Section 8 programs involving rehabilitation, an example of a major feasibility factor would be the prospects for participation of private owners willing to meet the rehabilitation requirements.

(c) *Approval of unit of general local government.* The plan must be approved by the unit of general local government in which the project proposed for demolition or disposition is located, which approval shall be provided by the chief executive officer (e.g., the mayor or the county executive).

(d) *Schedule for replacement housing plan.* (1) The plan must include a schedule for carrying out all its terms within a period consistent with the size of the proposed demolition or disposition, except that the schedule for completing the plan shall in no event exceed 6 years from the date specified to begin plan implementation, which is the date of HUD approval of the demolition or disposition application.

(2) Where demolition or disposition will occur in phases, the schedule shall provide for completing the plan within six years from the date of the HUD approval letter for a specific demolition

or disposition action requested. ''Completion'' does not mean that the replacement housing must be built or rehabilitated within the six years. For replacement units developed under the public housing development program, the completion of the plan would be units that have reached the stage of notice to proceed for conventional units and contract of sale for Turnkey units.

(e) *Housing the same number of individuals and families.* The plan must include a method which ensures that at least the same total number of individuals and families will be provided housing, allowing for replacement with units of different sizes to accommodate changes in local priority needs, as determined by the PHA and reviewed and approved by HUD as a part of the demolition or disposition application.

(f) *Relocation plan.* Where existing occupants will be displaced, the plan must include a relocation plan in accordance with §§970.5 and 970.8(d).

(g) *Assurances regarding relocation.* The plan must prevent the taking of any action to demolish or dispose of any unit until the tenant of the unit is relocated in accordance with §970.5. This does not preclude actions permitted under §970.12, actions required under this part for development and submission of the PHA's application for HUD approval of demolition or disposition, or actions required to carry out a relocation plan which has been approved by HUD in accordance with §§970.5 and 970.8(d).

(h) *Site and neighborhood standards assessment.* With respect to replacement housing, PHAs must comply with site and neighborhood standards, as follows:

(1) If units under the Public Housing Development Program or the Section 8 project-based assistance program have been requested as replacement housing in the PHA's application, except when the PHA plans to build back on the same site, the site and neighborhood standards applicable for those programs will apply and be assessed at the appropriate time as required by that program rule or handbook and not at the time of the demolition or disposition application. The PHA must certify to HUD at the time of application for demolition or disposition, that once the site is identified, the PHA will comply with the site and neighborhood standards applicable for those programs.

(2) If units under the Public Housing Development Program or the Section 8 project-based assistance program have been requested as replacement housing in the PHA's application and the PHA plans to build back on the same site, the PHA shall comply with the site and neighborhood standards applicable for those programs when the demolition or disposition application is submitted to HUD. A complete site and neighborhood standards review shall be done by HUD subsequent to the submission of the demolition or disposition application but prior to approval.

(3)(i) If the replacement housing units are to be provided under a State or local program, and the site is known (including building back on the same site), the PHA is required to comply with site and neighborhood standards comparable to part 882 of this title when the demolition or disposition application is submitted to HUD. A complete site and neighborhood standards review shall be done by HUD subsequent to the submission of the demolition or disposition application but prior to approval.

(ii) However, if the site is not known, the PHA shall include in the application for demolition or disposition a certification that it will comply with site and neighborhood standards comparable to part 882 of this title once the site is known.

(iii) In the case of replacement housing funded by State or local government funds, the PHAs must demonstrate in the application that it has a commitment for funding the replacement housing.

(4)(i) If the replacement housing units are to be provided out of the proceeds of the disposition of public housing property, and the site is known (including building back on the same site), the PHA is required to comply with site and neighborhood standards comparable to part 941 of this chapter (or under part 882 of this title in the case of use of Section 8 assistance)

when the demolition or disposition application is submitted to HUD. A complete site and neighborhood standards review shall be done by HUD subsequent to the submission of the demolition or disposition application but prior to approval.

(ii) However, if the site is not known, the PHA shall include in the application for demolition or disposition a certification that it will comply with site and neighborhood standards comparable to part 941 of this chapter or under part 882 of this title once the site is known.

(i) *Assurances regarding accessibility*. The plan must contain assurances that any replacement units acquired, newly constructed or rehabilitated will meet the applicable accessibility requirements set forth in § 8.25 of this title.

(j) *Exception for replacement housing in cases of demolition*. In any 5-year period, a public housing agency may *demolish* not more than the lesser of 5 dwelling units or 5 percent of the total dwelling units owned and operated by the public housing agency, without providing an additional dwelling unit for each public housing unit to be *demolished,* but only if the space occupied by the demolished unit is used for meeting the service or other needs of public housing residents. If the PHA elects to use this exception, it shall meet all other requirements of this part except § 970.11.

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[60 FR 3719, Jan. 18, 1995]

§ 970.12 Required and permitted actions prior to approval.

A PHA may not take any action to demolish or dispose of a public housing project or a portion of a public housing project without obtaining HUD approval under this part. Until such time as HUD approval may be obtained, the PHA shall continue to meet its ACC obligations to maintain and operate the property as housing for low-income families. This does not, however, mean that HUD approval under this part is required for planning activities, analysis, or consultations, such as project viability studies, comprehensive modernization planning or comprehensive occupancy planning.

[53 FR 30987, Aug. 17, 1988]

§ 970.13 Resident organization opportunity to purchase.

(a) *Applicability*. (1) This section applies to applications for demolition or disposition of a development which involve dwelling units, nondwelling spaces (e.g. administration and community buildings, maintenance facilities), and excess land.

(2) The requirements of this section do not apply to the following cases which it has been determined do not present appropriate opportunities for resident purchase:

(i) The PHA has determined that the property proposed for demolition is an imminent threat to the health and safety of residents;

(ii) The local government has condemned the property proposed for demolition;

(iii) A local government agency has determined and notified the PHA that units must be demolished to allow access to fire and emergency equipment;

(iv) The PHA has determined that the demolition of selected portions of the development in order to reduce density is essential to ensure the long term viability of the development or the PHA (but in no case should this be used cumulatively to avoid Section 412 requirements);

(v) A public body has requested to acquire vacant land that is less than 2 acres in order to build or expand its services (e.g., a local government wishes to use the land to build or establish a police substation); or

(vi) PHA seeks disposition outside the public housing program to privately finance or otherwise develop a facility to benefit low-income families (e.g., day care center, administrative building, other types of low-income housing).

(3) In the situations listed in paragraph (a) of this section, the PHA may proceed to submit its request to demolish or dispose of the property, or the portion of the property, to HUD, in accordance with Section 18 of the United States Housing Act of 1937 and 24 CFR

part 970 without affording an opportunity for purchase by a resident organization. However, resident consultation would be required in accordance with §970.4(a). The PHA must submit written documentation, on official stationery, with date and signatures to justify paragraphs (a)(2)(i), (ii), (iii), (iv), and (v) of this section. Examples of such documentation include:

(i) A certification from a local agency, such as the fire or health department, that a condition exists in the development that is an imminent threat to residents; or

(ii) A copy of the condemnation order from the local health department. If, however, at some future date, the PHA proposes to sell the remaining property described in paragraphs (a)(2)(i) through (iii) of this section, the PHA will be required to comply with this section.

(b) *Opportunity for residents to organize.* Where the affected development does not have an existing resident council, resident management corporation or resident cooperative at the time of the PHA proposal to demolish or dispose of the development or a portion of the development, the PHA shall make a reasonable effort to inform residents of the development of the opportunity to organize and purchase the property proposed for demolition or disposition. Examples of ''reasonable effort'' at a minimum include one of the following activities: convening a meeting, sending letters to all residents, publishing an announcement in the resident newsletter, where available, or hiring a consultant to provide technical assistance to the residents. The Department will not approve any application that cannot demonstrate that the PHA has allowed at least 45 days for the residents to organize a resident organization. The PHA should initiate its efforts to inform the residents of their right to organize as an integral part of the resident consultation requirement under §970.4(a).

(c) *Established Organizations.* Where there are duly formed resident councils, resident management corporation, or resident cooperative at the affected development, the PHA shall follow the procedures beginning in paragraph (d) of this section. Where the affected development is fully or partially occupied, the residents must be given the opportunity to form under the procedures in paragraph (b) of this section.

(d) *Offer of sale to resident organizations.* (1) The PHA shall make the formal offer for sale which must include, at a minimum, the information listed in this paragraph (d). All contacted organizations shall have 30 days to express an interest in the offer. The PHA must offer to sell the property proposed for demolition or disposition to the resident management corporation, the resident council or resident cooperative of the affected development under at least as favorable terms and conditions as the PHA would offer it for sale to another purchaser:

(i) An identification of the development, or portion of the development, in the proposed demolition or disposition, including the development number and location, the number of units and bedroom configuration, the amount of space and use for non-dwelling space, the current physical condition (e.g., fire damaged, friable asbestos, lead-based paint evaluation results), and occupancy status (e.g., percent occupancy).

(ii) In the case of disposition, a copy of the appraisal of the property and any terms of sale.

(iii) A PHA disclosure and description of plans proposed for reuse of land, if any, after the proposed demolition or disposition.

(iv) An identification of available resources (including its own and HUD's) to provide technical assistance to the resident management corporation, resident council or resident cooperative of the affected development to enable the organization to better understand its opportunity to purchase the development, the development's value and potential use.

(v) Any and all terms of sale that the PHA requires for the Section 18 action. (If the resident management corporation, resident council or resident cooperative of the affected development submits a proposal that is other than the terms of sale (e.g., purchase at less than fair market value with demonstrated commensurate public benefit or for the purposes of homeownership),

the PHA may consider accepting the offer).

(vi) A date by which the resident management corporation, resident council or resident cooperative of the affected development must respond to the HA's offer to sell the property proposed for demolition or disposition, which shall be no less than 30 days from the date of the official offering of the PHA. The response from the resident management corporation, resident council or resident cooperative of the affected development shall be in the form of a letter expressing its interest in accepting the PHAs written offer.

(vii) A statement that the resident council, resident management corporation, and resident cooperative of the affected development will be given 60 days to develop and submit a proposal to the PHA to purchase the property and to obtain a firm financial commitment. It shall explain that the PHA shall approve the proposal from the resident council, resident management corporation or resident cooperative of the affected development, if it meets the terms of sale. However, the statement shall indicate that the PHA can consider accepting an offer from the resident council, resident management corporation or resident cooperative of the affected development that is other than the terms of sale; e.g., purchase at less than fair market value with demonstrated commensurate public benefit or for the purposes of homeownership. The statement shall explain that if the PHA receives more than one proposal from a resident council, resident management corporation or resident cooperative at the affected development, the PHA shall select the proposal that meets the terms of sale. In the event that two proposals from the affected development meet the terms of sale, the PHA shall chose the best proposal.

(2) After the 30 day time frame for the resident council, resident management corporation, or resident cooperative of the affected development to respond to the notification letter has expired, the PHA is to prepare letters to those organizations that responded affirmatively inviting them to submit a formal proposal to purchase the property. The organization has 60 days from the date of its affirmative response to prepare and submit a proposal to the PHA that provides all the information requested in paragraph (g) of this section and meets the terms of sale.

(e) *PHA Review of Proposals.* The PHA has up to 60 days from the date of receipt of the proposal(s) to review them and determine whether they meet the terms of sale set forth in its offer. If the resident management corporation, resident council or resident cooperative of the affected development submits a proposal that is other than the terms of sale (e.g., purchase at less than the fair market value with demonstrated commensurate public benefit or for the purposes of homeownership), the PHA may consider accepting the offer. If the terms of sale are met, within 14 days of the PHA's final decision, the PHA shall notify the resident management corporation, resident council or resident cooperative of the affected development of that fact and that the proposal has been accepted or rejected.

(f) *Appeals.* The resident management corporation, resident council or resident cooperative of the affected development has the right to appeal the PHA's decision to the HUD field office. A letter requesting an appeal has to be made within 30 days of the decision by the PHA. The request should include copies of the proposal and any related correspondence. The field office will render a final decision within 30 days. A letter communicating the decision is to be prepared and sent to the PHA and the resident management corporation, resident council or resident cooperative of the affected development.

(g) *Contents of Proposal.* (1) The proposal from the resident management corporation, resident council or resident cooperative of the affected development shall at a minimum include the following:

(i) The length of time the organization has been in existence;

(ii) A description of current or past activities which demonstrate the organization's organizational and management capability or the planned acquisition of such capability through a partner or other outside entities;

(iii) A statement of financial capability;

(iv) A description of involvement of any non-resident organization (non-profit, for profit, governmental or other entities), if any, the proposed division of responsibilities between these two, and the non-resident organization's financial capabilities;

(v) A plan for financing the purchase of the property and a firm commitment for funding resources necessary to purchase the property and pay for any necessary repairs;

(vi) A plan for the use of the property;

(vii) The proposed purchase price in relation to the appraised value;

(viii) Justification for purchase at less than the fair market value in accordance with § 970.9, if appropriate;

(ix) Estimated time schedule for completing the transaction;

(x) The response to the PHA's terms of sale;

(xi) A resolution from the resident organization approving the proposal; and

(xii) A proposed date of settlement, generally not to exceed six months from the date of PHA approval of the proposal, or such period as the PHA may determine to be reasonable.

(2) If the proposal is to purchase the property for homeownership under 5(h) or HOPE 1, then the requirements of Section 18 of the United States Housing Act of 1937 and 24 CFR part 970 do not apply, but the applicable requirements shall be those under the HOPE 1 guidelines, as set forth at 57 FR 1522, or the section 5(h) regulation, as set forth in parts 905 and 906 of this chapter. In order for a PHA to consider a proposal to purchase under section 412, using homeownership opportunities under section 5(h) or HOPE 1, the resident council, resident management corporation or resident cooperative of the affected development shall meet the provisions of this rule, including paragraphs (g)(1)(i) through (g)(1)(xii) of this section.

(3) If the proposal is to purchase the property for other than the aforementioned homeownership programs or for uses other than homeownership, then the proposal must meet all the disposition requirements of Section 18 of the United States Housing Act of 1937 and 24 CFR part 970.

(h) *PHA obligations.* (1) Prepare and disperse the formal offer of sale to the resident council, resident management corporation and resident cooperative of the affected development.

(2) Evaluate proposals received and make the selection based on the considerations set forth in paragraph (b) of this section. Issuance of letters of acceptance and rejection.

(3) Prepare certifications, where appropriate, as discussed in paragraph (i)(3) of this section.

(4) The PHA shall comply with its obligations under § 970.4(a) regarding tenant consultation and provide evidence to HUD that it has met those obligations. The PHA shall not act in an arbitrary manner and shall give full and fair consideration to any qualified resident management corporation, resident council or resident cooperative of the affected development and accept the proposal if it meets the terms of sale.

(i) *PHA application submission requirements for proposed demolition or disposition.* (1) If the proposal from the resident organization is rejected by the PHA, and either there is no appeal by the organization or the appeal has been denied, the PHA shall submit its demolition or disposition application to HUD in accordance with Section 18 of the United States Housing Act of 1937 and part 970 of this chapter. The demolition or disposition application must include complete documentation that the requirements of this section have been met. PHAs must submit written documentation that the resident council, resident management corporation and tenant cooperative of the affected development have been apprised of their opportunity to purchase under this section. This documentation shall include:

(i) A copy of the signed and dated PHA notification letter(s) to each organization informing them of the PHA's intention to submit an application for demolition or disposition, the right to purchase; and

(ii) The responses from each organization.

(2) If the PHA accepts the proposal of the resident organization, the PHA shall submit a disposition application in accordance with Section 18 of the United States Housing Act of 1937 and

part 970 of this chapter, with appropriate justification for a negotiated sale and for sale at less than fair market value, if applicable.

(3) HUD will not process an application for demolition or disposition unless the PHA provides the Department with one of the following:

(i) Where no resident management corporation, resident council or resident cooperative exists in the affected development and the residents of the affected development have not formed a new organization in accordance with paragraph (b) of this section, a certification from either the executive director or the board of commissioners stating that no such organization(s) exists and documentation that a reasonable effort to inform residents of their opportunity to organize has been made; or

(ii) Where a resident management corporation, resident council or resident cooperative exists in the affected development one of the following, either paragraph (i)(3)(ii)(A) or paragraph (i)(3)(ii)(B) of this section:

(A) A board resolution or its equivalent from each resident council, resident management corporation or resident cooperative stating that such organization has received the PHA letter, and that it understands the offer and waives its opportunity to purchase the project, or portion of the project, covered by the demolition or disposition application. The response should clearly state that the resolution was adopted by the entire organization at a formal meeting; or

(B) A certification from the executive director or board of commissioners of the PHA that the thirty (30) day timeframe has expired and no response was received to its offer.

(Approved by the Office of Management and Budget under control number 2577–0075)

[60 FR 3721, Jan. 18, 1995, as amended at 64 FR 50229, Sept. 15, 1999]

§970.14 Reports and records.

(a) After HUD approval of demolition or disposition of all or part of a project, the PHA shall keep the appropriate HUD Field Office informed of significant actions in carrying out the demolition or disposition, including any significant delays or other problems. When demolition or disposition is completed, the PHA shall submit to the Field Office a report confirming such action, certifying compliance with all applicable requirements of Federal law and regulations and, in the case of disposition, accounting for the proceeds and costs of disposition.

(b) The PHA shall be responsible for keeping records of its HUD-approved demolition or disposition sufficient for audit by HUD to determine the PHA's compliance applicable requirements of Federal law and this part.

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[50 FR 50894, Dec. 13, 1985. Redesignated at 53 FR 30987, Aug. 17, 1988. Redesignated at 60 FR 3721, Jan. 18, 1995]

PART 971—ASSESSMENT OF THE REASONABLE REVITALIZATION POTENTIAL OF CERTAIN PUBLIC HOUSING REQUIRED BY LAW

Sec.

971.1 Purpose.
971.3 Standards for identifying developments.
971.5 Long-term viability.
971.7 Plan for removal of units from public housing inventories.
971.9 Tenant and local government consultation.
971.11 Hope VI developments.
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APPENDIX TO PART 971—METHODOLOGY OF COMPARING COST OF PUBLIC HOUSING WITH COST OF TENANT-BASED ASSISTANCE

AUTHORITY: Pub. L. 104–134; 42 U.S.C. 3535(d).

SOURCE: 62 FR 49576, Sept. 22, 1997, unless otherwise noted.

§971.1 Purpose.

Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub.L. 104–134, approved April 26, 1996) (''OCRA'') requires PHAs to identify certain distressed public housing developments that cost more than Section 8 rental assistance and cannot be reasonably revitalized. Households in occupancy that will be affected by the activities will be offered tenant-based or project-based assistance (that can include other public housing units) and will be relocated, to

other decent, safe, sanitary, and affordable housing which is, to the maximum extent practicable, housing of their choice. After residents are relocated, the distressed developments (or affected buildings) for which no reasonable means of revitalization exists will be removed from the public housing inventory.

§ 971.3 Standards for identifying developments.

(a) PHAs shall use the following standards for identifying developments or portions thereof which are subject to section 202's requirement that PHAs develop and carry out plans for the removal over time from the public housing inventory. These standards track section 202(a) of OCRA. The development, or portions thereof, must:

(1) *Be on the same or contiguous sites.* (OCRA Sec. 202(a)(1)). This standard and the standard set forth in paragraph (a)(2) of this section refer to the actual number and location of units, irrespective of HUD development project numbers.

(2) *Total more than 300 dwelling units.* (OCRA Sec. 202(a)(2)).

(3) *Have a vacancy rate of at least ten percent for dwelling units not in funded, on-schedule modernization.* (OCRA Sec. 202(a)(3)). For this determination, PHAs and HUD shall use the data the PHA relied upon for its last Public Housing Management Assessment Program (PHMAP) certification, as reported on the Form HUD–51234 (Report on Occupancy), or more recent data which demonstrates improvement in occupancy rates. Units in the following categories shall not be included in this calculation:

(i) Vacant units in an approved demolition or disposition program;

(ii) Vacant units in which resident property has been abandoned, but only if State law requires the property to be left in the unit for some period of time, and only for the period stated in the law;

(iii) Vacant units that have sustained casualty damage, but only until the insurance claim is adjusted; and

(iv) Units that are occupied by employees of the PHA and units that are utilized for resident services.

(4) *Have an estimated cost of continued operation and modernization of the developments as public housing in excess of the cost of providing tenant-based assistance under section 8 of the United States Housing Act of 1937 for all families in occupancy, based on appropriate indicators of cost (such as the percentage of total development cost required for modernization).* (OCRA Sec. 202(a)(5)).

(i) For purposes of this determination, the costs used for public housing shall be those necessary to produce a revitalized development as described in the paragraph (a)(5) of this section.

(ii) These costs, including estimated operating costs, modernization costs and accrual needs must be used to develop a per unit monthly cost of continuing the development as public housing.

(iii) That per unit monthly cost of public housing must be compared to the per unit monthly Section 8 cost.

(iv) Both the method to be used and an example are included in the Appendix to this part.

(5) *Be identified as distressed housing that the PHA cannot assure the long-term viability as public housing through reasonable revitalization, density reduction, or achievement of a broader range of household income.* (OCRA Sec. 202(a)(4)). [See § 971.5.]

(b) Properties meeting the standards set forth in paragraphs (a)(1) through (3) of this section will be assumed to be ''distressed'' unless the PHA can show that the property fails the standard set forth in paragraph (a)(3) of this section for reasons that are temporary in duration and are unlikely to recur.

(c) Where the PHA will demolish all of the units in a development, or the portion thereof, that is subject to section 202, section 202 requirements will be satisfied once the demolition occurs and its standards will not be applied further to the use of the site.

(d) PHAs will meet the test for assuring long-term viability of identified housing only if it is probable that, after reasonable investment, for at least twenty years (or at least 30 years for rehabilitation equivalent to new construction) the development can sustain structural/system soundness and full occupancy; will not be excessively

densely configured relative to standards for similar (typically family) housing in the community; will not constitute an excessive concentration of very low-income families; and has no other site impairments which clearly should disqualify the site from continuation as public housing.

§971.5 Long-term viability.

(a) *Reasonable investment.* (1) Proposed revitalization costs for viability must be reasonable. Such costs must not exceed, and ordinarily would be substantially less than, 90 percent of HUD's total development cost limit for the units proposed to be revitalized (100 percent of the total development cost limit for any ''infill'' new construction subject to this regulation). The revitalization cost estimate used in the PHA's most recent comprehensive plan for modernization is to be used for this purpose, unless a PHA demonstrates or HUD determines that another cost estimate is clearly more realistic to ensure viability and to sustain the operating costs that are described in paragraph (a)(2) of this section.

(2) The overall projected cost of the revitalized development must not exceed the Section 8 cost under the method contained in the Appendix to this part, even if the cost of revitalization is a lower percentage of the TDC than the limits stated in paragraph (a)(1) of this section.

(3) The source of funding for such a revitalization program must be identified and already available. In addition to other resources already available to the PHA, a PHA may assume that future formula funds provided through the Comprehensive Grant Program are available for this purpose, provided that they are sufficient to permit completion of the revitalization within the statutory five year time frame. (Comprehensive plans must be amended accordingly.)

(b) *Density.* Density reduction measures would have to result in a public housing community with a density approaching that which prevails in the community for similar types of housing (typically family), or a lower density. If the development's density already meets this description, further reduction in density is not a requirement.

(c) *Income mix.* (1) Measures generally will be required to broaden the range of resident incomes to include over time a significant mix of households with at least one full-time worker (for example, at least 20 percent with an income at least 30 percent of median area income). Measures to achieve a broader range of household incomes must be realistic in view of the site's location. Evidence of such realism typically would include some mix of incomes of other households located in the same census tract or neighborhood, or unique advantages of the public housing site.

(2) For purposes of judging appropriateness of density reduction and broader range of income measures, overall size of the public housing site and its number of dwelling units will be considered. The concerns these measures would address generally are greater as the site's size and number of dwelling units increase.

§971.7 Plan for removal of units from public housing inventories.

(a) *Time frames.* Section 202 is a continuing requirement, and the Secretary will establish time frames for submission of necessary information annually through publication of a FEDERAL REGISTER notice.

(b) *Plan for removal.* With respect to any development that meets all of the standards listed, the PHA shall develop a plan for removal of the affected public housing units from the inventory. The plan should consider relocation alternatives for households in occupancy, including other public housing and Section 8 tenant-based assistance, and shall provide for relocation from the units as soon as possible. For planning purposes, PHAs shall assume that HUD will be able to provide in a timely fashion any necessary Section 8 rental assistance. The plan shall include:

(1) A listing of the public housing units to be removed from the inventory;

(2) The number of households to be relocated, by bedroom size;

(3) Identification and obligation status of any previously approved CIAP,

modernization, or major reconstruction funds for the distressed development and PHA recommendations concerning transfer of these funds to Section 8 or alternative public housing uses;

(4) The relocation resources that will be necessary, including a request for any necessary Section 8 and a description of actual or potential public or other assisted housing vacancies that can be used as relocation housing;

(5) A schedule for relocation and removal of units from the public housing inventory;

(6) Provision for notifying families residing in the development, in a timely fashion, that the development shall be removed from the public housing inventory; informing such families that they will receive tenant-based or project-based assistance; providing any necessary counselling with respect to the relocation, including a request for any necessary counseling funds; and assuring that such families are relocated as necessary to other decent, safe, sanitary and affordable housing which is, to the maximum extent possible, housing of their choice;

(7) The displacement and relocation provisions set forth in 24 CFR 970.5.

(8) A record indicating compliance with the statute's requirements for consultation with applicable public housing tenants of the affected development and the unit of local government where the public housing is located, as set forth in § 971.9.

(c) Section 18 of the United States Housing Act of 1937 shall not apply to demolition of developments removed from PHA inventories under this section, but shall apply to any proposed dispositions of such developments or their sites. HUD's review of any such disposition application will take into account that the development has been required to be removed from the PHA's inventory.

(d) For purposes of determining operating subsidy eligibility under the Performance Funding System (PFS), the submitted plan will be considered the equivalent of a formal request to remove dwelling units from the PHA's inventory and ACC and approval (or acceptance). The PHA will receive written notification that the plan has been approved (or accepted). Units that are vacant or vacated on or after the written notification date will be treated as approved for deprogramming under § 990.108(b)(1) of this chapter and also will be provided the phase-down of subsidy pursuant to § 990.114 of this chapter.

(Approved by the Office of Management and Budget under control number 2577–0210)

§ 971.9 Tenant and local government consultation.

(a) PHAs are required to proceed in consultation with affected public housing residents. PHAs must provide copies of their submissions complying with §§ 971.3(a) (1) through (3) to the appropriate tenant councils and resident groups before or immediately after these submissions are provided to HUD.

(b) PHAs must:

(1) Hold a meeting with the residents of the affected sites and explain the requirements of section 202 of OCRA;

(2) Provide an outline of the submission(s) complying with § 971.3(a) (4) and (5) to affected residents; and

(3) Provide a reasonable comment period for residents and must provide a summary of the resident comments to HUD.

(c) PHAs must prepare conversion plans in consultation with affected tenants and must:

(1) Hold a meeting with affected residents and provide draft copies of the plan; and

(2) Provide a reasonable comment period for residents and must provide a summary of the resident comments to HUD.

(d) The conversion plan must be approved by the local officials as not inconsistent with the Consolidated Plan.

§ 971.11 HOPE VI developments.

Developments with HOPE VI implementation grants that have approved HOPE VI revitalization plans will be treated as having shown the ability to achieve long-term viability with reasonable revitalization plans. Future HUD actions to approve or deny proposed HOPE VI implementation grant revitalization plans will be taken with consideration of the standards for section 202. Developments with HOPE VI planning or implementation grants,

but without approved HOPE VI revitalization plans, are fully subject to section 202 standards and requirements.

§ 971.13 HUD enforcement authority.

Section 202 provides HUD authority to ensure that certain distressed developments are properly identified and removed from PHA inventories. Specifically, HUD may:

(a) Direct a PHA to cease additional spending in connection with a development which meets or is likely to meet the statutory criteria, except as necessary to ensure decent, safe and sanitary housing until an appropriate course of action is approved;

(b) Identify developments which fall within the statutory criteria where a PHA has failed to do so properly;

(c) Take appropriate actions to ensure the removal of developments from the inventory where the PHA has failed to adequately develop or implement a plan to do so; and

(d) Authorize or direct the transfer of capital funds committed to or on behalf of the development (including comprehensive improvement assistance, comprehensive grant amounts attributable to the development's share of funds under the formula, and major reconstruction of obsolete projects funds) to tenant-based assistance or appropriate site revitalization for the agency.

APPENDIX TO PART 971—METHODOLOGY OF COMPARING COST OF PUBLIC HOUSING WITH COST OF TENANT-BASED ASSISTANCE

I. PUBLIC HOUSING

The costs used for public housing shall be those necessary to produce a revitalized development as described in the next paragraph. These costs, including estimated operating costs, modernization costs and costs to address accrual needs must be used to develop a per unit monthly cost of continuing the development as public housing. That per unit monthly cost of public housing must be compared to the per unit monthly Section 8 cost. The estimated cost of the continued operation and modernization as public housing shall be calculated as the sum of total operating, modernization, and accrual costs, expressed on a monthly per occupied unit basis. The costs shall be expressed in current dollar terms for the period for which the most recent Section 8 costs are available.

A. OPERATING COSTS

1. The proposed revitalization plan must indicate how unusually high current operating expenses (e.g, security, supportive services, maintenance, utilities) will be reduced as a result of post-revitalization changes in occupancy, density and building configuration, income mix and management. The plan must make a realistic projection of overall operating costs per occupied unit in the revitalized development, by relating those operating costs to the expected occupancy rate, tenant composition, physical configuration and management structure of the revitalized development. The projected costs should also address the comparable costs of buildings or developments whose siting, configuration, and tenant mix is similar to that of the revitalized public housing development.

2. The development's operating cost (including all overhead costs pro-rated to the development—including a Payment in Lieu of Taxes (PILOT) or some other comparable payment, and including utilities and utility allowances) shall be expressed as total operating costs per month, divided by the number of units occupied by households. For example, if a development will have 1,000 units occupied by households and will have $300,000 monthly in non-utility costs (including prorated overhead costs and appropriate P.I.L.O.T.) and $100,000 monthly in utility costs paid by the authority and $50,000 monthly in utility allowances that are deducted from tenant rental payments to the authority because tenants paid some utility bills directly to the utility company, then the development's monthly operating cost per occupied unit is $450—the sum of $300 per unit in non-utility costs, $100 per unit in direct utility costs, and $50 per unit in utility allowance costs.

3. In justifying the operating cost estimates as realistic, the plan should link the cost estimates to its assumptions about the level and rate of occupancy, the per-unit funding of modernization, any physical reconfiguration that will result from modernization, any planned changes in the surrounding neighborhood and security costs. The plan should also show whether developments or buildings in viable condition in similar neighborhoods have achieved the income mix and occupancy rate projected for the revitalized development. The plan should also show how the operating costs of the similar developments or buildings compare to the operating costs projected for the development.

4. In addition to presenting evidence that the operating costs of the revitalized development are plausible, when the per-unit operating cost of the renovated development is

more than ten percent lower than the current per-unit operating cost of the development, then the plan should detail how the revitalized development will achieve its reduction in costs. To determine the extent to which projected operating costs are lower than current operating costs, the current per-unit operating costs of the development will be estimated as follows:

a. If the development has reliable operating costs and if the overall vacancy rate is less than twenty percent, then these costs will be divided by the sum of all occupied units and vacant units fully funded under PFS plus fifty percent of all units not fully funded under PFS. For instance, if the total monthly operating costs of the current development are $6.6 million and it has 1,000 occupied units and 200 vacant units not fully funded under PFS (or a 17 percent overall vacancy rate), then the $6.6 million is divided by 1100—1000 plus 50 percent of 200—to give a per unit figure of $600 per unit month. By this example, the current costs of $600 per occupied unit are at least ten percent higher than the projected costs per occupied unit of $450 for the revitalized development, and the reduction in costs would have to be detailed.

b.If the development currently lacks reliable cost data or has a vacancy rate of twenty percent or higher, then its current per unit costs will be estimated as follows. First, the per unit cost of the entire authority will be computed, with total costs divided by the sum of all occupied units and vacant units fully funded under PFS plus fifty percent of all vacant units not fully funded under PFS. Second, this amount will be multiplied by the ratio of the bedroom adjustment factor of the development to the bedroom adjustment factor of the Housing Authority. The bedroom adjustment factor, which is based on national rent averages for units grouped by the number of bedrooms and which has been used by HUD to adjust for costs of units when the number of bedrooms vary, assigns to each unit the following factors:.70 for 0-bedroom units, .85 for 1-bedroom units, 1.0 for 2-bedroom units, 1.25 for 3-bedroom units, 1.40 for 4-bedroom units, 1.61 for 5-bedroom units, and 1.82 for 6 or more bedroom units. The bedroom adjustment factor is the unit-weighted average of the distribution. For instance, if the development with one thousand occupied units had in occupancy 500 two-bedroom units and 500 three-bedroom units, then its bedroom adjustment factor would be 1.125—500 times 1.0 plus 500 times 1.25, the sum divided by 1,000. Where necessary, HUD field offices will arrange for assistance in the calculation of the bedroom adjustment factors of the Housing Authority and its affected developments.

c. As an example of estimating development operating costs from PHA operating costs, suppose that the Housing Authority had a total monthly operating cost per unit of $500 and a bedroom adjustment factor of .90, and suppose that the development had a bedroom adjustment factor of 1.125. Then, the development's estimated current monthly operating cost per occupied unit would be $625—or $500 times 1.25 (the ratio of 1.125 to .90).

B. MODERNIZATION

The cost of modernization is the initial revitalization cost to meet viability standards, that cost amortized over twenty years (which is equivalent to fifteen years at a three percent annual real capital cost for the initial outlay). Expressed in monthly terms, the modernization cost is divided by 180 (or 15 years times 12 months). Thus, if the initial modernization outlay to meet viability standards is $60 million for 1,000 units, then the per-unit outlay is $60,000 and the amortized modernization cost is $333 per unit per month (or $60,000 divided by 180). However, when revitalization would be equivalent to new construction and the PHA thus is permitted to amortize the proposed cost over thirty years (which is equivalent to twenty-two and one-half years at a three percent annual real capital cost to the initial outlay), the modernization cost will be divided by 270, the product of 22.5 and 12, to give a cost per unit month of $222.

C. ACCRUAL

The monthly per occupied unit cost of accrual (i.e., replacement needs) will be estimated by using the latest published HUD unit total development cost limits for the area and applying them to the development's structure type and bedroom distribution after modernization, then subtracting from that figure half the per-unit cost of modernization, then multiplying that figure by .02 (representing a fifty year replacement cycle), and dividing this product by 12 to get a monthly cost. For example, if the development will remain a walkup structure containing five hundred two-bedroom occupied and five hundred three-bedroom occupied units, if HUD's Total Development Cost limit for the area is $70,000 for two-bedroom walkup structures and $92,000 for three-bedroom walkup structures, and if the per unit cost of modernization is $60,000, then the estimated monthly cost of accrual per occupied unit is $85. This is the result of multiplying the value of $51,000—the cost guideline value of $81,000 minus half the modernization value of $60,000—by .02 and then dividing by 12.

D. OVERALL COST

The overall current cost for continuing the development as public housing is the sum of its monthly post-revitalization operating cost estimates, its monthly modernization cost per occupied unit, and its estimated

monthly accrual cost per occupied unit. For example, if the operating cost per occupied unit month is $450 and the amortized modernization cost is $333 and the accrual cost is $85, the overall monthly cost per occupied unit is $868.

II. TENANT-BASED ASSISTANCE

The estimated cost of providing tenant-based assistance under Section 8 for all households in occupancy shall be calculated as the unit-weighted averaging of the monthly Fair Market Rents for units of the applicable bedroom size; plus the administrative fee applicable to newly funded Section 8 rental assistance during the year used for calculating public housing operating costs (e.g., the administrative fee for units funded from 10/1/95 through 9/30/96 is based on column C of the January 24, 1995 FEDERAL REGISTER, at 60 FR 4764, and the administrative fee for units funded from 10/1/96 through 9/30/97 is based on column B of the March 12, 1997 FEDERAL REGISTER, at 62 FR 11526); plus the amortized cost of demolishing the occupied public housing units, where the cost per unit is not to exceed ten percent of the TDC prior to amortization. For example, if the development has five hundred occupied two-bedroom units and five hundred occupied three-bedroom units and if the Fair Market Rent in the area is $600 for two bedroom units and is $800 for three bedroom units and if the administrative fee comes to $46 per unit, and if the cost of demolishing 1000 occupied units is $5 million, then the per unit monthly cost of tenant based assistance is $774 ($700 for the unit-weighted average of Fair Market Rents, or 500 times $600 plus 500 times $800 with the sum divided by 1,000; plus $46 for the administrative fee; plus $28 for the amortized cost of demolition and tenant relocation (including any necessary counseling), or $5000 per unit divided by 180 in this example). This Section 8 cost would then be compared to the cost of revitalized public housing development—in the example of this section, the revitalized public housing cost of $868 monthly per occupied unit would exceed the Section 8 cost of $774 monthly per occupied unit by 12 percent. The PHA would have to prepare a conversion plan for the property.

III. DETAILING THE SECTION-8 COST COMPARISON: A SUMMARY TABLE

The Section 8 cost comparison methods are summarized, using the example provided in this section III.

A. Key Data, Development: The revitalized development has 1000 occupied units. All of the units are in walkup buildings. The 1000 occupied units will consist of 500 two-bedroom units and 500 three-bedroom units. The total current operating costs attributable to the development are $300,000 per month in non-utility costs, $100,000 in utility costs paid by the PHA, and $50,000 in utility allowance expenses for utilities paid directly by the tenants to the utility company. Also, the modernization cost for revitalization is $60,000,000, or $60,000 per occupied unit. This will provide standards for viability but not standards for new construction. The cost of demolition and relocation of the 1000 occupied units is $5 million, or $5000 per unit, based on recent experience.

B. Key Data, Area: The unit total development cost limit is $70,000 for two-bedroom walkups and $92,000 for three-bedroom walkups. The two-bedroom Fair Market Rent is $600 and the three-bedroom Fair Market Rent is $800. The applicable monthly administrative fee amount, in column B of the March 12, 1997 FEDERAL REGISTER Notice, at 62 FR 11526, is $46.

C. Preliminary Computation of the Per-Unit Average Total Development Cost of the Development: This results from applying the location's unit total development cost by structure type and number of bedrooms to the occupied units of the development. In this example, five hundred units are valued at $70,000 and five hundred units are valued at $92,000 and the unit-weighted average is $81,000.

D. Current Per Unit Monthly Occupied Costs of Public Housing:

1. Operating Cost—$450 (total monthly costs divided by occupied units: in this example, the sum of $300,000 and $100,000 and $50,000—divided by 1,000 units).

2. Amortized Modernization Cost—$333 ($60,000 per unit divided by 180 for standards less than those of new construction).

3. Estimated Accrual Cost—$85 (the per-unit average total development cost minus half of the modernization cost per unit, times .02 divided by 12 months: in this example, $51,000 times .02 and then divided by 12).

4. Total per unit public housing costs—$868.

E. Current per unit monthly occupied costs of section 8:

1. Unit-weighted Fair Market Rents—$700 (the unit-weighted average of the Fair Market Rents of occupied bedrooms: in this example, 500 times $600 plus 500 times $800, divided by 1000).

2. Administrative Fee—$46.

3. Amortized Demolition and Relocation Cost—$28 ($5000 per unit divided by 180).

4. Total per unit section 8 costs—$774.

F. Result: In this example, because revitalized public housing costs exceed current Section 8 costs, a conversion plan for the property would be required.

PART 972—CONVERSION OF PUBLIC HOUSING TO TENANT-BASED ASSISTANCE

Subpart A—Required Conversion of Public Housing Developments

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Subpart B—Voluntary Conversion of Public Housing Developments

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CONVERSION PLANS

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AUTHORITY: 42 U.S.C. 1437t, 1437z–5, and 3535(d).

SOURCE: 66 FR 33618, June 22, 2001, unless otherwise noted.

Subpart A—Required Conversion of Public Housing Developments

SOURCE: 68 FR 54608, Sept. 17, 2003, unless otherwise noted.

PURPOSE; DEFINITION OF CONVERSION

§ 972.100 Purpose.

The purpose of this subpart is to implement section 33 of the United States Housing Act of 1937 (42 U.S.C. 1437z–5), which requires PHAs to annually review their public housing inventory and identify developments, or parts of developments, which must be removed from its stock of public housing operated under an Annual Contributions Contract (ACC) with HUD.

This subpart provides the procedures a PHA must follow to develop and carry out a conversion plan to remove the units from the public housing inventory, including how to provide for the transition for residents of these developments to other affordable housing.

§ 972.103 Definition of "conversion."

For purposes of this subpart, the term ''conversion'' means the removal of public housing units from the inventory of a PHA, and the provision of tenant-based or project-based assistance for the residents of the public housing units that are being removed. The term ''conversion,'' as used in this subpart, does not necessarily mean the

physical removal of the public housing development.

REQUIRED CONVERSION PROCESS

§ 972.106 Procedure for required conversion of public housing developments to tenant-based assistance.

(a) A PHA must annually review its public housing inventory and identify developments, or parts of developments, which must be converted to tenant-based assistance, in accordance with §§ 972.121–972.127.

(b) With respect to any public housing development that is identified under paragraph (a) of this section, the PHA generally must develop a 5-year plan for removal of the affected public housing units from the inventory, in accordance with §§ 972.130–972.136.

(c) The PHA may proceed to convert the development if HUD approves the conversion plan.

§ 972.109 Conversion of developments.

(a)(1) The PHA may proceed to convert the development covered by a conversion plan after receiving written approval from HUD. This approval will be separate from the approval that the PHA receives for its Annual Plan.

(2) HUD anticipates that its review of a conversion plan will ordinarily occur within 90 days following submission of a complete plan by the PHA. A longer process may be required where HUD's initial review of the plan raises questions that require further discussion with the PHA. In any event, HUD will provide all PHAs with a preliminary response within 90 days following submission of a conversion plan.

(b) The PHA may not demolish or dispose of units or property until completion of the required environmental review under part 58 of this title (if a responsible entity has assumed environmental responsibility for the project) or part 50 of this title (if HUD is performing the environmental review). Further, HUD will not approve a conversion plan until completion of the required environmental review. However, before completion of the environmental review, HUD may approve the targeted units for removal from the PHA's inventory and may authorize the PHA to undertake other activities proposed in its conversion plan that do not require environmental review (such as certain activities related to the relocation of residents), as long as the buildings in question are adequately secured and maintained.

(c) For purposes of determining operating subsidy eligibility, HUD will consider the conversion plan the PHA submits to be the equivalent of a formal request to remove dwelling units from the PHA's inventory and ACC. HUD will notify the PHA in writing whether it has approved the conversion plan. Units that are vacant or vacated on or after the written notification date will be treated as approved for deprogramming under § 990.108(b)(1) of this title and also will be provided any phase-down of subsidy to which the PHA is entitled pursuant to § 990.114 of this title.

(d) The PHA may apply for tenant-based assistance in accordance with Section 8 program requirements, and HUD will give the PHA a priority for receiving tenant-based assistance to replace the public housing units. It is HUD's policy to provide funds for one-for-one replacement housing with either public housing or tenant-based assistance, if funds are available. HUD may require that funding for the initial year be provided from the public housing Capital Fund, Operating Fund, or both.

§ 972.112 Relationship between required conversion and demolition/disposition requirements.

(a) Section 18 of the United States Housing Act of 1937 does not apply to demolition of developments removed from the inventory of the PHA under this subpart. Demolition of these developments is therefore not subject to section 18(g), which provides an exclusion from the applicability of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) (URA). Accordingly, the URA will apply to the displacement of tenants as the direct result of the demolition of a development carried out pursuant to this subpart, in accordance with § 972.118. With respect to any such demolition, the PHA must comply with the requirements for environmental review found at part 58 of this title.

(b) Section 18 of the United States Housing Act of 1937 does apply to any disposition of developments removed from the inventory of the PHA under this subpart. Therefore, to dispose of property, the PHA must submit a disposition application under section 18. HUD's review of any such disposition application will take into account that the development has been required to be converted.

§ 972.115 Relationship between required conversions and HOPE VI developments.

HUD actions to approve or deny proposed HOPE VI revitalization plans must be consistent with the requirements of this subpart. Developments with HOPE VI revitalization grants, but without approved HOPE VI revitalization plans, are fully subject to required conversion standards under this subpart.

§ 972.118 Applicability of Uniform Relocation Act.

To the extent that tenants are displaced as a direct result of the demolition, acquisition, or rehabilitation of federally-assisted property converted pursuant to this subpart, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) (URA), and the implementing regulations issued by the Department of Transportation at 49 CFR part 24, apply.

IDENTIFYING DEVELOPMENTS SUBJECT TO REQUIRED CONVERSION

§ 972.121 Developments subject to this subpart.

(a) This subpart is applicable to any development not identified before October 21, 1998, for conversion, or for assessment of whether such conversion is required, in accordance with section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104–134, approved April 26, 1996, 110 Stat. 1321–279—1321–281). Developments identified before October 21, 1998, continue to be subject to the requirements of section 202 and part 971 of this chapter until these requirements are satisfied. Thereafter, the provisions of this subpart apply to any remaining public housing on the sites of those developments.

(b) The developments to which this subpart is applicable are subject to the requirements of section 33 of the United States Housing Act of 1937 (42 U.S.C. 1437z–5).

(c) The provisions of this subpart cease to apply when the units in a development that are subject to the requirements of this subpart have been demolished.

§ 972.124 Standards for identifying public housing developments subject to required conversion.

The development, or portions thereof, must be converted if it is a general occupancy development of 250 or more dwelling units and it meets the following criteria:

(a) *The development is on the same or contiguous sites.* This refers to the actual number and location of units, irrespective of HUD development project numbers.

(b) *The development has a vacancy rate of at least a specified percent for dwelling units not in funded, on-schedule modernization, for each of the last three years, and the vacancy rate has not significantly decreased in those three years.* (1) For a conversion analysis performed on or before March 16, 2009, the specified vacancy rate is 15 percent. For a conversion analysis performed after that date, the specified vacancy rate is 12 percent.

(2) For the determination of vacancy rates, the PHA must use the data it relied upon for the PHA's latest Public Housing Assessment System (PHAS) certification, as reported on the Form HUD–51234 (report on Occupancy). Units in the following categories must not be included in this calculation:

(i) Vacant units in an approved demolition or disposition program;

(ii) Vacant units in which resident property has been abandoned, but only if state law requires the property to be left in the unit for some period of time, and only for the period of time stated in the law;

(iii) Vacant units that have sustained casualty damage, but only until the insurance claim is adjusted;

(iv) Units that are occupied by employees of the PHA and units that are used for resident services; and

(v) Units that HUD determines, in its sole discretion, are intentionally vacant and do not indicate continued distress.

(c) *The development either is distressed housing for which the PHA cannot assure the long-term viability as public housing, or more expensive for the PHA to operate as public housing than providing tenant-based assistance.* (1) The development is distressed housing for which the PHA cannot assure the long-term viability as public housing through reasonable revitalization, density reduction, or achievement of a broader range of household income. (See § 972.127)

(i) Properties meeting the standards set forth in paragraphs (a) and (b) of this section will be assumed to be ''distressed,'' unless HUD determines that the reasons a property meets such standards are temporary in duration and are unlikely to recur.

(ii) A development satisfies the long-term viability test only if it is probable that, after reasonable investment, for at least 20 years (or at least 30 years for rehabilitation equivalent to new construction) the development can sustain structural/system soundness and full occupancy; will not be excessively densely configured relative to other similar rental (typically family) housing in the community; can achieve a broader range of family income; and has no other site impairments that clearly should disqualify the site from continuation as public housing.

(2) The development is more expensive for the PHA to operate as public housing than to provide tenant-based assistance if it has an estimated cost, during the remaining useful life of the project, of continued operation and modernization of the development as public housing in excess of the cost of providing tenant-based assistance under section 8 of the United States Housing Act of 1937 for all families in occupancy, based on appropriate indicators of cost (such as the percentage of total development cost required for modernization).

(i) For purposes of this determination, the costs used for public housing must be those necessary to produce a revitalized development as described in paragraph (c)(1) of this section.

(ii) These costs, including estimated operating costs, modernization costs, and accrual needs must be used to develop a per unit monthly cost of continuing the development as public housing.

(iii) That per unit monthly cost of public housing must be compared to the per unit monthly Section 8 cost.

(iv) The cost methodology necessary to conduct the cost comparisons for required conversions has not yet been finalized. PHAs are not required to undertake conversions under this subpart until six months after the effective date of the cost methodology, which will be announced in the FEDERAL REGISTER. Once effective, the cost methodology will be codified as an appendix to this part.

§ 972.127 Standards for determining whether a property is viable in the long term.

In order for a property to meet the standard of long-term viability, as discussed in § 972.124, the following criteria must be met:

(a) *The investment to be made in the development is reasonable.* (1) Proposed revitalization costs for viability must be reasonable. Such costs must not exceed, and ordinarily would be substantially less than, 90 percent of HUD's total development cost (TDC) limit for the units proposed to be revitalized (100 percent of the total development cost limit for any ''infill'' new construction subject to this regulation). The revitalization cost estimate used in the PHA's most recent Annual Plan or 5-Year Plan is to be used for this purpose, unless the PHA demonstrates, or HUD determines, that another cost estimate is clearly more realistic to ensure viability and to sustain the operating costs that are described in paragraph (a)(2) of this section.

(2) The overall projected cost of the revitalized development must not exceed the Section 8 cost under the method contained in the Appendix to this part, even if the cost of revitalization is a lower percentage of the TDC than the limits stated in paragraph (a)(1) of this section.

(3) The source of funding for such a revitalization program must be identified and available. In addition to other resources already available to the PHA, it may assume that future formula funds provided through the Capital Fund over five years are available for this purpose.

(b) *Appropriate density is achieved.* The resulting public housing development must have a density which is comparable to that which prevails in or is appropriate for assisted rental housing or for other similar types of housing in the community (typically family).

(c) *A greater income mix can be achieved.* (1) Measures generally will be required to broaden the range of resident incomes over time to include a significant mix of households with at least one full-time worker. Measures to achieve a broader range of household incomes must be realistic in view of the site's location. Appropriate evidence typically would include census or other recent statistical evidence demonstrating some mix of incomes of other households located in the same census tract or neighborhood, or unique advantages of the public housing site.

(2) For purposes of judging appropriateness of density reduction and broader range of income measures, overall size of the public housing site and its number of dwelling units will be considered. The concerns these measures would address generally are greater as the site's size and number of dwelling units increase.

CONVERSION PLANS

§ 972.130 Conversion plan components.

(a) With respect to any development that is identified under §§ 972.121 through 972.127, the PHA generally must develop a 5-year plan for removal of the affected public housing units from the inventory. The plan must consider relocation alternatives for households in occupancy, including other public housing and Section 8 tenant-based assistance, and must provide for relocation from the units as soon as possible. For planning purposes, the PHA must assume that HUD will be able to provide in a timely fashion any necessary Section 8 rental assistance. The plan must include:

(1) A listing of the public housing units to be removed from the inventory;

(2) Identification and obligation status of any previously approved modernization, reconstruction, or other capital funds for the distressed development and the PHA's recommendations concerning transfer of these funds to Section 8 or alternative public housing uses;

(3) A record indicating compliance with the statute's requirements for consultation with applicable public housing tenants of the affected development and the unit of local government where the public housing is located, as set forth in § 972.133;

(4) A description of the plans for demolition or disposition of the public housing units; and

(5) A relocation plan, in accordance with paragraph (b) of this section.

(b) *Relocation plan.* The relocation plan must incorporate all of the information identified in paragraphs (b)(1) through (b)(4) of this section. In addition, if the required conversion is subject to the URA, the relocation plan must also contain the information identified in paragraph (b)(5) of this section. The relocation plan must incorporate the following:

(1) The number of households to be relocated, by bedroom size, and by the number of accessible units.

(2) The relocation resources that will be necessary, including a request for any necessary Section 8 funding and a description of actual or potential public or other assisted housing vacancies that can be used as relocation housing and budget for carrying out relocation activities.

(3) A schedule for relocation and removal of units from the public housing inventory (including the schedule for providing actual and reasonable relocation expenses, as determined by the PHA, for families displaced by the conversion).

(4) Provide for issuance of a written notice to families residing in the development in accordance with the following requirements:

(i) *Timing of notice.* If the required conversion is not subject to the URA,

the notice shall be provided to families at least 90 days before displacement. If the required conversion is subject to the URA the written notice shall be provided to families no later than the date the conversion plan is submitted to HUD. For purposes of a required conversion subject to the URA, this written notice shall constitute the General Information Notice (GIN) required by the URA.

(ii) *Contents of notice.* The written notice shall include all of the following:

(A) The development must be removed from the public housing inventory and that the family may be displaced as a result of the conversion;

(B) The family will be offered comparable housing, which may include tenant-based or project-based assistance, or occupancy in a unit operated or assisted by the PHA (if tenant-based assistance is used, the comparable housing requirement is fulfilled only upon the relocation of the family into such housing);

(C) Any necessary counseling with respect to the relocation will be provided, including any appropriate mobility counseling (the PHA may finance the mobility counseling using Operating Fund, Capital Fund, or Section 8 administrative fee funding);

(D) Such families will be relocated to other decent, safe, sanitary, and affordable housing that is, to the maximum extent possible, housing of their choice;

(E) If the development is used as housing after conversion, the PHA must ensure that each resident may choose to remain in the housing, using tenant-based assistance towards rent; and

(F) Where section 8 voucher assistance is being used for relocation, the family will be provided with the vouchers at least 90 days before displacement.

(5) If the required conversion is subject to the URA, the written notice described in paragraph (b)(4) must also provide that:

(i) The family will not be required to move without at least 90-days advance written notice of the earliest date by which the family may be required to move, and that the family will not be required to move permanently until the family is offered comparable housing, as provided in paragraph (b)(4)(ii)(B) of this section;

(ii) Any person who is an alien not lawfully present in the United States is ineligible for relocation payments or assistance under the URA, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as provided in the URA regulations at 49 CFR 24.208;

(iii) The family has a right to appeal the PHA's determination as to the family's application for relocation assistance for which the family may be eligible under this subpart and URA;

(iv) Families residing in the development will be provided with the URA Notice of Relocation Eligibility or Notice of Non-displacement (as applicable) as of the date HUD approves the conversion plan (for purposes of this subpart, the date of HUD's approval of the conversion plan shall be the ''date of initiation of negotiations'' as that term is used in URA and the implementing regulations at 49 CFR part 24); and

(v) Any family that moves into the development after submission of the conversion plan to HUD will also be eligible for relocation assistance, unless the PHA issues a written move-in notice to the family prior to leasing and occupancy of the unit advising the family of the development's possible conversion, the impact of the conversion on the family, and that the family will not be eligible for relocation assistance.

(c) The conversion plan may not be more than a 5-year plan, unless the PHA applies for and receives approval from HUD for a longer period of time. HUD may allow the PHA up to 10 years to remove the units from the inventory, in exceptional circumstances where HUD determines that this is clearly the most cost effective and beneficial means of providing housing assistance over that same period. For example, HUD may allow a longer period of time to remove the units from the public housing inventory, where more than one development is being converted, and a larger number of families require relocation than can easily be absorbed into the rental market at one

time, provided the housing has a remaining useful life of longer than five years and the longer time frame will assist in relocation.

§ 972.133 Public and resident consultation process for developing a conversion plan.

(a) The PHA must consult with appropriate public officials and with the appropriate public housing residents in developing the conversion plan.

(b) The PHA may satisfy the requirement for consultation with public officials by obtaining a certification from the appropriate government official that the conversion plan is consistent with the applicable Consolidated Plan. This may be the same certification as is required for the PHA Annual Plan that includes the conversion plan, so long as the certification specifically addresses the conversion plan.

(c) To satisfy the requirement for consultation with the appropriate public housing residents, in addition to the public participation requirements for the PHA Annual Plan, the PHA must:

(1) Hold at least one meeting with the residents of the affected sites (including the duly elected Resident Council, if any, that covers the development in question) at which the PHA must:

(i) Explain the requirements of this section, especially as they apply to the residents of the affected developments; and

(ii) Provide draft copies of the conversion plan to the residents;

(2) Provide a reasonable comment period for residents; and

(3) Summarize the resident comments for HUD, in the conversion plan, and consider these comments in developing the final conversion plan.

§ 972.136 Timing of submission of conversion plans to HUD.

The requirements of this section are on-going requirements. If the PHA must submit a plan for conversion, it must submit the conversion plan as part of the PHA's Annual Plan, beginning with PHA fiscal years that commence six months after the effective date of HUD's final rule establishing the cost methodology for required conversions.

HUD Actions With Respect to Required Conversions

§ 972.139 HUD actions with respect to required conversions.

(a) HUD will take appropriate steps to ensure that distressed developments subject to this subpart are properly identified and converted. If a PHA fails to properly identify a development for required conversion, or does not submit a conversion plan for a development in the PHA Annual Plan following the Annual Plan in which the development was identified as subject to required conversion, HUD will take the actions described in paragraph (b) of this section, and may also take any or all of the actions described in paragraph (c) of this section.

(b) If a PHA fails to take the conversion activities described in paragraph (a) of this section, HUD will:

(1) Disqualify the PHA from HUD funding competitions; and

(2) Direct the PHA to cease additional spending in connection with a development that meets, or is likely to meet the statutory criteria, except to the extent that failure to expend such amounts would endanger health or safety.

(c) If a PHA fails to take the conversion activities described in paragraph (a) of this section, HUD may also take any or all of the following actions:

(1) Identify developments that fall within the statutory criteria where the PHA has failed to do so properly;

(2) Take appropriate actions to ensure the conversion of developments where the PHA has failed to adequately develop or implement a conversion plan;

(3) Require the PHA to revise the conversion plan, or prohibit conversion, where HUD has determined that the PHA has erroneously identified a development as being subject to the requirements of this section;

(4) Authorize or direct the transfer of capital or operating funds committed to or on behalf of the development (including comprehensive improvement assistance, comprehensive grant or Capital Fund amounts attributable to the development's share of funds under the formula, and major reconstruction of obsolete projects funds) to tenant-

based assistance or appropriate site revitalization for the agency; and

(5) Any other action that HUD determines appropriate and has the authority to undertake.

Subpart B—Voluntary Conversion of Public Housing Developments

SOURCE: 68 FR 54619, Sept. 17, 2003, unless otherwise noted.

PURPOSE; DEFINITION OF CONVERSION

§ 972.200 Purpose.

This subpart implements section 22 of the United States Housing Act of 1937 (42 U.S.C. 1437t). The purposes of this subpart are to:

(a) Require PHAs to perform an assessment which considers developments for which conversion of public housing may be appropriate; and

(b) Provide a basis for a PHA to take action for conversion on a voluntary basis.

§ 972.203 Definition of "conversion."

For purposes of this subpart, the term ''conversion'' means the removal of public housing units from the inventory of a Public Housing Agency (PHA), and the provision of tenant-based, or project-based assistance for the residents of the public housing that is being removed. The term ''conversion,'' as used in this subpart, does not necessarily mean the physical removal of the public housing development from the site.

REQUIRED INITIAL ASSESSMENTS

§ 972.206 Required initial assessments.

(a) *General.* A PHA must conduct a required initial assessment (which consists of the certification described in paragraph (b) of this section), in accordance with this section, once for each of its developments, unless:

(1) The development is subject to required conversion under 24 CFR part 971;

(2) The development is the subject of an application for demolition or disposition that has not been disapproved by HUD;

(3) A HOPE VI revitalization grant has been awarded for the development; or

(4) The development is designated for occupancy by the elderly and/or persons with disabilities (*i.e.,* is not a general occupancy development).

(b) *Certification procedure.* For each development, the PHA shall certify that it has:

(1) Reviewed the development's operation as public housing;

(2) Considered the implications of converting the public housing to tenant-based assistance; and

(3) Concluded that conversion of the development may be:

(i) Appropriate because removal of the development would meet the necessary conditions for voluntary conversion described in § 972.224; or

(ii) Inappropriate because removal of the development would not meet the necessary conditions for voluntary conversion described § 972.224.

(c) *Documentation.* A PHA must maintain documentation of the reasoning with respect to each required initial assessment.

(d) *Timing of submission.* Consistent with statutory submission requirements, the results of each required initial assessment (consisting of the certification described in paragraph (b) of this section) must be submitted to HUD as part of the next PHA Annual Plan after its completion.

VOLUNTARY CONVERSION PROCEDURE

§ 972.209 Procedure for voluntary conversion of public housing developments to tenant-based assistance.

A PHA that wishes to convert a public housing development to tenant-based assistance must comply with the following process:

(a) The PHA must perform a conversion assessment, in accordance with §§ 972.218–972.224 and submit it to HUD as part of the next PHA Annual Plan submission.

(b) The PHA must prepare a conversion plan, in accordance with § 972.227–972.233, and submit it to HUD, as part of its PHA Annual Plan, within one year after submitting the conversion assessment. The PHA may submit the conversion plan in the same Annual Plan as the conversion assessment.

(c) The PHA may proceed to convert the development if HUD approves the conversion plan.

§ 972.212 Timing of voluntary conversion.

(a) A PHA may proceed to convert a development covered by a conversion plan only after receiving written approval of the conversion plan from HUD. This approval will be separate from the approval that the PHA receives for its PHA Annual Plan. A PHA may apply for tenant-based assistance in accordance with Section 8 program requirements and will be given priority for receiving tenant-based assistance to replace the public housing units.

(b) A PHA may not demolish or dispose of units or property until completion of the required environmental review under part 58 of this title (if a Responsible Entity has assumed environmental responsibility for the project) or part 50 of this title (if HUD is performing the environmental review). Further, HUD will not approve a conversion plan until completion of the required environmental review. However, before completion of the environmental review, HUD may approve the targeted units for deprogramming and may authorize the PHA to undertake other activities proposed in the conversion plan that do not require environmental review (such as certain activities related to the relocation of residents), as long as the buildings in question are adequately secured and maintained.

(c) For purposes of determining operating subsidy eligibility, the submitted conversion plan will be considered the equivalent of a formal request to remove dwelling units from the PHA's inventory and Annual Contributions Contract (ACC). Units that are vacant or are vacated on or after the written notification date will be treated as approved for deprogramming under § 990.108(b)(1) of this title, and will also be provided the phase down of subsidy pursuant to § 990.114 of this title.

(d) HUD may require that funding for the initial year of tenant-based assistance be provided from the public housing Capital Fund, Operating Fund, or both.

§ 972.215 Applicability of the Uniform Relocation Act.

To the extent that tenants are displaced as a direct result of the demolition, acquisition, or rehabilitation of federally-assisted property converted under this subpart, the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601) (URA), and the implementing regulations issued by the Department of Transportation at 49 CFR part 24, apply.

CONVERSION ASSESSMENTS

§ 972.218 Conversion assessment components.

The conversion assessment contains five elements, as described below:

(a) *Cost analysis.* A PHA must conduct a cost analysis comparing the cost of providing Section 8 tenant-based assistance with the cost of continuing to operate the development as public housing for the remainder of its useful life. The cost methodology necessary to conduct the cost comparisons for voluntary conversions has not yet been finalized. PHAs may not undertake conversions under this subpart until the effective date of the cost methodology, which will be announced in the FEDERAL REGISTER. Once effective, the cost methodology will be codified as an appendix to this part.

(b) *Analysis of the market value.* (1) A PHA must have an independent appraisal conducted to compare the market value of the development before and after rehabilitation. In both cases, the market value must be based on the use of the development as public housing.

(2) In addition, the appraisal must compare:

(i) The market value of the development before rehabilitation, based on the use of the development as public housing, with the market value of the development after conversion; with

(ii) The market value of the development after rehabilitation, based on the use of the development as public housing, with the market value of the development after conversion.

(3) A copy of the appraisal findings and the analysis of market value of the

development in the conversion assessment must be provided in the conversion assessment.

(c) *Analysis of rental market conditions.* (1) A PHA must conduct an analysis of the likely success of using tenant-based assistance for the residents of the public housing development. This analysis must include an assessment of the availability of decent, safe, and sanitary dwelling units rented at or below the applicable Section 8 payment standard established for the jurisdiction or designated part of the FMR area in which the development is located.

(2) In conducting this assessment, a PHA must take into account:

(i) Its overall use of rental certificates or vouchers under lease and the success rates of using Section 8 tenant-based assistance in the community for the appropriate bedroom sizes, including recent success rates for units renting at or below the established payment standard; and

(ii) Any particular characteristics of the specific residents of the public housing which may affect their ability to be housed (such as large household size or the presence of an elderly or disabled family member).

(d) *Impact analysis.* A PHA must describe the likely impact of conversion of the public housing development on the neighborhood in which the public housing is located. This must include:

(1) The impact on the availability of affordable housing in the neighborhood;

(2) The impact on the concentration of poverty in the neighborhood; and

(3) Other substantial impacts on the neighborhood.

(e) *Conversion implementation.* If a PHA intends to convert the development (or a portion of it) to tenant-based assistance, the conversion assessment must include a description of any actions the PHA plans to take in converting the development. This must include a general description of the planned future uses of the development, and the means and timetable for accomplishing such uses.

§ 972.221 Timing of submission of conversion assessments to HUD.

(a) *Submission with PHA Plan.* A PHA that wishes to convert a public housing development to tenant-based assistance must submit a conversion assessment to HUD with its next PHA Annual Plan.

(b) *Updated conversion assessment.* Where a PHA proposes to convert a development to tenant-based assistance, it must submit an updated conversion assessment if the conversion assessment otherwise would be more than one year older than the conversion plan to be submitted to HUD. To update a conversion assessment, a PHA must ensure that the analysis of rental market conditions is based on the most recently available data, and must include any data that have changed since the initial conversion assessment. A PHA may submit the initial cost analysis and comparison of the market value of the public housing before and after rehabilitation and/or conversion if there is no reason to believe that such information has changed significantly.

§ 972.224 Necessary conditions for HUD approval of conversion.

(a) *Conditions.* In order to convert a public housing development, the PHA must conduct a conversion assessment that demonstrates that the conversion of the development:

(1) Will not be more expensive than continuing to operate the development (or portion of it) as public housing;

(2) Will principally benefit the residents of the public housing development (or portion thereof) to be converted, the PHA, and the community; and

(3) Will not adversely affect the availability of affordable housing in the community.

(b) *Evidence.* (1) *Relative expense.* The relative expense of continuing operation as public housing or conversion to tenant-based assistance may be demonstrated by the cost analysis and market value analysis.

(2) *Benefit to residents, PHA, and the community.* (i) The benefit to residents, the PHA, and the community may be demonstrated in the rental market analysis, the analysis of the impact on

the neighborhood, the market value analysis, and the proposed future use of the development. In determining whether a conversion will principally benefit residents, the PHA, and the community, HUD will consider whether the conversion will conflict with any litigation settlement agreements, voluntary compliance agreements, or other remedial agreements signed by the PHA with HUD.

(ii) In making the determination of whether a conversion would principally benefit residents, the PHA, and the community, the PHA must consider such factors as the availability of landlords providing tenant-based assistance, as well as access to schools, jobs, and transportation.

(iii) To determine the benefit to residents, the PHA must hold at least one public meeting with residents of the affected site (including the duly elected Resident Council, if any, that covers the development in question). At the meeting, the PHA must:

(A) Explain the requirements of section 22 of the United States Housing Act of 1937 and these regulations, especially as they apply to residents of affected developments;

(B) Provide draft copies of the conversion assessment to the residents; and

(C) Provide the residents with a reasonable period of time to submit comments on the draft conversion assessment.

(iv) The conversion assessment submitted to HUD must contain a summary of the resident comments, and the PHA responses to any significant issues raised by the commenters.

(3) *Impact on affordable housing.* The impact on affordable housing may be demonstrated in the rental market analysis and the analysis of the impact of conversion on the neighborhood.

CONVERSION PLANS

§ 972.227 Public and resident consultation process for developing a conversion plan.

(a) A conversion plan must be developed in consultation with appropriate public officials and with significant participation by residents of the development.

(b) The requirement for consultation with public officials may be satisfied by obtaining a certification from the appropriate state or local officials that the conversion plan is consistent with that jurisdiction's Consolidated Plan. This may be the same certification as is required for the PHA Annual Plan that includes the conversion plan, so long as the certification specifically addresses the conversion plan.

(c) To satisfy the requirement for significant participation by residents of the development, in addition to the public participation requirements for the PHA Annual Plan, a PHA must:

(1) Hold at least one meeting with the residents of the affected sites (including the duly elected Resident Council, if any, that covers the development in question) at which the PHA must:

(i) Explain the requirements of section 22 of the United States Housing Act of 1937 and these regulations, especially as they apply to residents of affected developments; and

(ii) Provide draft copies of the conversion plan to them.

(2) Provide a reasonable comment period for residents; and

(3) Summarize the resident comments (as well as the PHA responses to the significant issues raised by the commenters) for HUD, and consider these comments in developing the final conversion plan.

§ 972.230 Conversion plan components.

A conversion plan must:

(a) Describe the conversion and future use or disposition of the public housing development. If the future use of the development is demolition or disposition, the PHA is not required to submit a demolition or disposition application, so long as the PHA submits, and HUD approves, a conversion plan that includes a description of the future uses of the development.

(b) Include an impact analysis of the conversion on the affected community. This may include the description that is required as part of the conversion assessment.

(c) Include a description of how the conversion plan is consistent with the findings of the conversion assessment

undertaken in accordance with §972.218.

(d) Include a summary of the resident comments received when developing the conversion plan, and the PHA responses to the significant issues raised by the commenters (including a description of any actions taken by the PHA as a result of the comments).

(e) Confirm that any proceeds received from the conversion are subject to the limitations under section 18(a)(5) of the United States Housing Act of 1937 (42 U.S.C. 1437p(a)(5)) applicable to proceeds resulting from demolition or disposition.

(f) Summarize why the conversion assessment for the public housing project supports the three conditions necessary for conversion described in §972.224.

(g) Include a relocation plan that incorporates all of the information identified in paragraphs (g)(1) through (g)(4) of this section. In addition, if the required conversion is subject to the URA, the relocation plan must also contain the information identified in paragraph (g)(5) of this section. The relocation plan must incorporate the following:

(1) The number of households to be relocated, by bedroom size, by the number of accessible units.

(2) The relocation resources that will be necessary, including a request for any necessary Section 8 funding and a description of actual or potential public or other assisted housing vacancies that can be used as relocation housing and budget for carrying out relocation activities.

(3) A schedule for relocation and removal of units from the public housing inventory (including the schedule for providing actual and reasonable relocation expenses, as determined by the PHA, for families displaced by the conversion).

(4) Provide for issuance of a written notice to families residing in the development in accordance with the following requirements:

(i) *Timing of notice.* If the voluntary conversion is not subject to the URA, the notice shall be provided to families at least 90 days before displacement. If the voluntary conversion is subject to the URA the written notice shall be provided to families no later than the date the conversion plan is submitted to HUD. For purposes of a voluntary conversion subject to the URA, this written notice shall constitute the General Information Notice (GIN) required by the URA.

(ii) *Contents of notice.* The written notice shall include all of the following:

(A) The development will no longer be used as public housing and that the family may be displaced as a result of the conversion;

(B) The family will be offered comparable housing, which may include tenant-based or project-based assistance, or occupancy in a unit operated or assisted by the PHA (if tenant-based assistance is used, the comparable housing requirement is fulfilled only upon relocation of the family into such housing);

(C) Any necessary counseling with respect to the relocation will be provided, including any appropriate mobility counseling (the PHA may finance the mobility counseling using Operating Fund, Capital Fund, or Section 8 administrative fee funding);

(D) The family will be relocated to other decent, safe, sanitary, and affordable housing that is, to the maximum extent possible, housing of their choice;

(E) If the development is used as housing after conversion, the PHA must ensure that each resident may choose to remain in the housing, using tenant-based assistance towards rent;

(F) Where Section 8 voucher assistance is being used for relocation, the family will be provided with the vouchers at least 90 days before displacement;

(5) *Additional information required for conversions subject to the URA.* If the voluntary conversion is subject to the URA, the written notice described in paragraph (g)(4) must also provide that:

(i) The family will not be required to move without at least 90-days advance written notice of the earliest date by which the family may be required to move, and that the family will not be required to move permanently until the family is offered comparable housing as provided in paragraph (g)(4)(ii)(B) of this section;

(ii) Any person who is an alien not lawfully present in the United States is ineligible for relocation payments or assistance under the URA, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child, as provided in the URA regulations at 49 CFR 24.208.

(iii) The family has a right to appeal the PHA's determination as to the family's application for relocation assistance for which the family may be eligible under this subpart and URA.

(iv) Families residing in the development will be provided with the URA Notice of Relocation Eligibility or Notice of Non-displacement (as applicable) as of the date HUD approves the conversion plan (for purposes of this subpart, the date of HUD's approval of the conversion plan shall be the ''date of initiation of negotiations'' as that term is used in URA and the implementing regulations at 49 CFR part 24).

(v) Any family that moves into the development after submission of the conversion plan to HUD will also be eligible for relocation assistance, unless the PHA issues a written move-in notice to the family prior to leasing and occupancy of the unit advising the family of the development's possible conversion, the impact of the conversion on the family, and that the family will not be eligible for relocation assistance.

§ 972.233 Timing of submission of conversion plans to HUD.

A PHA that wishes to convert a public housing project to tenant-based assistance must submit a conversion plan to HUD. A PHA must prepare a conversion plan, in accordance with § 972.230, and submit it to HUD, as part of the next PHA Annual Plan within one year after submitting the full conversion assessment, or as a significant amendment to that Annual Plan. The PHA may also submit the conversion plan in the same Annual Plan as the conversion assessment.

§ 972.236 HUD process for approving a conversion plan.

Although a PHA will submit its conversion plan to HUD as part of the PHA Annual Plan, the conversion plan will be treated separately for purposes of HUD approval. A PHA needs a separate written approval from HUD in order to proceed with conversion. HUD anticipates that its review of a conversion plan will ordinarily occur within 90 days following submission of a complete plan by the PHA. A longer process may be required where HUD's initial review of the plan raises questions that require further discussion with the PHA. In any event, HUD will provide all PHAs with a preliminary response within 90 days following submission of a conversion plan. A lack of a HUD response within this time frame will constitute automatic HUD approval of the conversion plan.

§ 972.239 HUD actions with respect to a conversion plan.

(a) When a PHA submits a conversion plan to HUD, HUD will review it to determine whether:

(1) The conversion plan is complete and includes all of the information required under § 972.230; and

(2) The conversion plan is consistent with the conversion assessment the PHA submitted.

(b) HUD will disapprove a conversion plan only if HUD determines that:

(1) The conversion plan is plainly inconsistent with the conversion assessment;

(2) There is reliable information and data available to the Secretary that contradicts the conversion assessment; or

(3) The conversion plan is incomplete or otherwise fails to meet the requirements under § 972.230.

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

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EDITORIAL NOTE: Nomenclature changes to part 982 appear at 64 FR 26640, May 14, 1999.

Subpart A—General Information

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

§ 982.1 Programs: purpose and structure.

(a) *General description.* (1) In the HUD Housing Choice Voucher Program (Voucher Program) and the HUD certificate program, HUD pays rental subsidies so eligible families can afford decent, safe and sanitary housing. Both programs are generally administered by State or local governmental entities called public housing agencies (PHAs). HUD provides housing assistance funds to the PHA. HUD also provides funds for PHA administration of the programs. PHAs are no longer allowed to enter into contracts for assistance in the certificate program.

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

(4)(i) In the certificate program, the subsidy for most families is the difference between the rent and 30 percent of adjusted monthly income.

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

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

(2) To receive tenant-based assistance, the family selects a suitable unit. After approving the tenancy, the PHA enters into a contract to make rental subsidy payments to the owner to subsidize occupancy by the family. The PHA contract with the owner only covers a single unit and a specific assisted family. If the family moves out of the leased unit, the contract with the owner terminates. The family may move to another unit with continued assistance so long as the family is complying with program requirements.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26640, May 14, 1999]

§ 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 certificate program and the Section 8 voucher program.

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

[60 FR 34695, July 3, 1995, as amended at 64 FR 26640, May 14, 1999]

§ 982.3 HUD.

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

§ 982.4 Definitions.

(a) *Definitions found elsewhere:*

(1) *General definitions.* The terms *1937 Act, HUD,* and *MSA,* are defined in 24 CFR part 5, subpart A.

(2) *Terms found elsewhere.* The following terms are defined in part 5, subpart A of this title: *1937 Act, covered person, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, MSA, other person*

under the tenant's control, public housing, Section 8, and *violent criminal activity.*

(3) *Definitions concerning family income and rent.* The terms ''adjusted income,'' ''annual income,'' ''extremely low income family,'' ''tenant rent,'' ''total tenant payment,'' ''utility allowance,'' ''utility reimbursement,'' and ''welfare assistance'' are defined in part 5, subpart F of this title. The definitions of ''tenant rent'' and ''utility reimbursement'' in part 5, subpart F of this title, apply to the certificate program, but do not apply to the tenant-based voucher program under part 982.

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

Absorption. In portability (under subpart H of this part 982): the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PPHA uses funds available under the receiving PHA consolidated ACC.

Administrative fee. Fee paid by HUD to the PHA for administration of the program. See § 982.152.

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

Administrative plan. The plan that describes PHA policies for administration of the tenant-based programs. See § 982.54.

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

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 a PHA program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

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

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

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

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

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

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

Downpayment assistance grant. A form of homeownership assistance in the homeownership option: A single downpayment assistance grant for the family. If a family receives a downpayment assistance grant, a PHA may not make monthly homeownership assistance payments for the family. A downpayment assistance grant is applied to the downpayment for purchase of the home or reasonable and customary closing costs required in connection with purchase of the home.

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

Family. A person or group of persons, as determined by the PHA, approved to reside in a unit with assistance under the program. See discussion of family composition at § 982.201(c).

Family rent to owner. In the voucher program, the portion of rent to owner

paid by the family. For calculation of family rent to owner, see §982.515(b).

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

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

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

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

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

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

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

HAP contract. Housing assistance payments contract.

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

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

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

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

Homeownership option. Assistance for a homeowner or cooperative member under §982.625 to §982.641. A special housing type.

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

(1) A payment to the owner for rent to the owner under the family's lease; and

(2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

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

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

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

(2) a PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

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

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

Interest in the home. In the homeownership option:

(1) In the case of assistance for a homeowner, ''interest in the home'' includes title to the home, any lease or other right to occupy the home, or any other present interest in the home.

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

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

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

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

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

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

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

Merger date. October 1, 1999.

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

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

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

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

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

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

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

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

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

Program. The Section 8 tenant-based assistance program under this part.

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

Public housing agency (PHA). PHA includes both:

(1) Any State, county, municipality, or other governmental entity or public body which is authorized to administer the program (or an agency or instrumentality of such an entity), and

(2) Any of the following:

(i) A consortium of housing agencies, each of which meets the qualifications in paragraph (1) of this definition, that HUD determines has the capacity and capability to efficiently administer the program (in which case, HUD may enter into a consolidated ACC with any legal entity authorized to act as the legal representative of the consortium members);

(ii) Any other public or private nonprofit entity that was administering a Section 8 tenant-based assistance program pursuant to a contract with the

contract administrator of such program (HUD or a PHA) on October 21, 1998; or

(iii) For any area outside the jurisdiction of a PHA that is administering a tenant-based program, or where HUD determines that such PHA is not administering the program effectively, a private non-profit entity or a governmental entity or public body that would otherwise lack jurisdiction to administer the program in such area.

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

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

(2) For comparable unassisted units in the premises.

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

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

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

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

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

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

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

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

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

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

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

Suspension. Stopping the clock on the term of a family's voucher, for such period as determined by the PHA, from the time when the family submits a request for PHA approval of the tenancy, until the time when the PHA 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 rent. For a tenancy in the certificate program: The total tenant payment minus any utility allowance.

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

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

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

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

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

[63 FR 23857, Apr. 30, 1998; 63 FR 31625, June 10, 1998, as amended at 64 FR 26641, May 14, 1999; 64 FR 49658, Sept. 14, 1999; 64 FR 56887, 56911, Oct. 21, 1999; 65 FR 16821, Mar. 30, 2000; 65 FR 55161, Sept. 12, 2000; 66 FR 28804, May 24, 2001; 66 FR 33613, June 22, 2001; 67 FR 64492, Oct. 18, 2002]

§ 982.5 Notices required by this part.

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

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

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

§ 982.51 PHA authority to administer program.

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

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

[60 FR 34695, July 3, 1995, as amended at 64 FR 26641, May 14, 1999]

§ 982.52 HUD requirements.

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

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

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

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

§ 982.53 Equal opportunity requirements.

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

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

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

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

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

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

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

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23859, Apr. 30, 1998; 64 FR 26641, May 14, 1999; 64 FR 56911, Oct. 21, 1999]

§ 982.54 Administrative plan.

(a) The PHA must adopt a written administrative plan that establishes local policies for administration of the program in accordance with HUD requirements. The administrative plan and any revisions of the plan must be formally adopted by the PHA Board of

Commissioners or other authorized PHA officials. The administrative plan states PHA policy on matters for which the PHA has discretion to establish local policies.

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

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

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

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

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

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

(4) Occupancy policies, including:

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

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

(iii) Standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with § 982.553;

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

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

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

(8) Disapproval of owners;

(9) Subsidy standards;

(10) Family absence from the dwelling unit;

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

(12) Informal review procedures for applicants;

(13) Informal hearing procedures for participants;

(14) The process for establishing and revising voucher payment standards;

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

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

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

(18) Interim redeterminations of family income and composition;

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

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

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

(22) Procedural guidelines and performance standards for conducting required HQS inspections; and

(23) PHA screening of applicants for family behavior or suitability for tenancy.

(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; 63 FR 23859, Apr. 30, 1998; 64 FR 26641, May 14, 1999; 64 FR 49658, 64 FR Sept. 14, 1999; 56911, Oct. 21, 1999; 66 FR 28804, May 24, 2001]

Subpart C—Funding and PHA Application for Funding

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

§ 982.101 Allocation of funding.

(a) *Allocation of funding.* HUD allocates available budget authority for the tenant-based assistance program 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;

(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.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26642, May 14, 1999]

§ 982.102 Allocation of budget authority for renewal of expiring consolidated ACC funding increments.

(a) *Applicability.* This section applies to the renewal of consolidated ACC funding increments in the program (as described in § 982.151(a)(2)) that expire after December 31, 1999 (including any assistance that the PHA has attached to units for project-based assistance under part 983 of this title). This section implements section 8(dd) of the 1937 Act (42 U.S.C. 1437f(dd)),

(b) *Renewal Methodology.* HUD will use the following methodology to determine the amount of budget authority to be allocated to a PHA for the renewal of expiring consolidated ACC funding increments in the program, subject to the availability of appropriated funds. If the amount of appropriated funds is not sufficient to provide the full amount of renewal funding for PHAs, as calculated in accordance with this section, HUD may establish a procedure to adjust allocations for the shortfall in funding.

(c) *Determining the amount of budget authority allocated for renewal of an expiring funding increment.* Subject to availability of appropriated funds, as determined by HUD, the amount of budget authority allocated by HUD to a PHA for renewal of each program funding increment that expires during a calendar year will be equal to:

(1) *Number of renewal units.* The number of renewal units assigned to the funding increment (as determined by HUD pursuant to paragraph (d) of this section); multiplied by

(2) *Adjusted annual per unit cost.* The adjusted annual per unit cost (as determined by HUD pursuant to paragraph (e) of this section).

(d) *Determining the number of renewal units.*—(1) *Number of renewal units.* HUD will determine the total number of renewal units for a PHA's program as of the last day of the calendar year previous to the calendar year for which renewal funding is calculated. The number of renewal units for a PHA's program will be determined as follows:

(i) *Step 1: Establishing the initial baseline.* HUD will establish a baseline number of units (''baseline'') for each PHA program. The initial baseline equals the number of units reserved by HUD for the PHA program as of December 31, 1999.

(ii) *Step 2: Establishing the adjusted baseline.* The adjusted baseline equals the initial baseline with the following

adjustments from the initial baseline as of the last day of the calendar year previous to the calendar year for which renewal funding is calculated:

(A) *Additional units.* HUD will add to the initial baseline any additional units reserved for the PHA after December 31, 1999.

(B) *Units removed.* HUD will subtract from the initial baseline any units dereserved by HUD from the PHA program after December 31, 1999.

(iii) *Step 3: Determining the number of renewal units.* The number of renewal units equals the adjusted baseline minus the number of units supported by contract funding increments that expire after the end of the calendar year.

(2) *Funding increments.* HUD will assign all units reserved for a PHA program to one or more funding increment(s).

(3) *Correction of errors.* HUD may adjust the number of renewal units to correct errors.

(e) *Determining the adjusted per unit cost.* HUD will determine the PHA's adjusted per unit cost when HUD processes the allocation of renewal funding for an expiring contract funding increment. The adjusted per unit cost calculated will be determined as follows:

(1) *Step 1: Determining monthly program expenditure.*—(i) *Use of most recent HUD-approved year end statement.* HUD will determine the PHA's monthly per unit program expenditure for the PHA certificate and voucher programs (including project-based assistance under such programs) under the consolidated ACC with HUD using data from the PHA's most recent HUD-approved year end statement.

(ii) *Monthly program expenditure.* The monthly program expenditure equals:

(A) *Total program expenditure.* The PHA's total program expenditure (the total of housing assistance payments and administrative costs) for the PHA fiscal year covered by the approved year end statement; divided by

(B) *Total unit months leased.* The total of unit months leased for the PHA fiscal year covered by the approved year end statement.

(2) *Step 2: Determining annual per unit cost.* HUD will determine the PHA's annual per unit cost. The annual per unit cost equals the monthly program expenditures (as determined under paragraph (e)(1)(ii) of this section) multiplied by 12.

(3) *Step 3: Determining adjusted annual per unit cost.* (i) HUD will determine the PHA's adjusted annual per unit cost. The adjusted annual per unit cost equals the annual per unit cost (as determined under paragraph (e)(2) of this section) multiplied cumulatively by the applicable published Section 8 housing assistance payments program annual adjustment factors in effect during the period from the end of the PHA fiscal year covered by the approved year end statement to the time when HUD processes the allocation of renewal funding.

(ii) *Use of annual adjustment factor applicable to PHA jurisdiction.* For this purpose, HUD will use the annual adjustment factor from the notice published annually in the FEDERAL REGISTER pursuant to part 888 that is applicable to the jurisdiction of the PHA. For a PHA whose jurisdiction spans multiple annual adjustment factor areas, HUD will use the highest applicable annual adjustment factor.

(iii) *Use of annual adjustment factors in effect subsequent to most recent Year End Statement.* HUD will use the Annual Adjustment Factors in effect during the time period subsequent to the time covered by the most recent HUD approved Year End Statement and the time of the processing of the contract funding increment to be renewed.

(iii) *Special circumstances.* At its discretion, HUD may modify the adjusted annual per unit cost based on receipt of a modification request from a PHA. The modification request must demonstrate that because of special circumstances application of the annual adjustment factor will not provide an accurate adjusted annual per unit cost.

(4) *Correction of errors.* HUD may correct for errors in the adjusted per unit cost.

(f) *consolidated ACC amendment to add renewal funding.* HUD will reserve allocated renewal funding available to the PHA within a reasonable time prior to the expiration of the funding increment to be renewed and establish a new expiration date one-year from the date of such expiration.

(g) *Modification of allocation of budget authority*—(1) *HUD authority to conform PHA program costs with PHA program finances through* FEDERAL REGISTER *notice.* In the event that a PHA's costs incurred threaten to exceed budget authority and allowable reserves, HUD reserves the right, through FEDERAL REGISTER notice, to bring PHA program costs and the number of families served, in line with PHA program finances.

(2) *HUD authority to limit increases of per unit cost through* FEDERAL REGISTER *notice.* HUD may, by FEDERAL REGISTER notice, limit the amount or percentage of increases in the adjusted annual per unit cost to be used in calculating the allocation of budget authority.

(3) *HUD authority to limit decreases to per unit costs through* FEDERAL REGISTER *notice.* HUD may, by FEDERAL REGISTER notice, limit the amount or percentage of decreases in the adjusted annual per unit cost to be used in calculating the allocation of budget authority.

(4) *Contents of* FEDERAL REGISTER *notice.* If HUD publishes a FEDERAL REGISTER notice pursuant to paragraphs (g)(1), (g)(2) or (g)(3) of this section, it will describe the rationale, circumstances and procedures under which such modifications are implemented. Such circumstances and procedures shall, be consistent with the objective of enabling PHAs and HUD to meet program goals and requirements including but not limited to:

(i) Deconcentration of poverty and expanding housing opportunities;

(ii) Reasonable rent burden;

(iii) Income targeting;

(iv) Consistency with applicable consolidated plan(s);

(v) Rent reasonableness;

(vi) Program efficiency and economy;

(vii) Service to additional households within budgetary limitations; and

(viii) Service to the adjusted baseline number of families.

(5) *Public consultation before issuance of* FEDERAL REGISTER notice. HUD will design and undertake informal public consultation prior to issuing FEDERAL REGISTER notices pursuant to paragraphs (g)(1) or (g)(2) of this section.

(h) *Ability to prorate and synchronize contract funding increments.* Notwithstanding paragraphs (c) through (g) of this section, HUD may prorate the amount of budget authority allocated for the renewal of funding increments that expire on different dates throughout the calendar year. HUD may use such proration to synchronize the expiration dates of funding increments under the PHA's consolidated ACC.

(i) *Reallocation of budget authority.* If a PHA has performance deficiencies, such as a failure to adequately lease units, HUD may reallocate some of its budget authority to other PHAs. If HUD determines to reallocate budget authority, it will reduce the number of units reserved by HUD for the PHA program of the PHA whose budget authority is being reallocated and increase the number of units reserved by HUD for the PHAs whose programs are receiving the benefit of the reallocation, so that such PHAs can issue vouchers. HUD will publish a notice in the FEDERAL REGISTER that will describe the circumstances and procedures for reallocating budget authority pursuant to this paragraph.

[64 FR 56887, Oct. 21, 1999; 65 FR 16818, Mar. 30, 2000]

§ 982.103 PHA application for funding.

(a) a PHA 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 a PHA 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.

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

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23859, Apr. 30, 1998. Redesignated at 64 FR 56887, Oct. 21, 1999]

§ 982.104 HUD review of application.

(a) *Competitive funding under NOFA.* 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 PHA's capacity and capability to administer the program.

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

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

(3) For budget authority that is distributed to PHAs 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).

(c) *PHA disqualification.* HUD will not approve any PHA funding application (including an application for competitive funding under a NOFA) if HUD determines that the PHA is disbarred or otherwise disqualified from providing assistance under the program.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26642, May 14, 1999. Redesignated at 64 FR 56887, Oct. 21, 1999]

Subpart D—Annual Contributions Contract and PHA 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 a PHA. Under the ACC, HUD agrees to make payments to the PHA, over a specified term, for housing assistance payments to owners and for the PHA administrative fee. The ACC specifies the maximum payment over the ACC term. The PHA 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 PHA program constitutes a separate ACC. However, commitments for all the funding increments in a PHA program are listed in one consolidated contractual document called the consolidated annual contributions contract (consolidated ACC). A single consolidated ACC covers funding for the PHA tenant-based assistance program.

(b) *Budget authority.* (1) Budget authority is the maximum amount that may be paid by HUD to a PHA over the ACC term of a funding increment. Before adding a funding increment to the consolidated ACC for a PHA 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 term over which HUD will make payments for the PHA program, and the amount of available budget authority for each funding increment. The amount to be paid to the PHA during each PHA fiscal year (including payment from the ACC reserve account described in § 982.154) must be approved 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; 64 FR 26642, May 14, 1999]

§ 982.152 Administrative fee.

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

(i) Ongoing administrative fee;

(ii) Costs to help families who experience difficulty finding or renting appropriate housing under the program;

(iii) The following types of extraordinary costs approved by HUD:

(A) Costs to cover necessary additional expenses incurred by the PHA to provide reasonable accommodation for persons with disabilities in accordance with part 8 of this title (e.g., additional counselling costs), where the PHA is unable to cover such additional expenses from ongoing administrative fee income or the PHA administrative fee reserve;

(B) Costs of audit by an independent public accountant;

(C) Other extraordinary costs determined necessary by HUD Headquarters;

(iv) Preliminary fee (in accordance with paragraph (c) of this section);

(v) Costs to coordinate supportive services for families participating in the family self-sufficiency (FSS) program.

(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.

(3) HA administrative fees may only be used to cover costs incurred to perform HA administrative responsibilities for the program in accordance with HUD regulations and requirements.

(b) *Ongoing administrative fee.* (1) The PHA 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 determined by HUD in accordance with Section 8(q)(1) of the 1937 Act (42 U.S.C. 1437f(q)(1)).

(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 PHA 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 PHA-owned units.

(c) *Preliminary fee.* (1) If the PHA was not administering a program of Section 8 tenant-based assistance prior to the merger date, HUD will pay a one-time fee in the amount of $500 in the first year the PHA administers a program. The fee is paid for each new unit added to the PHA program by the initial funding increment under the consolidated ACC.

(2) The preliminary fee is used to cover expenses the PHA incurs to help families who inquire about or apply for the program, and to lease up new program units.

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

[60 FR 23695, July 3, 1995, as amended at 63 FR 23860, Apr. 30, 1998; 64 FR 26642, May 14, 1999]

§ 982.153 PHA responsibilities.

The PHA must comply with the consolidated ACC, the application, HUD regulations and other requirements, and the PHA administrative plan.

(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; 63 FR 23860, Apr. 30, 1998]

§ 982.154 ACC reserve account.

(a) HUD may establish and maintain an unfunded reserve account for the PHA program from available budget authority under the consolidated ACC. This reserve is called the ''ACC reserve account'' (formerly ''project reserve''). There is a single ACC reserve account for the PHA program.

(b) The amount in the ACC reserve account is determined by HUD. HUD may approve payments for the PHA program, in accordance with the PHA's HUD-approved budget, from available amounts in the ACC reserve account.

[64 FR 26642, May 14, 1999]

§ 982.155 Administrative fee reserve.

(a) The PHA must maintain an administrative fee reserve (formerly ''operating reserve'') for the program. There is a single administrative fee reserve for the PHA program. The PHA must credit to the administrative fee reserve the total of:

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

(2) Interest earned on the administrative fee reserve.

(b)(1) The PHA must use funds in the administrative fee reserve to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. If funds in the administrative fee reserve are not needed to cover PHA administrative expenses (to the end of the last expiring funding increment under the consolidated

ACC), the PHA 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 PHA 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 PHA has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct the PHA 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; 64 FR 26642, May 14, 1999]

§ 982.156 Depositary for program funds.

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

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

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

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

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

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

(2) HUD must send the PHA a copy of the freeze notice from HUD to the depositary.

(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 PHA fiscal year, the PHA must submit its proposed budget for the program to HUD for approval at such time and in such form as required by HUD.

(b) *PHA use of program receipts.* (1) Program receipts must be used in accordance with the PHA's HUD-approved budget. Such program receipts may only be used for:

(i) Housing assistance payments; and

(ii) PHA administrative fees.

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

(c) *Intellectual property rights.* Program receipts may not be used to indemnify contractors or subcontractors of the PHA against costs associated with any judgment of infringement of intellectual property rights.

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

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 64 FR 26642, May 14, 1999]

§ 982.158 Program accounts and records.

(a) The PHA 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. The PHA must comply with the financial reporting requirements in 24 CFR part 5, subpart H.

(b) The PHA 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 PHA offices and facilities, and to all accounts and other records of the PHA tPHAt are pertinent to administration of the program, including the right to examine or audit

the records, and to make copies. The PHA 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 PHA must prepare a unit inspection report.

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

(1) A copy of the executed lease;

(2) The HAP contract; and

(3) The application from the family.

(f) The PHA 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 records as required by part 35, subpart B of this title.

(6) Accounts and other records supporting PHA budget and financial statements for the program;

(7) Records to document the basis for PHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and

(8) 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; 63 FR 23860, Apr. 30, 1998; 63 FR 46593, Sept. 1, 1998; 64 FR 50229, Sept. 15, 1999]

§ 982.159 Audit requirements.

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

(b) The PHA 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 PHA organized, or that there is no PHA 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 PHAs 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 PHA 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 PHA (except a participant commissioner);

(2) Any employee of the PHA, or any contractor, subcontractor or agent of the PHA, 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 PHA 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 PHA must use program contracts and other forms required by HUD headquarters, including:

(1) The consolidated ACC between HUD and the PHA;

(2) The HAP contract between the PHA and the owner; and

(3) The tenancy addendum required by HUD (which is included both in the HAP contract and 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.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26642, May 14, 1999]

§ 982.163 Fraud recoveries.

Under 24 CFR part 792, the PHA may retain a portion of program fraud losses that the PHA 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 and targeting.

(a) *When applicant is eligible: general.* The PHA may only admit an eligible family to the 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) *Income-eligibility.* To be income-eligible, the applicant must be a family in any of the following categories:

(i) A ''very low income'' family;

(ii) A low-income family that is ''continuously assisted'' under the 1937 Housing Act;

(iii) A low-income family that meets additional eligibility criteria specified in the PHA administrative plan. Such additional PHA criteria must be consistent with the PHA plan and with the consolidated plans for local governments in the PHA jurisdiction;

(iv) A low-income family that qualifies for voucher assistance as a nonpurchasing family residing in a HOPE 1 (HOPE for public housing homeownership) or HOPE 2 (HOPE for homeownership of multifamily units) project. (Section 8(o)(4)(D) of the 1937 Act (42 U.S.C. 1437f(o)(4)(D));

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

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

(2) *Income-targeting.* (i) Not less than 75 percent of the families admitted to a PHA's tenant-based voucher program during the PHA fiscal year from the PHA waiting list shall be extremely low income families. Annual income of such families shall be verified within the period described in paragraph (e) of this section.

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

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

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

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

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

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

(iv) Conversion of assistance for a participant in the PHA certificate program to assistance in the PHA voucher program does not count as an ''admission,'' and is not subject to targeting under paragraph (b)(2)(i) of this section.

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

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

(vii) If a family initially leases a unit outside the PHA jurisdiction under portability procedures at admission to the voucher program on or after the merger date, such admission shall be counted against the targeting obligation of the initial PHA (unless the receiving PHA absorbs the portable family into the receiving PHA voucher program from the point of admission).

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

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

(c) *Family composition.* (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 PHA 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 voucher program.

(2) The PHA must establish policies concerning whether and to what extent

a brief interruption between assistance under one of these programs and admission to the voucher program will be considered to break continuity of assistance under the 1937 Housing Act.

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

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

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

[59 FR 36682, July 18, 1994, as amended at 60 FR 34717, July 3, 1995; 61 FR 13627, Mar. 27, 1996; 64 FR 26642, May 14, 1999; 64 FR 49658, Sept. 14, 1999; 64 FR 56911, Oct. 21, 1999; 66 FR 6226, Jan. 19, 2001; 66 FR 8174, Jan. 30, 2001; 67 FR 6820, Feb. 13, 2002]

§ 982.202 How applicants are selected: General requirements.

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

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

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

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

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

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

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

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

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

(iv) Discrimination because of disability; or

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

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

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

[59 FR 36682, July 18, 1994, as amended at 60 FR 34717, July 3, 1995; 61 FR 9048, Mar. 6, 1996; 61 FR 27163, May 30, 1996; 64 FR 26643, May 14, 1999; 65 FR 16821, Mar. 30, 2000]

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 982.204 Waiting list: Administration of waiting list.

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

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

(1) Applicant name;

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

(3) Date and time of application;

(4) Qualification for any local preference;

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

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

(2) An PHA decision to withdraw from the waiting list the name of an applicant family that includes a person with disabilities is subject to reasonable accommodation in accordance with 24 CFR part 8. If the applicant did not respond to the PHA request for information or updates because of the family member's disability, the PHA must reinstate the applicant in the family's former position on the waiting list.

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

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

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

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

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

§ 982.205 Waiting list: Different programs.

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

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

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

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

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

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

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

(i) Refuse to list the applicant on the PHA waiting list for tenant-based assistance;

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

(iii) Change the applicant's place on the waiting list based on preference, date and time of application, or other factors affecting selection under the PHA selection policy; or

(iv) Remove the applicant from the waiting list.

[59 FR 36682, July 18, 1994, as amended at 61 FR 27163, May 30, 1996; 63 FR 23860, Apr. 30, 1998; 64 FR 26643, May 14, 1999; 65 FR 16821, Mar. 30, 2000]

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) *Particular local preferences.* (1) *Residency requirements or preferences.* (i) Residency requirements are prohibited. Although a PHA is not prohibited from adopting a residency preference, the PHA may only adopt or implement residency preferences in accordance with non-discrimination and equal opportunity requirements listed at § 5.105(a) of this title.

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

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

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

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

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

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

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

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

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

(1) Date and time of application; or

(2) A drawing or other random choice technique.

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

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

[64 FR 26643, May 14, 1999, as amended at 64 FR 56912, Oct. 21, 1999; 65 FR 16821, Mar. 30, 2000]

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

(i) A description of how the program works;

(ii) Family and owner responsibilities; and

(iii) Where the family may lease a unit, including renting a dwelling unit inside or outside the PHA jurisdiction.

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

(3) If the family is currently living in a high poverty census tract in the PHA'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 PHA must take appropriate steps to ensure effective communication in accordance with 24 CFR 8.6.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(13) Family obligations under the program;

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

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

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[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 27163, May 30, 1996; 64 FR 26644, May 14, 1999; 64 FR 50229, Sept. 15, 1999; 64 FR 56912, Oct. 21, 1999

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

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

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

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

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

[64 FR 26644, May 14, 1999]

§ 982.303 Term of voucher.

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

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

(2) If the family needs and requests an extension of the initial voucher term as a reasonable accommodation, in accordance with part 8 of this title, to make the program accessible to a family member who is a person with disabilities, the PHA must extend the voucher term up to the term reasonably required for that purpose.

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

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

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[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23860, Apr. 30, 1998; 64 FR 26644, May 14, 1999; 64 FR 56913, Oct. 21, 1999]

§ 982.304 Illegal discrimination: PHA assistance to family.

A family may claim that illegal discrimination because of race, color, religion, sex, national origin, age, familial status or disability prevents the family from finding or leasing a suitable unit with assistance under the program.

The PHA must give the family information on how to fill out and file a housing discrimination complaint.

(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 PHA approval of assisted tenancy.

(a) *Program requirements.* The PHA may not give approval for the family of the assisted tenancy, or execute a HAP contract, until the PHA has determined that all the following meet program requirements:

(1) The unit is eligible;

(2) The unit has been inspected by the PHA and passes HQS;

(3) The lease includes the tenancy addendum;

(4) The rent to owner is reasonable; and

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

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

(i) The PHA has inspected the unit and has determined that the unit satisfies the HQS;

(ii) The landlord and the tenant have executed the lease (including the HUD-prescribed tenancy addendum, and the lead-based paint disclosure information as required in § 35.92(b) of this title); and

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

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

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

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

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

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

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

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

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

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

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

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

§ 982.306 PHA disapproval of owner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) The PHA must not approve a unit if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless the PHA determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities. This restriction against PHA approval of a unit only applies at the time a family initially receives tenant-based assistance for occupancy of a particular unit, but does not apply to PHA approval of a new tenancy with continued tenant-based assistance in the same unit.

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

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

[60 FR 34695, July 3, 1995, as amended at 63 FR 27437, May 18, 1998; 64 FR 26644, May 14, 1999; 64 FR 56913, Oct. 21, 1999; 65 FR 16821, Mar. 30, 2000]

§ 982.307 Tenant screening.

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

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

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

(i) Payment of rent and utility bills;

(ii) Caring for a unit and premises;

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

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

(v) Compliance with other essential conditions of tenancy.

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

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

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

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

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

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[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 27163, May 30, 1996; 64 FR 26645, May 14, 1999; 64 FR 49658, Sept. 14, 1999]

§ 982.308 Lease and tenancy.

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

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

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

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

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

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

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

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

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

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

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

(f) *Tenancy addendum.* (1) The HAP contract form required by HUD shall include an addendum (the ''tenancy addendum''), that sets forth:

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

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

(2) All provisions in the HUD-required tenancy addendum must be added word-for-word to the owner's standard form lease that is used by the

owner for unassisted tenants. The tenant shall have the right to enforce the tenancy addendum against the owner, and the terms of the tenancy addendum shall prevail over any other provisions of the lease.

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

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

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

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

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

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

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

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

§ 982.309 Term of assisted tenancy.

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

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

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

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

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

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

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

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

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

(ii) The PHA terminates the HAP contract; or

(iii) The PHA terminates assistance for the family.

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

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

[64 FR 26645, May 14, 1999]

§ 982.310 Owner termination of tenancy.

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

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

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

(3) Other good cause.

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

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

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

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

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

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

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

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

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

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

(3) *Evidence of criminal activity.* The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person in accordance with this section if the owner determines that the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction. (See part 5, subpart J, of this title for provisions concerning access to criminal records.)

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

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

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

(iii) The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or

(iv) A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rental).

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

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

(i) The owner must give the tenant a written notice that specifies the

grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

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

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

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

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

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

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

(i) The seriousness of the offending action;

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

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

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

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

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

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

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

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

(4) *Nondiscrimination limitation.* The owner's termination of assistance actions must be consistent with fair housing and equal opportunity provisions of § 5.105 of this title.

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[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 64 FR 26645, May 14, 1999; 64 FR 56913, Oct. 21, 1999; 66 FR 28804, May 24, 2001]

§ 982.311 When assistance is paid.

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

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

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

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

§ 982.312 Absence from unit.

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

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

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

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

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

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

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

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

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

§ 982.313 Security deposit: Amounts owed by tenant.

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

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

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

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

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

§ 982.314 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 PHA has terminated the HAP contract for the owner's breach; or

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

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

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

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

(2) The PHA may establish:

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

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

(3) The PHA policies may apply to moves within the PHA jurisdiction by a participant family, and to moves by a participant family outside the PHA 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 PHA 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 PHA and the owner before moving from the old unit. If the family wants to move to a new unit that is located outside the initial PHA jurisdiction, the notice to the initial PHA must specify the area where the family wants to move. See portability procedures in subpart H of this part.

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

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

[60 FR 34695, July 3, 1995, as amended at 64 FR 56913, Oct. 21, 1999]

§ 982.315 Family break-up.

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

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

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

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

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

(4) Other factors specified by the PHA.

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

§ 982.316 Live-in aide.

(a) A family that consists of one or more elderly, near-elderly or disabled persons may request that the PHA approve a live-in aide to reside in the unit and provide necessary supportive services for a family member who is a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the

program accessible to and usable by the family member with a disability. (See § 982.402(b)(6) concerning effect of live-in aide on family unit size.)

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

(1) The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

(2) The person commits drug-related criminal activity or violent criminal activity; or

(3) The person currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

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

§ 982.317 Lease-purchase agreements.

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

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

[65 FR 55162, Sept. 12, 2000]

Subpart H—Where Family Can Live and Move

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

§ 982.351 Overview.

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

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

(b) ''Portability'' assistance for a family PHA rents a unit outside the jurisdiction of the initial PHA.

§ 982.352 Eligible housing.

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

(1) A public housing or Indian housing unit;

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

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

(4) College or other school dormitories;

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

(6) A unit occupied by its owner or by a person with any interest in the unit.

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

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

(i) The PHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease, and a PHA-owned unit is freely selected by the family, without PHA pressure or steering.

(ii) The unit is not ineligible housing.

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

(iv)(A) The PHA must obtain the services of an independent entity to

perform the following PHA functions as required under the program rule:

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

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

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

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

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

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

(1) Public or Indian housing assistance;

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

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

(4) Section 101 rent supplements;

(5) Section 236 rental assistance payments;

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

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

(8) Any local or State rent subsidy;

(9) Section 202 supportive housing for the elderly;

(10) Section 811 supportive housing for persons with disabilities;

(11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or

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

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

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

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

(b) *Portability: Assistance outside the initial PHA jurisdiction.* Subject to paragraph (c) of this section, and to § 982.552 and § 982.553, a voucher-holder or participant family has the right to receive tenant-based voucher assistance in accordance with requirements of this part to lease a unit outside the initial PHA jurisdiction, anywhere in the United States, in the jurisdiction of a PHA with a tenant-based program under this part. The initial PHA must not provide such portable assistance for a participant if the family has

moved out of its assisted unit in violation of the lease.

(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 PHA at the time when the family first submitted an application for participation in the program to the initial PHA.

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

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

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

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

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

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

(2) If a portable family is a participant in the initial PHA Section 8 tenant-based program (either the PHA voucher program or the PHA certificate program), income eligibility is not redetermined when the family moves to the receiving PHA program under portability procedures.

(3) Except as provided in paragraph (d)(2) of this section, a portable family must be income eligible for admission to the voucher program in the area where the family leases a unit under portability procedures.

(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 PHA may not directly or indirectly reduce the family's opportunity to select among available units except as provided in paragraph (a) of this section, or elsewhere in this part 982 (e.g. prohibition on use of ineligible housing, housing not meeting HQS, or housing for which the rent to owner 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; 64 FR 26646, May 14, 1999]

§ 982.355 Portability: Administration by receiving PHA.

(a) When a family moves under portability (in accordance with § 982.353(b)) to an area outside the initial PHA jurisdiction, another PHA (the ''receiving PHA'') must administer assistance for the family if a PHA with a tenant-based program has jurisdiction in the area where the unit is located.

(b) In the conditions described in paragraph (a) of this section, a PHA with jurisdiction in the area where the family wants to lease a unit must issue a voucher to the family. If there is more than one such PHA, the initial PHA may choose the receiving PHA.

(c) *Portability procedures.* (1) The receiving PHA does not redetermine elibilibility for a portable family that was already receiving assistance in the initial PHA Section 8 tenant-based program (either the PHA voucher program or certificate program). However, for a portable family that was not already receiving assistance in the PHA tenant-based program, the initial PHA must determine whether the family is eligible for admission to the receiving PHA voucher program.

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

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

(4) The initial PHA must give the receiving PHA the most recent HUD Form 50058 (Family Report) for the family, and related verification information. If the receiving PHA opts to conduct a new reexamination, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit unless the recertification is necessary to determine income eligibility.

(5) When the portable family requests assistance from the receiving PHA, the receiving PHA must promptly inform

the initial PHA whether the receiving PHA will bill the initial PHA for assistance on behalf of the portable family, or will absorb the family into its own program.

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

(7) The receiving PHA 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 PHA.

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

(9) To provide tenant-based assistance for portable families, the receiving PHA must perform all PHA program functions, such as reexaminations of family income and composition. At any time, either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance to the family in accordance with §§ 982.552 and 982.553.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[60 FR 34695, July 3, 1995, as amended at 61 FR 27163, May 30, 1996; 64 FR 26646, May 14, 1999; 64 FR 56914, Oct. 21, 1999]

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.

(2)(i) The HQS consist of:

(A) Performance requirements; and

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

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

(A) Sanitary facilities;

(B) Food preparation and refuse disposal;

(C) Space and security;

(D) Thermal environment;

(E) Illumination and electricity;

(F) Structure and materials;

(G) Interior air quality;

(H) Water supply;

(I) Lead-based paint;

(J) Access;

(K) Site and neighborhood;

(L) Sanitary condition; and

(M) Smoke detectors.

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

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

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

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

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

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

(A) Meet or exceed the performance requirements; or

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

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

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

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

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

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

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

(c) *Food preparation and refuse disposal*—(1) *Performance requirement.* (i) The dwelling unit must have suitable

space and equipment to store, prepare, and serve foods in a sanitary manner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

and must protect the occupants from the environment.

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

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

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

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

(v) Elevators must be working and safe.

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

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

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

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

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

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

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

(j) *Lead-based paint performance requirement.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, M, and R of this title apply to units assisted under this part.

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

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

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

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

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

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

(2) For units assisted prior to April 24, 1993, owners who installed battery-operated or hard-wired smoke detectors prior to April 24, 1993 in compliance with HUD's smoke detector requirements, including the regulations published on July 30, 1992, (57 FR 33846),

will not be required subsequently to comply with any additional requirements mandated by NFPA 74 (i.e., the owner would not be required to install a smoke detector in a basement not used for living purposes, nor would the owner be required to change the location of the smoke detectors that have already been installed on the other floors of the unit).

[60 FR 34695, July 3, 1995, as amended at 61 FR 27163, May 30, 1996; 63 FR 23861, Apr. 30, 1998; 64 FR 26646, May 14, 1999; 64 FR 49658, Sept. 14, 1999; 64 FR 50230, Sept. 15, 1999]

§ 982.402 Subsidy standards.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[60 FR 34695, July 3, 1995, as amended at 63 FR 23861, Apr. 30, 1998; 64 FR 26646, May 14, 1999]

§ 982.403 Terminating HAP contract when unit is too small.

(a) *Violation of HQS space standards.* (1) If the PHA determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible.

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

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

(2) The PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible 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 PHA 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 PHA subsidy standards.

(3) The PHA 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 PHA.

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

(c) *Termination.* When the PHA terminates the HAP contract under paragraph (a) of this section:

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

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

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

(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; 64 FR 26647, May 14, 1999]

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 982.405 PHA initial and periodic unit inspection.

(a) The PHA must inspect the unit leased to a family prior to the initial term of the lease, at least annually during assisted occupancy, and at other times as needed, to determine if the unit meets the HQS. (See § 982.305(b)(2) concerning timing of initial inspection by the PHA.)

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

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

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

(e) The PHA may not charge the family or owner for initial inspection or reinspection of the unit.

[60 FR 34695, July 3, 1995, as amended at 64 FR 26647, May 14, 1999; 64 FR 56914, Oct. 21, 1999]

§ 982.406 Enforcement of HQS.

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

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

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

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

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

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

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

(A) The rent to owner; minus

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

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

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

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

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

(*1*) Such penalties are in accordance with generally accepted practices and

law, as applicable in the local housing market, governing penalties for late payment of rent by a tenant;

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

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

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

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

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

§ 982.452 Owner responsibilities.

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

(b) The owner is responsible for:

(1) Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit.

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

(3) Complying with equal opportunity requirements.

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

(5) Collecting from the family:

(i) Any security deposit.

(ii) The tenant contribution

(the part of rent to owner not covered by the housing assistance payment).

(iii) Any charges for unit damage by the family.

(6) Enforcing tenant obligations under the lease.

(7) Paying for utilities and services (unless paid by the family under the lease).

(c) For provisions on modifications to a dwelling unit occupied or to be occupied by a disabled person, see 24 CFR 100.203.

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

[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23861, Apr. 30, 1998; 64 FR 26647, May 14, 1999]

§ 982.453 Owner breach of contract.

(a) Any of the following actions by the owner (including a principal or other interested party) is a breach of the HAP contract by the owner:

(1) If the owner has violated any obligation under the HAP contract for the dwelling unit, including the owner's obligation to maintain the unit in accordance with the HQS.

(2) If the owner has violated any obligation under any other HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f).

(3) If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program.

(4) For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable mortgage insurance or loan program, with the mortgage or mortgage note, or with the regulatory agreement; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan.

(5) If the owner has engaged in drug-related criminal activity.

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

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

housing assistance payments, termination of housing assistance payments, and termination of the HAP contract.

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

§ 982.454 Termination of HAP contract: Insufficient funding.

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

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

§ 982.455 Automatic termination of HAP contract.

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

[64 FR 26647, May 14, 1999]

§ 982.456 Third parties.

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

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

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

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

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

Subpart K—Rent and Housing Assistance Payment

SOURCE: 63 FR 23861, Apr. 30, 1998, unless otherwise noted.

§ 982.501 Overview.

(a) This subpart describes program requirements concerning the housing assistance payment and rent to owner. These requirements apply to the Section 8 tenant-based program.

(b) There are two types of tenancies in the Section 8 tenant-based program:

(1) A tenancy under the voucher program.

(2) A tenancy under the certificate program (commenced before merger of the certificate and voucher programs on the merger date).

(c) Unless specifically stated, requirements of this part are the same for all tenancies. Sections 982.503, 982.504, and 982.505 only apply to a voucher tenancy. Sections 982.518, 982.519, and 982.520 only apply to a tenancy under the certificate program.

[64 FR 26647, May 14, 1999, as amended at 65 FR 42509, July 10, 2000]

§ 982.502 Conversion to voucher program.

(a) *New HAP contracts.* On and after the merger date, the PHA may only enter into a HAP contract for a tenancy under the voucher program, and may not enter into a new HAP contract for a tenancy under the certificate program.

(b) *Over-FMR tenancy.* If the PHA had entered into any HAP contract for an over-FMR tenancy under the certificate program prior to the merger date, on and after the merger date such tenancy shall be considered and treated as a tenancy under the voucher program, and shall be subject to the voucher program requirements under this part, including calculation of the voucher housing assistance payment in accordance with § 982.505. However, § 982.505(b)(2) shall not be applicable for calculation of the housing assistance payment prior to the effective date of the second regular reexamination of family income and compostion on or after the merger date.

(c) *Voucher tenancy.* If the PHA had entered into any HAP contract for a voucher tenancy prior to the merger date, on and after the merger date such tenancy shall continue to be considered and treated as a tenancy under the voucher program, and shall be subject to the voucher program requirements under this part, including calculation of the voucher housing assistance payment in accordance with § 982.505. However, before the effective date of the second regular reexamination of family income and composition on or after the merger date, the payment standard for the family shall be the higher of:

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

(2) The payment standard for the family as calculated in accordance with § 982.505, except that § 982.505(b)(2) shall not be applicable until the effective date of the second regular reexamination of family income and composition on or after the merger date.

(d) *Regular certificate tenancy.* The PHA must terminate program assistance under any outstanding HAP contract for a regular tenancy under the certificate program (entered prior to the merger date) at the effective date of the second regular reexamination of family income and composition on or after the merger date. Upon such termination of assistance, the HAP contract for such tenancy terminates automatically. The PHA must give at least 120 days written notice of such termination to the family and the owner, and the PHA must offer the family the opportunity for continued tenant-based assistance under the voucher program. The PHA may deny the family the opportunity for continued assistance in accordance with §§ 982.552 and 982.553.

[64 FR 26648, May 14, 1999, as amended at 64 FR 56914, Oct. 21, 1999; 65 FR 16822, Mar. 30, 2000]

§ 982.503 Voucher tenancy: Payment standard amount and schedule.

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

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

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

(b) *Establishing payment standard amounts.* (1)(i) The PHA may establish the payment standard amount for a unit size at any level between 90 percent and 110 percent of the published FMR for that unit size. HUD approval is not required to establish a payment standard amount in that range (''basic range'').

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

(2) The PHA must request HUD approval to establish a payment standard amount that is higher or lower than the basic range. HUD has sole discretion to grant or deny approval of a higher or lower payment standard amount. Paragraphs (c) and (e) of this section describe the requirements for approval of a higher payment standard amount (''exception payment standard amount'').

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

HUD-approved exception payment standard amount.

(2) *Above 110 percent of FMR to 120 percent of published FMR.* (i) The HUD Field Office may approve an exception payment standard amount from above 110 percent of the published FMR to 120 percent of the published FMR (upper range) if the HUD Field Office determines that approval is justified by either the median rent method or the 40th or 50th percentile rent method as described in paragraph (c)(2)(i)(B) of this section (and that such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section).

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

(B) *40th or 50th percentile rent method.* In this method, HUD determines that the area exception payment standard amount equals either the 40th or 50th percentile of rents for standard quality rental housing in the exception area. HUD determines whether the 40th or 50th percentile rent applies in accordance with the methodology described in § 888.113 of this title for determining FMRs. A PHA must present statistically representative rental housing survey data to justify HUD approval.

(ii) The HUD Field Office may approve an exception payment standard amount within the upper range if required as a reasonable accommodation for a family that includes a person with disabilities.

(3) *Above 120 percent of FMR.* (i) At the request of a PHA, the Assistant Secretary for Public and Indian Housing may approve an exception payment standard amount for the total area of a county, PHA jurisdiction, or place if the Assistant Secretary determines that:

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

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

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

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

(4) *Program justification.* (i) HUD will only approve an exception payment standard amount (pursuant to paragraph (c)(2) or paragraph (c)(3) of this section) if HUD determines that approval of such higher amount is needed either:

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

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

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

(5) *Population.* The total population of HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

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

(7) *Transition: Area exception rents approved prior to merger date.* Subject to paragraph (c)(6) of this section, the PHA may establish an exception payment standard amount up to the amount of a HUD-approved area exception rent in effect at the merger date.

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

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

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

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

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

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

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

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

(f) *Payment standard protection for PHAs that meet deconcentration objectives.* Paragraph (f) of this section applies only to a PHA with jurisdiction in an FMR area where the FMR had previously been set at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area, pursuant to §888.113(c), but is now set at the 40th percentile rent.

(1) Such a PHA may obtain HUD Field Office approval of a payment standard amount based on the 50th percentile rent if the PHA scored the maximum number of points on the deconcentration bonus indicator in §985.3(h) in the prior year, or in two of the last three years.

(2) HUD approval of payment standard amounts based on the 50th percentile rent shall be for all unit sizes in the FMR area that had previously been set at the 50th percentile rent pursuant to §888.113(c). A PHA may opt to establish a payment standard amount based on the 50th percentile rent for one or more unit sizes in all or a designated part of the PHA jurisdiction within the FMR area.

(g) *HUD review of PHA payment standard schedules.* (1) HUD will monitor rent burdens of families assisted in a PHA's voucher program. HUD will review the PHA's payment standard for a particular unit size if HUD finds that 40 percent or more of such families occupying units of that unit size currently pay more than 30 percent of adjusted monthly income as the family share. Such determination may be based on the most recent examinations of family income.

(2) After such review, HUD may, at its discretion, require the PHA to modify payment standard amounts for any unit size on the PHA payment standard schedule. HUD may require the PHA to establish an increased payment standard amount within the basic range.

[64 FR 26648, May 14, 1999; 64 FR 49658, Sept. 14, 1999, as amended at 64 FR 56914, Oct. 21, 1999; 65 FR 16822, Mar. 30, 2000; 65 FR 58874, Oct. 2, 2000; 66 FR 30568, June 6, 2001; 67 FR 56688, Sept. 4, 2002]

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

(a) This section applies to tenant-based assistance under the voucher program if all the following conditions are applicable:

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

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

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

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

[64 FR 26649, May 14, 1999]

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

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

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

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

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

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

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

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

(2) If the PHA has established a separate payment standard amount for a designated part of an FMR area in accordance with § 982.503 (including an exception payment standard amount as determined in accordance with § 982.503(b)(2) and § 982.503(c)), and the dwelling unit is located in such designated part, the PHA must use the appropriate payment standard amount for such designated part to calculate the payment standard for the family. The payment standard for the family shall be calculated in accordance with this paragraph and paragraph (c)(1) of this section.

(3) *Decrease in the payment standard amount during the HAP contract term.* If the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard amount generally must be used to calculate the monthly housing assistance payment for the family beginning at the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount. The PHA must determine the

payment standard for the family as follows.

(i) *Step 1:* At the first regular reexamination following the decrease in the payment standard amount, the PHA shall determine the payment standard for the family in accordance with paragraphs (c)(1) and (c)(2) of this section (using the decreased payment standard amount).

(ii) *Step 2* (first reexamination payment standard amount): The PHA shall compare the payment standard amount from step 1 to the payment standard amount last used to calculate the monthly housing assistance payment for the family. The payment standard amount used by the PHA to calculate the monthly housing assistance payment at the first regular reexamination following the decrease in the payment standard amount is the higher of these two payment standard amounts. The PHA shall advise the family that the application of the lower payment standard amount will be deferred until the second regular reexamination following the effective date of the decrease in the payment standard amount.

(iii) *Step 3* (second reexamination payment standard amount): At the second regular reexamination following the decrease in the payment standard amount, the lower payment standard amount shall be used to calculate the monthly housing assistance payment for the family unless the PHA has subsequently increased the payment standard amount, in which case the payment standard amount is determined in accordance with paragraph (c)(4) of this section.

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

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

(d) *PHA approval of higher payment standard for the family as a reasonable accommodation.* If the family includes a person with disabilities and requires a higher payment standard for the family, as a reasonable accommodation for such person, in accordance with part 8 of this title, the PHA may establish a higher payment standard for the family within the basic range.

[64 FR 26649, May 14, 1999, as amended at 64 FR 56914, Oct. 21, 1999; 65 FR 16822, Mar. 30, 2000; 65 FR 42509, July 10, 2000; 66 FR 30568, June 6, 2001; 67 FR 56689, Sept. 4, 2002]

§ 982.506 Negotiating rent to owner.

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

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

§ 982.507 Rent to owner: Reasonable rent.

(a) *PHA determination.* (1) The PHA may not approve a lease until the PHA determines that the initial rent to owner is a reasonable rent.

(2) The PHA must redetermine the reasonable rent:

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

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

(iii) If directed by HUD.

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

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

(b) *Comparability.* The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units.

To make this determination, the PHA must consider:

(1) The location, quality, size, unit type, and age of the contract unit; and

(2) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

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

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

§ 982.508 Maximum family share at initial occupancy.

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

[64 FR 59622, Nov. 3, 1999]

§ 982.509 Rent to owner: Effect of rent control.

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

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

§ 982.510 Other fees and charges.

(a) The cost of meals or supportive services may not be included in the rent to owner, and the value of meals or supportive services may not be included in the calculation of reasonable rent.

(b) The lease may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

(c) The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises.

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

§ 982.514 Distribution of housing assistance payment.

The monthly housing assistance payment is distributed as follows:

(a) The PHA pays the owner the lesser of the housing assistance payment or the rent to owner.

(b) If the housing assistance payment exceeds the rent to owner, the PHA may pay the balance of the housing assistance payment (''utility reimbursement'') either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

[63 FR 23861, Apr. 30, 1998, as amended at 64 FR 56914, Oct. 21, 1999; 65 FR 16822, Mar. 30, 2000]

§ 982.515 Family share: Family responsibility.

(a) The family share is calculated by subtracting the amount of the housing assistance payment from the gross rent.

(b) The family rent to owner is calculated by subtracting the amount of the housing assistance payment to the owner from the rent to owner.

(c) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the family share, including the family rent to owner. Payment of the whole family share is the responsibility of the family.

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

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

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

(2) The PHA must obtain and document in the tenant file third party verification of the following factors, or must document in the tenant file why third party verification was not available:

(i) Reported family annual income;

(ii) The value of assets;

(iii) Expenses related to deductions from annual income; and

(iv) Other factors that affect the determination of adjusted income.

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

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

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

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

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

(2) At the effective date of a regular or interim reexamination, the PHA must make appropriate adjustments in the housing assistance payment. (For a voucher tenancy, the housing assistance payment shall be calculated in accordance with §982.505. For a certificate tenancy, the housing assistance payment shall be calculated in accordance with §982.518.)

(e) *Family member income.* Family income must include income of all family members, including family members not related by blood or marriage. If any new family member is added, family income must include any income of the additional family member. The PHA must conduct a reexamination to determine such additional income, and must make appropriate adjustments in the housing assistance payment.

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

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

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

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

[63 FR 23861, Apr. 30, 1998, as amended at 64 FR 13057, Mar. 16, 1999; 64 FR 26649, May 14, 1999; 64 FR 56915, Oct. 21, 1999; 65 FR 16822, Mar. 30, 2000]

EDITORIAL NOTE: At 64 FR 26649, May 14, 1999, §982.516 was amended in paragraph (e) by removing the reference to ''and family unit size''; however paragraph (e) does not contain this phrase.

§982.517 Utility allowance schedule.

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

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

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

(2)(i) a PHA's utility allowance schedule, and the utility allowance for an individual family, must include the utilities and services that are necessary in the locality to provide housing that complies with the housing quality standards. However, the PHA may not provide any allowance for non-essential utility costs, such as costs of cable or satellite television.

(ii) In the utility allowance schedule, the PHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection (disposal of waste and refuse); other electric; refrigerator (cost of tenant-supplied refrigerator); range (cost of tenant-supplied range); and other specified housing services. The PHA must provide a utility allowance for tenant-paid air-conditioning costs if the majority of housing units in the market provide centrally air-conditioned units or there is appropriate wiring for tenant-installed air conditioners.

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

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

(c) *Revisions of utility allowance schedule.* (1) a PHA must review its schedule of utility allowances each year, and must revise its allowance for a utility category if there PHAs been a change of 10 percent or more in the utility rate since the last time the utility allowance schedule was revised. The PHA must maintain information supporting its annual review of utility allowances and any revisions made in its utility allowance schedule.

(2) At HUD's direction, the PHA must revise the utility allowance schedule to correct any errors, or as necessary to update the schedule.

(d) *Use of utility allowance schedule.* (1) The PHA must use the appropriate utility allowance for the size of dwelling unit actually leased by the family (rather than the family unit size as determined under the PHA subsidy standards).

(2) At reexamination, the PHA must use the PHA current utility allowance schedule.

(e) *Higher utility allowance as reasonable accommodation for a person with disabilities.* On request from a family that includes a person with disabilities, the PHA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation in accordance with 24 CFR part 8 to make the program accessible to and usable by the family member with a disability.

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

§ 982.518 Regular tenancy: How to calculate housing assistance payment.

The monthly housing assistance payment equals the gross rent, minus the higher of:

(a) The total tenant payment; or

(b) The minimum rent as required by law.

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

§ 982.519 Regular tenancy: Annual adjustment of rent to owner.

(a) *When rent is adjusted.* At each annual anniversary date of the HAP contract, the PHA must adjust the rent to

owner at the request of the owner in accordance with this section.

(b) *Amount of annual adjustment.* (1) The adjusted rent to owner equals the lesser of:

(i) The pre-adjustment rent to owner multiplied by the applicable Section 8 annual adjustment factor, published by HUD in the FEDERAL REGISTER, that is in effect 60 days before the HAP contract anniversary;

(ii) The reasonable rent (as most recently determined or redetermined by the PHA in accordance with §982.503); or

(iii) The amount requested by the owner.

(2) In making the annual adjustment, the pre-adjustment rent to owner does not include any previously approved special adjustments.

(3) The rent to owner may be adjusted up or down in accordance with this section.

(4) Notwithstanding paragraph (b)(1) of this section, the rent to owner for a unit must not be increased at the annual anniversary date unless:

(i) The owner requests the adjustment by giving notice to the PHA; and

(ii) During the year before the annual anniversary date, the owner has complied with all requirements of the HAP contract, including compliance with the HQS.

(5) The rent to owner will only be increased for housing assistance payments covering months commencing on the later of:

(i) The first day of the first month commencing on or after the contract anniversary date; or

(ii) At least sixty days after the PHA receives the owner's request.

(6) To receive an increase resulting from the annual adjustment for an annual anniversary date, the owner must request the increase at least sixty days before the next annual anniversary date.

[63 FR 23861, Apr. 30, 1998, as amended at 64 FR 13057, Mar. 16, 1999. Redesignated at 64 FR 26648, May 14, 1999]

§982.520 Regular tenancy: Special adjustment of rent to owner.

(a) *Substantial and general cost increases.* (1) At HUD's sole discretion, HUD may approve a special adjustment of the rent to owner to reflect increases in the actual and necessary costs of owning and maintaining the unit because of substantial and general increases in:

(i) Real property taxes;

(ii) Special governmental assessments;

(iii) Utility rates; or

(iv) Costs of utilities not covered by regulated rates.

(2) An PHA may make a special adjustment of the rent to owner only if the adjustment has been approved by HUD. The owner does not have any right to receive a special adjustment.

(b) *Reasonable rent.* The adjusted rent may not exceed the reasonable rent. The owner may not receive a special adjustment if the adjusted rent would exceed the reasonable rent.

(c) *Term of special adjustment.* (1) The PHA may withdraw or limit the term of any special adjustment.

(2) If a special adjustment is approved to cover temporary or one-time costs, the special adjustment is only a temporary or one-time increase of the rent to owner.

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

§982.521 Rent to owner in subsidized project.

(a) *Applicability to subsidized project.* This section applies to a program tenancy in any of the following types of federally subsidized project:

(1) An insured or non-insured Section 236 project;

(2) A Section 202 project;

(3) A Section 221(d)(3) below market interest rate (BMIR) project; or

(4) A Section 515 project of the Rural Development Administration.

(b) *How rent to owner is determined.* The rent to owner is the subsidized rent as determined in accordance with requirements for the applicable federal program listed in paragraph (a) of this section. This determination is not subject to the prohibition against increasing the rent to owner during the initial lease term (see §982.309).

(c) *Certificate tenancy—Rent adjustment.* Rent to owner for a certificate tenancy is not subject to provisions governing annual adjustment (§982.519)

or special adjustment (§ 982.520) of rent to owner.

[65 FR 16822, Mar. 30, 2000]

Subpart L—Family Obligations; Denial and Termination of Assistance

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

§ 982.551 Obligations of participant.

(a) *Purpose.* This section states the obligations of a participant family under the program.

(b) *Supplying required information*—(1) The family must supply any information that the PHA or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status (as provided by 24 CFR part 5). ''Information'' includes any requested certification, release or other documentation.

(2) The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements.

(3) The family must disclose and verify social security numbers (as provided by part 5, subpart B, of this title) and must sign and submit consent forms for obtaining information in accordance with part 5, subpart B, of this title.

(4) Any information supplied by the family must be true and complete.

(c) *HQS breach caused by family.* The family is responsible for an HQS breach caused by the family as described in § 982.404(b).

(d) *Allowing PHA inspection.* The family must allow the PHA to inspect the unit at reasonable times and after reasonable notice.

(e) *Violation of lease.* The family may not commit any serious or repeated violation of the lease.

(f) *Family notice of move or lease termination.* The family must notify the PHA and the owner before the family moves out of the unit, or terminates the lease on notice to the owner. See § 982.314(d).

(g) *Owner eviction notice.* The family must promptly give the PHA a copy of any owner eviction notice.

(h) *Use and occupancy of unit.*—(1) The family must use the assisted unit for residence by the family. The unit must be the family's only residence.

(2) The composition of the assisted family residing in the unit must be approved by the PHA. The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit. No other person [i.e., nobody but members of the assisted family] may reside in the unit (except for a foster child or live-in aide as provided in paragraph (h)(4) of this section).

(3) The family must promptly notify the PHA if any family member no longer resides in the unit.

(4) If the PHA has given approval, a foster child or a live-in-aide may reside in the unit. The PHA has the discretion to adopt reasonable policies concerning residence by a foster child or a live-in-aide, and defining when PHA consent may be given or denied.

(5) Members of the household may engage in legal profitmaking activities in the unit, but only if such activities are incidental to primary use of the unit for residence by members of the family.

(6) The family must not sublease or let the unit.

(7) The family must not assign the lease or transfer the unit.

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

(j) *Interest in unit.* The family must not own or have any interest in the unit.

(k) *Fraud and other program violation.* The members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with the programs.

(l) *Crime by household members.* The members of the household may not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises (see § 982.553).

(m) *Alcohol abuse by household members.* The members of the household must not abuse alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.

(n) *Other housing assistance.* An assisted family, or members of the family, may not receive Section 8 tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative (as determined by HUD or in accordance with HUD requirements) federal, State or local housing assistance program.

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[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 11119, Mar. 18, 1996; 61 FR 13627, Mar. 27, 1996; 61 FR 27163, May 30, 1996; 64 FR 26650, May 14, 1999; 66 FR 28805, May 24, 2001]

§ 982.552 PHA denial or termination of assistance for family.

(a) *Action or inaction by family.* (1) a PHA may deny assistance for an applicant or terminate assistance for a participant under the programs because of the family's action or failure to act as described in this section or § 982.553. The provisions of this section do not affect denial or termination of assistance for grounds other than action or failure to act by the family.

(2) Denial of assistance for an applicant may include any or all of the following: denying listing on the PHA waiting list, denying or withdrawing a voucher, refusing to enter into a HAP contract or approve a lease, and refusing to process or provide assistance under portability procedures.

(3) Termination of assistance for a participant may include any or all of the following: refusing to enter into a HAP contract or approve a lease, terminating housing assistance payments under an outstanding HAP contract, and refusing to process or provide assistance under portability procedures.

(4) This section does not limit or affect exercise of the PHA rights and remedies against the owner under the HAP contract, including termination, suspension or reduction of housing assistance payments, or termination of the HAP contract.

(b) *Requirement to deny admission or terminate assistance.* (1) For provisions on denial of admission and termination of assistance for illegal drug use, other criminal activity, and alcohol abuse that would threaten other residents, see § 982.553.

(2) The PHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease.

(3) The PHA must deny admission to the program for an applicant, or terminate program assistance for a participant, if any member of the family fails to sign and submit consent forms for obtaining information in accordance with part 5, subparts B and F of this title.

(4) The family must submit required evidence of citizenship or eligible immigration status. See part 5 of this title for a statement of circumstances in which the PHA must deny admission or terminate program assistance because a family member does not establish citizenship or eligible immigration status, and the applicable informal hearing procedures.

(c) *Authority to deny admission or terminate assistance.* (1) *Grounds for denial or termination of assistance.* The PHA may at any time deny program assistance for an applicant, or terminate program assistance for a participant, for any of the following grounds:

(i) If the family violates any family obligations under the program (see § 982.551). See § 982.553 concerning denial or termination of assistance for crime by family members.

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

(iii) If a PHA has ever terminated assistance under the program for any member of the family.

(iv) If any member of the family has committed fraud, bribery, or any other

corrupt or criminal act in connection with any Federal housing program (see also § 982.553(a)(1));

(v) If the family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

(vi) If the family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

(vii) If the family breaches an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA. (The PHA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement.)

(viii) If a family participating in the FSS program fails to comply, without good cause, with the family's FSS contract of participation.

(ix) If the family has engaged in or threatened abusive or violent behavior toward PHA personnel.

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

(xi) If the family has been engaged in criminal activity or alcohol abuse as described in § 982.553.

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

(i) The PHA may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

(ii) The PHA may impose, as a condition of continued assistance for other family members, a requirement that other family members who participated in or were culpable for the action or failure will not reside in the unit. The PHA may permit the other members of a participant family to continue receiving assistance.

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

(iv) If the family includes a person with disabilities, the PHA decision concerning such action is subject to consideration of reasonable accommodation in accordance with part 8 of this title.

(v) *Nondiscrimination limitation.* The PHA's admission and eviction actions must be consistent with fair housing and equal opportunity provisions of § 5.105 of this title.

(d) *Information for family.* The PHA must give the family a written description of:

(1) Family obligations under the program.

(2) The grounds on which the PHA may deny or terminate assistance because of family action or failure to act.

(3) The PHA informal hearing procedures.

(e) *Applicant screening.* The PHA may at any time deny program assistance for an applicant in accordance with the PHA policy, as stated in the PHA administrative plan, on screening of applicants for family behavior or suitability for tenancy.

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[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 13627, Mar. 27, 1996; 63 FR 23865, Apr. 30, 1998; 64 FR 26650, May 14, 1999; 64 FR 49659, Sept. 14, 1999; 64 FR 56915, Oct. 21, 1999; 65 FR 16823, Mar. 30, 2000; 66 FR 28805, May 24, 2001]

§ 982.553 Denial of admission and termination of assistance for criminals and alcohol abusers.

(a) *Denial of admission.* (1) *Prohibiting admission of drug criminals.*

(i) The PHA *must* prohibit admission to the program of an applicant for three years from the date of eviction if a household member has been evicted from federally assisted housing for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

(A) That the evicted household member who engaged in drug-related criminal activity has successfully completed a supervised drug rehabilitation program approved by the PHA; or

(B) That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned).

(ii) The PHA must establish standards that prohibit admission if:

(A) The PHA determines that any household member is currently engaging in illegal use of a drug;

(B) The PHA determines that it has reasonable cause to believe that a household member's illegal drug use or a pattern of illegal drug use may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents; or

(C) Any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(2) *Prohibiting admission of other criminals—(i) Mandatory prohibition.* The PHA *must* establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In this screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the State where the housing is located and in other States where the household members are known to have resided.

(ii) *Permissive prohibitions.* (A) The PHA *may* prohibit admission of a household to the program if the PHA determines that any household member is currently engaged in, or has engaged in during a reasonable time before the admission:

(1) Drug-related criminal activity;

(2) Violent criminal activity;

(3) Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or

(4) Other criminal activity which may threaten the health or safety of the owner, property management staff, or persons performing a contract administration function or responsibility on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor or agent).

(B) The PHA may establish a period before the admission decision during which an applicant must not to have engaged in the activities specified in paragraph (a)(2)(i) of this section (''reasonable time'').

(C) If the PHA previously denied admission to an applicant because a member of the household engaged in criminal activity, the PHA may reconsider the applicant if the PHA has sufficient evidence that the members of the household are not currently engaged in, and have not engaged in, such criminal activity during a reasonable period, as determined by the PHA, before the admission decision.

(1) The PHA would have ''sufficient evidence'' if the household member submitted a certification that she or he is not currently engaged in and has not engaged in such criminal activity during the specified period and provided supporting information from such sources as a probation officer, a landlord, neighbors, social service agency workers and criminal records, which the PHA verified.

(2) For purposes of this section, a household member is ''currently engaged in'' criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current.

(3) *Prohibiting admission of alcohol abusers.* The PHA must establish standards that prohibit admission to the program if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the

health, safety, or right to peaceful enjoyment of the premises by other residents.

(b) *Terminating assistance*—(1) *Terminating assistance for drug criminals.* (i) The PHA *must* establish standards that allow the PHA to terminate assistance for a family under the program if the PHA determines that:

(A) Any household member is currently engaged in any illegal use of a drug; or

(B) A pattern of illegal use of a drug by any household member interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

(ii) The PHA must immediately terminate assistance for a family under the program if the PHA determines that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

(iii) The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any family member has violated the family's obligation under §982.551 not to engage in any drug-related criminal activity.

(2) *Terminating assistance for other criminals.* The PHA must establish standards that allow the PHA to terminate assistance under the program for a family if the PHA determines that any household member has violated the family's obligation under §982.551 not to engage in violent criminal activity.

(3) *Terminating assistance for alcohol abusers.* The PHA must establish standards that allow termination of assistance for a family if the PHA determines that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

(c) *Evidence of criminal activity.* The PHA may terminate assistance for criminal activity by a household member as authorized in this section if the PHA determines, based on a preponderance of the evidence, that the household member has engaged in the activity, regardless of whether the household member has been arrested or convicted for such activity.

(d) *Use of criminal record.*—(1) *Denial.* If a PHA proposes to deny admission for criminal activity as shown by a criminal record, the PHA must provide the subject of the record and the applicant with a copy of the criminal record. The PHA must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with §982.554. (See part 5, subpart J for provision concerning access to criminal records.)

(2) *Termination of assistance.* If a PHA proposes to terminate assistance for criminal activity as shown by a criminal record, the PHA must notify the household of the proposed action to be based on the information and must provide the subject of the record and the tenant with a copy of the criminal record. The PHA must give the family an opportunity to dispute the accuracy and relevance of that record in accordance with §982.555.

(3) *Cost of obtaining criminal record.* The PHA may not pass along to the tenant the costs of a criminal records check.

[66 FR 28805, May 24, 2001]

§ 982.554 Informal review for applicant.

(a) *Notice to applicant.* The PHA must give an applicant for participation prompt notice of a decision denying assistance to the applicant. The notice must contain a brief statement of the reasons for the PHA decision. The notice must also state that the applicant may request an informal review of the decision and must describe how to obtain the informal review.

(b) *Informal review process.* The PHA must give an applicant an opportunity for an informal review of the PHA decision denying assistance to the applicant. The administrative plan must state the PHA procedures for conducting an informal review. The PHA review procedures must comply with the following:

(1) The review may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

(2) The applicant must be given an opportunity to present written or oral objections to the PHA decision.

(3) The PHA must notify the applicant of the PHA final decision after the informal review, including a brief statement of the reasons for the final decision.

(c) *When informal review is not required.* The PHA is not required to provide the applicant an opportunity for an informal review for any of the following:

(1) Discretionary administrative determinations by the PHA.

(2) General policy issues or class grievances.

(3) A determination of the family unit size under the PHA subsidy standards.

(4) An PHA determination not to approve an extension or suspension of a voucher term.

(5) A PHA determination not to grant approval of the tenancy.

(6) An PHA determination that a unit selected by the applicant is not in compliance with HQS.

(7) An PHA determination that the unit is not in accordance with HQS because of the family size or composition.

(d) *Restrictions on assistance for noncitizens.* The informal hearing provisions for the denial of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

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[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 13627, Mar. 27, 1996; 64 FR 26650, May 14, 1999]

§ 982.555 Informal hearing for participant.

(a) *When hearing is required.*(1) a PHA must give a participant family an opportunity for an informal hearing to consider whether the following PHA decisions relating to the individual circumstances of a participant family are in accordance with the law, HUD regulations and PHA policies:

(i) A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment.

(ii) A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the PHA utility allowance schedule.

(iii) A determination of the family unit size under the PHA subsidy standards.

(iv) A determination 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 PHA subsidy standards, or the PHA 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 PHA policy and HUD rules.

(2) In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the PHA must give the opportunity for an informal hearing before the PHA terminates housing assistance payments for the family under an outstanding HAP contract.

(b) *When hearing is not required.* The PHA is not required to provide a participant family an opportunity for an informal hearing for any of the following:

(1) Discretionary administrative determinations by the PHA.

(2) General policy issues or class grievances.

(3) Establishment of the PHA schedule of utility allowances for families in the program.

(4) a PHA determination not to approve an extension or suspension of a voucher term.

(5) a PHA determination not to approve a unit or tenancy.

(6) a PHA determination that an assisted unit is not in compliance with HQS. (However, the PHA must provide the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family as described in § 982.551(c).)

(7) a PHA determination that the unit is not in accordance with HQS because of the family size.

(8) A determination by the PHA to exercise or not to exercise any right or

remedy against the owner under a HAP contract.

(c) *Notice to family*. (1) In the cases described in paragraphs (a)(1) (i), (ii) and (iii) of this section, the PHA must notify the family that the family may ask for an explanation of the basis of the PHA determination, and that if the family does not agree with the determination, the family may request an informal hearing on the decision.

(2) In the cases described in paragraphs (a)(1) (iv), (v) and (vi) of this section, the PHA must give the family prompt written notice that the family may request a hearing. The notice must:

(i) Contain a brief statement of reasons for the decision,

(ii) State that if the family does not agree with the decision, the family may request an informal hearing on the decision, and

(iii) State the deadline for the family to request an informal hearing.

(d) *Expeditious hearing process.* Where a hearing for a participant family is required under this section, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

(e) *Hearing procedures*—(1) *Administrative plan*. The administrative plan must state the PHA procedures for conducting informal hearings for participants.

(2) *Discovery*—(i) *By family*. The family must be given the opportunity to examine before the PHA hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such document at the family's expense. If the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

(ii) *By PHA*. The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at PHA offices before the PHA hearing any family documents that are directly relevant to the hearing. The PHA must be allowed to copy any such document at the PHA's expense. If the family does not make the document available for examination on request of the PHA, the family may not rely on the document at the hearing.

(iii) *Documents.* The term ''documents'' includes records and regulations.

(3) *Representation of family*. At its own expense, the family may be represented by a lawyer or other representative.

(4) *Hearing officer: Appointment and authority*. (i) The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of this person.

(ii) The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures.

(5) *Evidence.* The PHA and the family must be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(6) *Issuance of decision*. The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family shall be based on a preponderance of the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the family.

(f) *Effect of decision*. The PHA is not bound by a hearing decision:

(1) Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing under this section, or that otherwise exceeds the authority of the person conducting the hearing under the PHA hearing procedures.

(2) Contrary to HUD regulations or requirements, or otherwise contrary to federal, State, or local law.

(3) If the PHA determines that it is not bound by a hearing decision, the PHA must promptly notify the family of the determination, and of the reasons for the determination.

(g) *Restrictions on assistance to noncitizens.* The informal hearing provisions for the denial of assistance on the basis

of ineligible immigration status are contained in 24 CFR part 5.

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[60 FR 34695, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 13627, Mar. 27, 1996; 64 FR 26650, May 14, 1999; 65 FR 16823, Mar. 30, 2000]

Subpart M—Special Housing Types

SOURCE: 63 FR 23865, Apr. 30, 1998, unless otherwise noted.

§ 982.601 Overview.

(a) *Special housing types.* This subpart describes program requirements for special housing types. The following are the special housing types:

(1) Single room occupancy (SRO) housing;

(2) Congregate housing;

(3) Group home;

(4) Shared housing;

(5) Manufactured home;

(6) Cooperative housing (excluding families that are not cooperative members); and

(7) Homeownership option.

(b) *PHA choice to offer special housing type.* (1) The PHA may permit a family to use any of the following special housing types in accordance with requirements of the program: single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home when the family owns the home and leases the manufactured home space, cooperative housing or homeownership option.

(2) In general, the PHA is not required to permit families (including families that move into the PHA program under portability procedures) to use any of these special housing types, and may limit the number of families using special housing types.

(3) The PHA must permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8.

(4) For occupancy of a manufactured home, see § 982.620(a).

(c) *Program funding for special housing types.* (1) HUD does not provide any additional or designated funding for special housing types, or for a specific special housing type (e.g, the homeownership option). Assistance for special housing types is paid from program funding available for the PHA's tenant-based program under the consolidated annual contributions contract.

(2) The PHA may not set aside program funding or program slots for special housing types or for a specific special housing type.

(d) *Family choice of housing and housing type.* The family chooses whether to use housing that qualifies as a special housing type under this subpart, or as any specific special housing type, or to use other eligible housing in accordance with requirements of the program. The PHA may not restrict the family's freedom to choose among available units in accordance with § 982.353.

(e) *Applicability of requirements.* (1) Except as modified by this subpart, the requirements of other subparts of this part apply to the special housing types.

(2) Provisions in this subpart only apply to a specific special housing type. The housing type is noted in the title of each section.

(3) Housing must meet the requirements of this subpart for a single special housing type specified by the family. Such housing is not subject to requirements for other special housing types. A single unit cannot be designated as more than one special housing type.

[63 FR 23865, Apr. 30, 1998, as amended at 65 FR 55162, Sept. 12, 2000; 67 FR 64493, Oct. 18, 2002]

SINGLE ROOM OCCUPANCY (SRO)

§ 982.602 SRO: Who may reside in an SRO?

A single person may reside in an SRO housing unit.

[64 FR 26650, May 14, 1999]

§ 982.603 SRO: Lease and HAP contract.

For SRO housing, there is a separate lease and HAP contract for each assisted person.

§ 982.604 SRO: Voucher housing assistance payment.

(a) For a person residing in SRO housing, the payment standard is 75 percent of the zero-bedroom payment standard amount on the PHA payment standard schedule. For a person residing in SRO housing in an exception area, the payment standard is 75 percent of the HUD-approved zero-bedroom exception payment standard amount.

(b) The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero bedroom utility allowance.

[64 FR 26650, May 14, 1999]

§ 982.605 SRO: Housing quality standards.

(a) *HQS standards for SRO.* The HQS in § 982.401 apply to SRO housing. However, the standards in this section apply in place of § 982.401(b) (sanitary facilities), § 982.401(c) (food preparation and refuse disposal), and § 982.401(d) (space and security). Since the SRO units will not house children, the housing quality standards in § 982.401(j), concerning lead-based paint, do not apply to SRO housing.

(b) *Performance requirements.* (1) SRO housing is subject to the additional performance requirements in this paragraph (b).

(2) Sanitary facilities, and space and security characteristics must meet local code standards for SRO housing. In the absence of applicable local code standards for SRO housing, the following standards apply:

(i) *Sanitary facilities.* (A) At least one flush toilet that can be used in privacy, lavatory basin, and bathtub or shower, in proper operating condition, must be supplied for each six persons or fewer residing in the SRO housing.

(B) If SRO units are leased only to males, flush urinals may be substituted for not more than one-half the required number of flush toilets. However, there must be at least one flush toilet in the building.

(C) Every lavatory basin and bathtub or shower must be supplied at all times with an adequate quantity of hot and cold running water.

(D) All of these facilities must be in proper operating condition, and must be adequate for personal cleanliness and the disposal of human waste. The facilities must utilize an approvable public or private disposal system.

(E) Sanitary facilities must be reasonably accessible from a common hall or passageway to all persons sharing them. These facilities may not be located more than one floor above or below the SRO unit. Sanitary facilities may not be located below grade unless the SRO units are located on that level.

(ii) *Space and security.* (A) No more than one person may reside in an SRO unit.

(B) An SRO unit must contain at least one hundred ten square feet of floor space.

(C) An SRO unit must contain at least four square feet of closet space for each resident (with an unobstructed height of at least five feet). If there is less closet space, space equal to the amount of the deficiency must be subtracted from the area of the habitable room space when determining the amount of floor space in the SRO unit. The SRO unit must contain at least one hundred ten square feet of remaining floor space after subtracting the amount of the deficiency in minimum closet space.

(D) Exterior doors and windows accessible from outside an SRO unit must be lockable.

(3) *Access.* (i) Access doors to an SRO unit must have locks for privacy in proper operating condition.

(ii) An SRO unit must have immediate access to two or more approved means of exit, appropriately marked, leading to safe and open space at ground level, and any means of exit required by State and local law.

(iii) The resident must be able to access an SRO unit without passing through any other unit.

(4) *Sprinkler system.* A sprinkler system that protects all major spaces, hard wired smoke detectors, and such other fire and safety improvements as State or local law may require must be installed in each building. The term ''major spaces'' means hallways, large

common areas, and other areas specified in local fire, building, or safety codes.

CONGREGATE HOUSING

§982.606 Congregate housing: Who may reside in congregate housing.

(a) An elderly person or a person with disabilities may reside in a congregate housing unit.

(b)(1) If approved by the PHA, a family member or live-in aide may reside with the elderly person or person with disabilities.

(2) The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See §982.316 concerning occupancy by a live-in aide.

§982.607 Congregate housing: Lease and HAP contract.

For congregate housing, there is a separate lease and HAP contract for each assisted family.

§982.608 Congregate housing: Voucher housing assistance payment.

(a) Unless there is a live-in aide:

(1) For a family residing in congregate housing, the payment standard is the zero-bedroom payment standard amount on the PHA payment standard schedule. For a family residing in congregate housing in an exception area, the payment standard is the HUD-approved zero-bedroom exception payment standard amount.

(2) However, if there are two or more rooms in the unit (not including kitchen or sanitary facilities), the payment standard for a family residing in congregate housing is the one-bedroom payment standard amount.

(b) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

[63 FR 23865, Apr. 30, 1998, as amended at 64 FR 26650, May 14, 1999]

§982.609 Congregate housing: Housing quality standards.

(a) *HQS standards for congregate housing.* The HQS in §982.401 apply to congregate housing. However, the standards in this section apply in place of §982.401(c) (food preparation and refuse disposal). Congregate housing is not subject to the HQS acceptability requirement in §982.401(d)(2)(i) that the dwelling unit must have a kitchen area.

(b) *Food preparation and refuse disposal: Additional performance requirements.* The following additional performance requirements apply to congregate housing:

(1) The unit must contain a refrigerator of appropriate size.

(2) There must be central kitchen and dining facilities on the premises. These facilities:

(i) Must be located within the premises, and accessible to the residents;

(ii) Must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner;

(iii) Must be used to provide a food service that is provided for the residents, and that is not provided by the residents; and

(iv) Must be for the primary use of residents of the congregate units and be sufficient in size to accommodate the residents.

(3) There must be adequate facilities and services for the sanitary disposal of food waste and refuse, including facilities for temporary storage where necessary.

GROUP HOME

§982.610 Group home: Who may reside in a group home.

(a) An elderly person or a person with disabilities may reside in a State-approved group home.

(b)(1) If approved by the PHA, a live-in aide may reside with a person with disabilities.

(2) The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See §982.316 concerning occupancy by a live-in aide.

(c) Except for a live-in aide, all residents of a group home, whether assisted or unassisted, must be elderly persons or persons with disabilities.

(d) Persons residing in a group home must not require continual medical or nursing care.

(e) Persons who are not assisted under the tenant-based program may reside in a group home.

(f) No more than 12 persons may reside in a group home. This limit covers all persons who reside in the unit, including assisted and unassisted residents and any live-in aide.

§ 982.611 Group home: Lease and HAP contract.

For assistance in a group home, there is a separate HAP contract and lease for each assisted person.

§ 982.612 Group home: State approval of group home.

A group home must be licensed, certified, or otherwise approved in writing by the State (e.g., Department of Human Resources, Mental Health, Retardation, or Social Services) as a group home for elderly persons or persons with disabilities.

§ 982.613 Group home: Rent and voucher housing assistance payment.

(a) *Meaning of pro-rata portion.* For a group home, the term ''pro-rata portion'' means the ratio derived by dividing the number of persons in the assisted household by the total number of residents (assisted and unassisted) residing in the group home. The number of persons in the assisted household equals one assisted person plus any PHA-approved live-in aide.

(b) *Rent to owner: Reasonable rent limit.* (1) The rent to owner for an assisted person may not exceed the pro-rata portion of the reasonable rent for the group home.

(2) The reasonable rent for a group home is determined in accordance with § 982.507. In determining reasonable rent for the group home, the PHA must consider whether sanitary facilities, and facilities for food preparation and service, are common facilities or private facilities.

(c) *Payment standard.* (1) *Family unit size.* (i) Unless there is a live-in aide, the family unit size is zero or one bedroom.

(ii) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

(2) The payment standard for a person who resides in a group home is the lower of:

(i) The payment standard amount on the PHA payment standard schedule for the family unit size; or (ii) The pro-rata portion of the payment standard amount on the PHA payment standard schedule for the group home size.

(iii) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

(d) *Utility allowance.* The utility allowance for each assisted person residing in a group home is the pro-rata portion of the utility allowance for the group home unit size.

[63 FR 23865, Apr. 30, 1998, as amended at 64 FR 26651, May 14, 1999]

§ 982.614 Group home: Housing quality standards.

(a) *Compliance with HQS.* The PHA may not give approval to reside in a group home unless the unit, including the portion of the unit available for use by the assisted person under the lease, meets the housing quality standards.

(b) *Applicable HQS standards.* (1) The HQS in § 982.401 apply to assistance in a group home. However, the standards in this section apply in place of § 982.401(b) (sanitary facilities), § 982.401(c) (food preparation and refuse disposal), § 982.401(d) (space and security), § 982.401(g) (structure and materials) and § 982.401(l) (site and neighborhood).

(2) The entire unit must comply with the HQS.

(c) *Additional performance requirements.* The following additional performance requirements apply to a group home:

(1) *Sanitary facilities.* (i) There must be a bathroom in the unit. The unit must contain, and an assisted resident must have ready access to:

(A) A flush toilet that can be used in privacy;

(B) A fixed basin with hot and cold running water; and

(C) A shower or bathtub with hot and cold running water.

(ii) All of these facilities must be in proper operating condition, and must be adequate for personal cleanliness and the disposal of human waste. The facilities must utilize an approvable public or private disposal system.

(iii) The unit may contain private or common sanitary facilities. However, the facilities must be sufficient in number so that they need not be shared by more than four residents of the group home.

(iv) Sanitary facilities in the group home must be readily accessible to and usable by residents, including persons with disabilities.

(2) *Food preparation and service.* (i) The unit must contain a kitchen and a dining area. There must be adequate space to store, prepare, and serve foods in a sanitary manner.

(ii) Food preparation and service equipment must be in proper operating condition. The equipment must be adequate for the number of residents in the group home. The unit must contain the following equipment:

(A) A stove or range, and oven;

(B) A refrigerator; and

(C) A kitchen sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.

(iii) There must be adequate facilities and services for the sanitary disposal of food waste and refuse, including facilities for temporary storage where necessary.

(iv) The unit may contain private or common facilities for food preparation and service.

(3) *Space and security.* (i) The unit must provide adequate space and security for the assisted person.

(ii) The unit must contain a living room, kitchen, dining area, bathroom, and other appropriate social, recreational or community space. The unit must contain at least one bedroom of appropriate size for each two persons.

(iii) Doors and windows that are accessible from outside the unit must be lockable.

(4) *Structure and material.* (i) The unit must be structurally sound to avoid any threat to the health and safety of the residents, and to protect the residents from the environment.

(ii) Ceilings, walls, and floors must not have any serious defects such as severe bulging or leaning, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts or other significant damage. The roof structure must be firm, and the roof must be weathertight. The exterior or wall structure and exterior wall surface may not have any serious defects such as serious leaning, buckling, sagging, cracks or large holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc., must not present a danger of tripping or falling. Elevators must be maintained in safe operating condition.

(iii) The group home must be accessible to and usable by a resident with disabilities.

(5) *Site and neighborhood.* The site and neighborhood must be reasonably free from disturbing noises and reverberations and other hazards to the health, safety, and general welfare of the residents. The site and neighborhood may not be subject to serious adverse environmental conditions, natural or man-made, such as dangerous walks or steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mud slides, abnormal air pollution, smoke or dust, excessive noise, vibrations or vehicular traffic, excessive accumulations of trash, vermin or rodent infestation, or fire hazards. The unit must be located in a residential setting.

SHARED HOUSING

§982.615 Shared housing: Occupancy.

(a) *Sharing a unit.* An assisted family may reside in shared housing. In shared housing, an assisted family shares a unit with the other resident or residents of the unit. The unit may be a house or an apartment.

(b) *Who may share a dwelling unit with assisted family?* (1) If approved by the HA, a live-in aide may reside with the family to care for a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See §982.316 concerning occupancy by a live-in aide.

(2) Other persons who are assisted under the tenant-based program, or other persons who are not assisted

under the tenant-based program, may reside in a shared housing unit.

(3) The owner of a shared housing unit may reside in the unit. A resident owner may enter into a HAP contract with the PHA. However, housing assistance may not be paid on behalf of an owner. An assisted person may not be related by blood or marriage to a resident owner.

§ 982.616 Shared housing: Lease and HAP contract.

For assistance in a shared housing unit, there is a separate HAP contract and lease for each assisted family.

§ 982.617 Shared housing: Rent and voucher housing assistance payment.

(a) *Meaning of pro-rata portion.* For shared housing, the term ''pro-rata portion'' means the ratio derived by dividing the number of bedrooms in the private space available for occupancy by a family by the total number of bedrooms in the unit. For example, for a family entitled to occupy three bedrooms in a five bedroom unit, the ratio would be 3/5.

(b) *Rent to owner: Reasonable rent.* (1) The rent to owner for the family may not exceed the pro-rata portion of the reasonable rent for the shared housing dwelling unit.

(2) The reasonable rent is determined in accordance with § 982.507.

(c) *Payment standard.* The payment standard for a family that resides in a shared housing is the lower of:

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

(2) The pro-rata portion of the payment standard amount on the PHA payment standard schedule for the size of the shared housing unit.

(d) *Utility allowance.* The utility allowance for an assisted family residing in shared housing is the pro-rata portion of the utility allowance for the shared housing unit.

[63 FR 23865, Apr. 30, 1998, as amended by 64 FR 26651, May 14, 1999]

§ 982.618 Shared housing: Housing quality standards.

(a) *Compliance with HQS.* The PHA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

(b) *Applicable HQS standards.* The HQS in § 982.401 apply to assistance in shared housing. However, the HQS standards in this section apply in place of § 982.401(d) (space and security).

(c) *Facilities available for family.* The facilities available for the use of an assisted family in shared housing under the family's lease must include (whether in the family's private space or in the common space) a living room, sanitary facilities in accordance with § 982.401(b), and food preparation and refuse disposal facilities in accordance with § 982.401(c).

(d) *Space and security: Performance requirements.* (1) The entire unit must provide adequate space and security for all its residents (whether assisted or unassisted).

(2)(i) Each unit must contain private space for each assisted family, plus common space for shared use by the residents of the unit. Common space must be appropriate for shared use by the residents.

(ii) The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family may not be less than the family unit size.

(iii) A zero or one bedroom unit may not be used for shared housing.

COOPERATIVE

§ 982.619 Cooperative housing.

(a) *Assistance in cooperative housing.* This section applies to rental assistance for a cooperative member residing in cooperative housing. However, this section does not apply to:

(1) Assistance for a cooperative member under the homeownership option pursuant to §§ 982.625 through 982.641; or

(2) Rental assistance for a family that leases a cooperative housing unit from a cooperative member (such rental assistance is not a special housing type, and is subject to requirements in other subparts of this part 982).

(b) *Rent to owner.* (1) The reasonable rent for a cooperative unit is determined in accordance with §982.507. For cooperative housing, the rent to owner is the monthly carrying charge under the occupancy agreement/lease between the member and the cooperative.

(2) The carrying charge consists of the amount assessed to the member by the cooperative for occupancy of the housing. The carrying charge includes the member's share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. However, the carrying charge does not include down-payments or other payments to purchase the cooperative unit, or to amortize a loan to the family for this purpose.

(3) Gross rent is the carrying charge plus any utility allowance.

(4) For a regular tenancy under the certificate program, rent to owner is adjusted in accordance with §982.519 (annual adjustment) and §982.520 (special adjustments). For a cooperative, adjustments are applied to the carrying charge as determined in accordance with this section.

(5) The occupancy agreement/lease and other appropriate documents must provide that the monthly carrying charge is subject to Section 8 limitations on rent to owner.

(c) *Housing assistance payment.* The amount of the housing assistance payment is determined in accordance with subpart K of this part.

(d) *Maintenance.* (1) During the term of the HAP contract between the PHA and the cooperative, the dwelling unit and premises must be maintained in accordance with the HQS. If the dwelling unit and premises are not maintained in accordance with the HQS, the PHA may exercise all available remedies, regardless of whether the family or the cooperative is responsible for such breach of the HQS. PHA remedies for breach of the HQS include recovery of overpayments, abatement or other reduction of housing assistance payments, termination of housing assistance payments and termination of the HAP contract.

(2) The PHA may not make any housing assistance payments if the contract unit does not meet the HQS, unless any defect is corrected within the period specified by the PHA and the PHA verifies the correction. If a defect is life-threatening, the defect must be corrected within no more than 24 hours. For other defects, the defect must be corrected within the period specified by the PHA.

(3) The family is responsible for a breach of the HQS that is caused by any of the following:

(i) The family fails to perform any maintenance for which the family is responsible in accordance with the terms of the cooperative occupancy agreement between the cooperative member and the cooperative;

(ii) The family fails to pay for any utilities that the cooperative is not required to pay for, but which are to be paid by the cooperative member;

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

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

(4) If the family has caused a breach of the HQS for which the family is responsible, the PHA must take prompt and vigorous action to enforce such family obligations. The PHA may terminate assistance for violation of family obligations in accordance with §982.552.

(5) Section 982.404 does not apply to assistance for cooperative housing under this section.

(e) *Live-in aide.* (1) If approved by the PHA, a live-in aide may reside with the family to care for a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See §982.316 concerning occupancy by a live-in aide.

(2) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

[63 FR 23865, Apr. 30, 1998, as amended by 64 FR 26651, May 14, 1999; 65 FR 55162, Sept. 12, 2000]

MANUFACTURED HOME

§ 982.620 Manufactured home: Applicability of requirements.

(a) *Assistance for resident of manufactured home.* (1) A family may reside in a manufactured home with assistance under the program.

(2) The PHA must permit a family to lease a manufactured home and space with assistance under the program.

(3) The PHA may provide assistance for a family that owns the manufactured home and leases only the space. The PHA is not required to provide such assistance under the program.

(b) *Applicability.* (1) The HQS in § 982.621 always apply when assistance is provided to a family occupying a manufactured home (under paragraph (a)(2) or (a)(3) of this section).

(2) Sections 982.622 to 982.624 only apply when assistance is provided to a manufactured home owner to lease a manufactured home space.

(c) *Live-in aide.* (1) If approved by the PHA, a live-in aide may reside with the family to care for a person with disabilities. The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with 24 CFR part 8. See § 982.316 concerning occupancy by a live-in aide.

(2) If there is a live-in aide, the live-in aide must be counted in determining the family unit size.

§ 982.621 Manufactured home: Housing quality standards.

A manufactured home must meet all the HQS performance requirements and acceptability criteria in § 982.401. A manufactured home also must meet the following requirements:

(a) *Performance requirement.* A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage.

(b) *Acceptability criteria.* A manufactured home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist wind overturning and sliding.

MANUFACTURED HOME SPACE RENTAL

§ 982.622 Manufactured home space rental: Rent to owner.

(a) *What is included.* (1) Rent to owner for rental of a manufactured home space includes payment for maintenance and services that the owner must provide to the tenant under the lease for the space.

(2) Rent to owner does not include the costs of utilities and trash collection for the manufactured home. However, the owner may charge the family a separate fee for the cost of utilities or trash collection provided by the owner.

(b) *Reasonable rent.* (1) During the assisted tenancy, the rent to owner for the manufactured home space may not exceed a reasonable rent as determined in accordance with this section. Section 982.503 is not applicable.

(2) The PHA may not approve a lease for a manufactured home space until the PHA determines that the initial rent to owner for the space is a reasonable rent. At least annually during the assisted tenancy, the PHA must redetermine that the current rent to owner is a reasonable rent.

(3) The PHA must determine whether the rent to owner for the manufactured home space is a reasonable rent in comparison to rent for other comparable manufactured home spaces. To make this determination, the PHA must consider the location and size of the space, and any services and maintenance to be provided by the owner in accordance with the lease (without a fee in addition to the rent).

(4) By accepting each monthly housing assistance payment from the PHA, the owner of the manufactured home space certifies that the rent to owner for the space is not more than rent charged by the owner for unassisted rental of comparable spaces in the same manufactured home park or elsewhere. The owner must give the PHA information, as requested by the PHA, on rents charged by the owner for other manufactured home spaces.

§ 982.623 Manufactured home space rental: Housing assistance payment.

(a) *Housing assistance payment: For certificate tenancy.* (1) During the term

of a certificate tenancy (entered prior to the merger date), the amount of the monthly housing assistance payment equals the lesser of the amounts specified in paragraphs (b)(1)(i) or (b)(1)(ii) of this section:

(i) Manufactured home space cost minus the total tenant payment.

(ii) The rent to owner for the manufactured home space.

(2) ''Manufactured home space cost'' means the sum of:

(i) The amortization cost,

(ii) The utility allowance, and

(iii) The rent to owner for the manufactured home space.

(3) *Amortization cost.* (i) The amortization cost may include debt service to amortize cost (other than furniture costs) included in the purchase price of the manufactured home. The debt service includes the payment for principal and interest on the loan. The debt service amount must be reduced by 15 percent to exclude debt service to amortize the cost of furniture, unless the PHA determines that furniture was not included in the purchase price.

(ii) The amount of the amortization cost is the debt service established at time of application to a lender for financing purchase of the manufactured home if monthly payments are still being made. Any increase in debt service due to refinancing after purchase of the home is not included in amortization cost.

(iii) Debt service for set-up charges incurred by a family that relocates its home may be included in the monthly amortization payment made by the family. In addition, set-up charges incurred before the family became an assisted family may be included in the amortization cost if monthly payments are still being made to amortize such charges.

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

(2) The payment standard shall be determined in accordance with §982.505.

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

(i) The payment standard minus the total tenant payment; or

(ii) The rent paid for rental of the real property on which the manufactured home owned by the family is located (''space rent'') minus the total tenant payment.

(4) The space rent is the sum of the following as determined by the PHA:

(i) Rent to owner for the manufactured home space;

(ii) Owner maintenance and management charges for the space;

(iii) The utility allowance for tenant-paid utilities.

[64 FR 26651, May 14, 1999; 64 FR 49659, Sept. 14, 1999; 64 FR 56915, Oct. 21, 1999]

§982.624 Manufactured home space rental: Utility allowance schedule.

The PHA must establish utility allowances for manufactured home space rental. For the first twelve months of the initial lease term only, the allowances must include a reasonable amount for utility hook-up charges payable by the family if the family actually incurs the expenses because of a move. Allowances for utility hook-up charges do not apply to a family that leases a manufactured home space in place. Utility allowances for manufactured home space must not cover costs payable by a family to cover the digging of a well or installation of a septic system.

HOMEOWNERSHIP OPTION

SOURCE: 65 FR 55163, Sept. 12, 2000, unless otherwise noted.

§982.625 Homeownership option: General.

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

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

(c) *Forms of homeownership assistance.* (1) A PHA may provide one of two

forms of homeownership assistance for a family:

(i) Monthly homeownership assistance payments; or

(ii) A single downpayment assistance grant.

(2) *Prohibition against combining forms of homeownership assistance.* A family may only receive one form of homeownership assistance. Accordingly, a family that includes a person who was an adult member of a family that previously received either of the two forms of homeownership assistance may not receive the other form of homeownership assistance from any PHA.

(d) *PHA choice to offer homeownership options.* (1) The PHA may choose to offer either or both forms of homeownership assistance under this subpart, or choose not to offer either form of assistance. However, the PHA must offer either form of homeownership assistance if necessary as a reasonable accommodation for a person with disabilities in accordance with § 982.601(b)(3).

(2) It is the sole responsibility of the PHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The PHA will determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. The PHA may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where the PHA has otherwise opted not to implement a homeownership program.

(e) *Family choice.* (1) The family chooses whether to participate in the homeownership option if offered by the PHA.

(2) If the PHA offers both forms of homeownership assistance, the family chooses which form of homeownership assistance to receive.

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

(g) The PHA must have the capacity to operate a successful Section 8 homeownership program. The PHA has the required capacity if it satisfies either paragraph (g)(1), (g)(2), or (g)(3) of this section.

(1) The PHA establishes a minimum homeowner downpayment requirement of at least 3 percent of the purchase price for participation in its Section 8 homeownership program, and requires that at least one percent of the purchase price come from the family's personal resources;

(2) The PHA requires that financing for purchase of a home under itsSection 8 homeownership program:

(i) Be provided, insured, or guaranteed by the state or Federal government;

(ii) Comply with secondary mortgage market underwriting requirements; or

(iii) Comply with generally accepted private sector underwriting standards; or

(3) The PHA otherwise demonstrates in its Annual Plan that it has the capacity, or will acquire the capacity, to successfully operate a Section 8 homeownership program.

(h) *Recapture of homeownership assistance.* A PHA shall not impose or enforce any requirement for the recapture of voucher homeownership assistance on the sale or refinancing of a home purchased with assistance under the homeownership option.

(i) *Applicable requirements.* The following specify what regulatory provisions (under the heading ''homeownership option'') are applicable to either or both forms of homeownership assistance (except as otherwise specifically provided):

(1) *Common provisions.* The following provisions apply to both forms of homeownership assistance:

(i) Section 982.625 (General);

(ii) Section 982.626 (Initial requirements);

(iii) Section 982.627 (Eligibility requirements for families);

(iv) Section 982.628 (Eligible units);

(v) Section 982.629 (Additional PHA requirements for family search and purchase);

(vi) Section 982.630 (Homeownership counseling);

(vii) Section 982.631 (Home inspections, contract of sale, and PHA disapproval of seller);

(viii) Section 982.632 (Financing purchase of home; affordability of purchase);

(ix) Section 982.636 (Portability);

(x) Section 982.638 (Denial or termination of assistance for family); and

(xi) Section 982.641 (Applicability of other requirements).

(2) *Monthly homeownership assistance payments.* The following provisions only apply to homeownership assistance in the form of monthly homeownership assistance payments:

(i) Section 982.633 (Continued assistance requirements; family obligations);

(ii) Section 982.634 (Maximum term of homeownership assistance);

(iii) Section 982.635 (Amount and distribution of monthly homeownership assistance payment);

(iv) Section 982.637 (Move with continued tenant-based assistance); and

(v) Section 982.639 (Administrative fees).

(3) *Downpayment assistance grant.* The following provision only applies to homeownership assistance in the form of a downpayment assistance grant: Section 982.643 (Downpayment assistance grants).

[65 FR 55163, Sept. 12, 2000, as amended at 67 FR 64493, Oct. 18, 2002]

§982.626 Homeownership option: Initial requirements.

(a) *List of initial requirements.* Before commencing homeownership assistance for a family, the PHA must determine that all of the following initial requirements have been satisfied:

(1) The family is qualified to receive homeownership assistance (see §982.627);

(2) The unit is eligible (see §982.628); and

(3) The family has satisfactorily completed the PHA program of required pre-assistance homeownership counseling (see §982.630).

(b) *Additional PHA requirements.* Unless otherwise provided in this part, the PHA may limit homeownership assistance to families or purposes defined by the PHA, and may prescribe additional requirements for commencement of homeownership assistance for a family. Any such limits or additional requirements must be described in the PHA administrative plan.

(c) *Environmental requirements.* The PHA is responsible for complying with the authorities listed in §58.6 of this title requiring the purchaser to obtain and maintain flood insurance for units in special flood hazard areas, prohibiting assistance for acquiring units in the coastal barriers resource system, and requiring notification to the purchaser of units in airport runway clear zones and airfield clear zones.

§982.627 Homeownership option: Eligibility requirements for families.

(a) *Determination whether family is qualified.* The PHA may not provide homeownership assistance for a family unless the PHA determines that the family satisfies all of the following initial requirements at commencement of homeownership assistance for the family:

(1) The family has been admitted to the Section 8 Housing Choice Voucher program, in accordance with subpart E of this part.

(2) The family satisfies any first-time homeowner requirements (described in paragraph (b) of this section).

(3) The family satisfies the minimum income requirement (described in paragraph (c) of this section).

(4) The family satisfies the employment requirements (described in paragraph (d) of this section).

(5) The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option (see paragraph (e) of this section).

(6) Except for cooperative members who have acquired cooperative membership shares prior to commencement of homeownership assistance, no family member has a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.

(7) Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered a contract of sale in accordance with §982.631(c).

(8) The family also satisfies any other initial requirements established by the PHA (see §982.626(b)). Any such additional requirements must be described in the PHA administrative plan.

(b) *First-time homeowner requirements.* At commencement of homeownership assistance for the family, the family must be any of the following:

(1) A first-time homeowner (defined at § 982.4);

(2) A cooperative member (defined at § 982.4); or

(3) A family of which a family member is a person with disabilities, and use of the homeownership option is needed as a reasonable accommodation so that the program is readily accessible to and usable by such person, in accordance with part 8 of this title.

(c) *Minimum income requirements.* (1) At commencement of monthly homeownership assistance payments for the family, or at the time of a downpayment assistance grant for the family, the family must demonstrate that the annual income, as determined by the PHA in accordance with § 5.609 of this title, of the adult family members who will own the home at commencement of homeownership assistance is not less than:

(i) In the case of a disabled family (as defined in § 5.403(b) of this title), the monthly Federal Supplemental Security Income (SSI) benefit for an individual living alone (or paying his or her share of food and housing costs) multiplied by twelve; or

(ii) In the case of other families, the Federal minimum wage multiplied by 2,000 hours.

(2)(i) Except in the case of an elderly family or a disabled family (see the definitions of these terms at § 5.403(b) of this title), the PHA shall not count any welfare assistance received by the family in determining annual income under this section.

(ii) The disregard of welfare assistance income under paragraph (c)(2)(i) of this section only affects the determination of minimum annual income used to determine if a family initially qualifies for commencement of homeownership assistance in accordance with this section, but does not affect:

(A) The determination of income-eligibility for admission to the voucher program;

(B) Calculation of the amount of the family's total tenant payment (gross family contribution); or

(C) Calculation of the amount of homeownership assistance payments on behalf of the family.

(iii) In the case of an elderly or disabled family, the PHA shall include welfare assistance for the adult family members who will own the home in determining if the family meets the minimum income requirement.

(3) A PHA may establish a minimum income standard that is higher than those described in paragraph (c)(1) of this section for either or both types of families. However, a family that meets the applicable HUD minimum income requirement described in paragraph (c)(1) of this section, but not the higher standard established by the PHA shall be considered to satisfy the minimum income requirement if:

(i) The family demonstrates that it has been pre-qualified or pre-approved for financing;

(ii) The pre-qualified or pre-approved financing meets any PHA established requirements under § 982.632 for financing the purchase of the home (including qualifications of lenders and terms of financing); and

(iii) The pre-qualified or pre-approved financing amount is sufficient to purchase housing that meets HQS in the PHA's jurisdiction.

(d) *Employment requirements.* (1) Except as provided in paragraph (d)(2) of this section, the family must demonstrate that one or more adult members of the family who will own the home at commencement of homeownership assistance:

(i) Is currently employed on a full-time basis (the term ''full-time employment'' means not less than an average of 30 hours per week); and

(ii) Has been continuously so employed during the year before commencement of homeownership assistance for the family.

(2) The PHA shall have discretion to determine whether and to what extent interruptions are considered to break continuity of employment during the year. The PHA may count successive employment during the year. The PHA may count self-employment in a business.

(3) The employment requirement does not apply to an elderly family or a disabled family (see the definitions of

these terms at § 5.403(b) of this title). Furthermore, if a family, other than an elderly family or a disabled family, includes a person with disabilities, the PHA shall grant an exemption from the employment requirement if the PHA determines that an exemption is needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities in accordance with part 8 of this title.

(4) A PHA may not establish an employment requirement in addition to the employment standard established by this paragraph.

(e) *Prohibition against assistance to family that has defaulted.* The PHA shall not commence homeownership assistance for a family that includes an individual who was an adult member of a family at the time when such family received homeownership assistance and defaulted on a mortgage securing debt incurred to purchase the home.

[65 FR 55163, Sept. 12, 2000, as amended at 67 FR 64493, Oct. 18, 2002]

§ 982.628 Homeownership option: Eligible units.

(a) *Initial requirements applicable to the unit.* The PHA must determine that the unit satisfies all of the following requirements:

(1) The unit is eligible. (See § 982.352. Paragraphs (a)(6), (a)(7) and (b) of § 982.352 do not apply.)

(2) The unit is either under construction or already existing at the time the family enters into the contract of sale.

(3) The unit is either a one-unit property (including a manufactured home) or a single dwelling unit in a cooperative or condominium.

(4) The unit has been inspected by a PHA inspector and by an independent inspector designated by the family (see § 982.631).

(5) The unit satisfies the HQS (see § 982.401 and § 982.631).

(b) *Purchase of home where family will not own fee title to the real property.* Homeownership assistance may be provided for the purchase of a home where the family will not own fee title to the real property on which the home is located, but only if:

(1) The home is located on a permanent foundation; and

(2) The family has the right to occupy the home site for at least forty years.

(c) *PHA disapproval of seller.* The PHA may not commence homeownership assistance for occupancy of a home if the PHA has been informed (by HUD or otherwise) that the seller of the home is debarred, suspended, or subject to a limited denial of participation under part 24 of this title.

(d) *PHA-owned units.* Homeownership assistance may be provided for the purchase of a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA), only if all of the following conditions are satisfied:

(1) The PHA must inform the family, both orally and in writing, that the family has the right to purchase any eligible unit and a PHA-owned unit is freely selected by the family without PHA pressure or steering;

(2) The unit is not ineligible housing;

(3) The PHA must obtain the services of an independent agency, in accordance with § 982.352(b)(1)(iv)(B) and (C), to perform the following PHA functions:

(i) Inspection of the unit for compliance with the HQS, in accordance with § 982.631(a);

(ii) Review of the independent inspection report, in accordance with § 982.631(b)(4);

(iii) Review of the contract of sale, in accordance with § 982.631(c); and

(iv) Determination of the reasonableness of the sales price and any PHA provided financing, in accordance with § 982.632 and other supplementary guidance established by HUD.

[65 FR 55163, Sept. 12, 2000, as amended at 67 FR 64494, Oct. 18, 2002; 67 FR 65865, Oct. 28, 2002; 67 FR 67522, Nov. 6, 2002]

§ 982.629 Homeownership option: Additional PHA requirements for family search and purchase.

(a) The PHA may establish the maximum time for a family to locate a home, and to purchase the home.

(b) The PHA may require periodic family reports on the family's progress in finding and purchasing a home.

(c) If the family is unable to purchase a home within the maximum time established by the PHA, the PHA may issue the family a voucher to lease a unit or place the family's name on the waiting list for a voucher.

§ 982.630 Homeownership option: Homeownership counseling.

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

(b) Suggested topics for the PHA-required pre-assistance counseling program include:

(1) Home maintenance (including care of the grounds);

(2) Budgeting and money management;

(3) Credit counseling;

(4) How to negotiate the purchase price of a home;

(5) How to obtain homeownership financing and loan preapprovals, including a description of types of financing that may be available, and the pros and cons of different types of financing;

(6) How to find a home, including information about homeownership opportunities, schools, and transportation in the PHA jurisdiction;

(7) Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;

(8) Information on fair housing, including fair housing lending and local fair housing enforcement agencies; and

(9) Information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) (RESPA), state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

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

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

(e) If the PHA is not using a HUD-approved housing counseling agency to provide the counseling for families participating in the homeownership option, the PHA should ensure that its counseling program is consistent with the homeownership counseling provided under HUD's Housing Counseling program.

§ 982.631 Homeownership option: Home inspections, contract of sale, and PHA disapproval of seller.

(a) HQS inspection by PHA. The PHA may not commence monthly homeownership assistance payments or provide a downpayment assistance grant for the family until the PHA has inspected the unit and has determined that the unit passes HQS.

(b) *Independent inspection.* (1) The unit must also be inspected by an independent professional inspector selected by and paid by the family.

(2) The independent inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing, electrical, and heating systems. The independent inspector must be qualified to report on property conditions, including major building systems and components.

(3) The PHA may not require the family to use an independent inspector selected by the PHA. The independent inspector may not be a PHA employee or contractor, or other person under control of the PHA. However, the PHA may establish standards for qualification of inspectors selected by families under the homeownership option.

(4) The independent inspector must provide a copy of the inspection report both to the family and to the PHA. The PHA may not commence monthly homeownership assistance payments, or provide a downpayment assistance grant for the family, until the PHA has reviewed the inspection report of the independent inspector. Even if the unit otherwise complies with the HQS (and may qualify for assistance under the PHA's tenant-based rental voucher program), the PHA shall have discretion

to disapprove the unit for assistance under the homeownership option because of information in the inspection report.

(c) *Contract of sale.* (1) Before commencement of monthly homeownership assistance payments or receipt of a downpayment assistance grant, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. The family must give the PHA a copy of the contract of sale (see also § 982.627(a)(7)).

(2) The contract of sale must:

(i) Specify the price and other terms of sale by the seller to the purchaser.

(ii) Provide that the purchaser will arrange for a pre-purchase inspection of the dwelling unit by an independent inspector selected by the purchaser.

(iii) Provide that the purchaser is not obligated to purchase the unit unless the inspection is satisfactory to the purchaser.

(iv) Provide that the purchaser is not obligated to pay for any necessary repairs.

(v) Contain a certification from the seller that the seller has not been debarred, suspended, or subject to a limited denial of participation under part 24 of this title.

(d) *PHA disapproval of seller.* In its administrative discretion, the PHA may deny approval of a seller for any reason provided for disapproval of an owner in § 982.306(c).

[65 FR 55163, Sept. 12, 2000, as amended at 67 FR 64494, Oct. 18, 2002]

§ 982.632 Homeownership option: Financing purchase of home; affordability of purchase.

(a) The PHA may establish requirements for financing purchase of a home to be assisted under the homeownership option. Such PHA requirements may include requirements concerning qualification of lenders (for example, prohibition of seller financing or case-by-case approval of seller financing), or concerning terms of financing (for example, a prohibition of balloon payment mortgages, establishment of a minimum homeowner equity requirement from personal resources, or provisions required to protect borrowers against high cost loans or predatory loans). A PHA may not require that families acquire financing from one or more specified lenders, thereby restricting the family's ability to secure favorable financing terms.

(b) If the purchase of the home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements.

(c) The PHA may establish requirements or other restrictions concerning debt secured by the home.

(d) The PHA may review lender qualifications and the loan terms before authorizing homeownership assistance. The PHA may disapprove proposed financing, refinancing or other debt if the PHA determines that the debt is unaffordable, or if the PHA determines that the lender or the loan terms do not meet PHA qualifications. In making this determination, the PHA may take into account other family expenses, such as child care, unreimbursed medical expenses, homeownership expenses, and other family expenses as determined by the PHA.

(e) All PHA financing or affordability requirements must be described in the PHA administrative plan.

[65 FR 55163, Sept. 12, 2000, as amended at 66 FR 33613, June 22, 2001]

§ 982.633 Homeownership option: Continued assistance requirements; Family obligations.

(a) *Occupancy of home.* Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, the PHA may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to the PHA the homeownership assistance for the month when the family moves out.

(b) *Family obligations.* The family must comply with the following obligations.

(1) *Ongoing counseling.* To the extent required by the PHA, the family must attend and complete ongoing homeownership and housing counseling.

(2) *Compliance with mortgage.* The family must comply with the terms of any mortgage securing debt incurred to purchase the home (or any refinancing of such debt).

(3) *Prohibition against conveyance or transfer of home.* (i) So long as the family is receiving homeownership assistance, use and occupancy of the home is subject to § 982.551(h) and (i).

(ii) The family may grant a mortgage on the home for debt incurred to finance purchase of the home or any refinancing of such debt.

(iii) Upon death of a family member who holds, in whole or in part, title to the home or ownership of cooperative membership shares for the home, homeownership assistance may continue pending settlement of the decedent's estate, notwithstanding transfer of title by operation of law to the decedent's executor or legal representative, so long as the home is solely occupied by remaining family members in accordance with § 982.551(h).

(4) *Supplying required information.* (i) The family must supply required information to the PHA in accordance with § 982.551(b).

(ii) In addition to other required information, the family must supply any information as required by the PHA or HUD concerning:

(A) Any mortgage or other debt incurred to purchase the home, and any refinancing of such debt (including information needed to determine whether the family has defaulted on the debt, and the nature of any such default), and information on any satisfaction or payment of the mortgage debt;

(B) Any sale or other transfer of any interest in the home; or

(C) The family's homeownership expenses.

(5) *Notice of move-out.* The family must notify the PHA before the family moves out of the home.

(6) *Notice of mortgage default.* The family must notify the PHA if the family defaults on a mortgage securing any debt incurred to purchase the home.

(7) *Prohibition on ownership interest on second residence.* During the time the family receives homeownership assistance under this subpart, no family member may have any ownership interest in any other residential property.

(8) *Additional PHA requirements.* The PHA may establish additional requirements for continuation of homeownership assistance for the family (for example, a requirement for post-purchase homeownership counseling or for periodic unit inspections while the family is receiving homeownership assistance). The family must comply with any such requirements.

(9) *Other family obligations.* The family must comply with the obligations of a participant family described in § 982.551. However, the following provisions do not apply to assistance under the homeownership option: § 982.551(c), (d), (e), (f), (g) and (j).

(c) *Statement of homeowner obligations.* Before commencement of homeownership assistance, the family must execute a statement of family obligations in the form prescribed by HUD. In the statement, the family agrees to comply with all family obligations under the homeownership option.

§ 982.634 Homeownership option: Maximum term of homeownership assistance.

(a) *Maximum term of assistance.* Except in the case of a family that qualifies as an elderly or disabled family (see paragraph (c) of this section), the family members described in paragraph (b) of this section shall not receive homeownership assistance for more than:

(1) Fifteen years, if the initial mortgage incurred to finance purchase of the home has a term of 20 years or longer; or

(2) Ten years, in all other cases.

(b) *Applicability of maximum term.* The maximum term described in paragraph (a) of this section applies to any member of the family who:

(1) Has an ownership interest in the unit during the time that homeownership payments are made; or

(2) Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.

(c) *Exception for elderly and disabled families.* (1) As noted in paragraph (a) of this section, the maximum term of assistance does not apply to elderly and disabled families.

(2) In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during

receipt of homeownership assistance the family qualifies as a disabled family.

(3) If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance in accordance with this part).

(d) *Assistance for different homes or PHAs.* If the family has received such assistance for different homes, or from different PHAs, the total of such assistance terms is subject to the maximum term described in paragraph (a) of this section.

§ 982.635 Homeownership option: Amount and distribution of monthly homeownership assistance payment.

(a) *Amount of monthly homeownership assistance payment.* While the family is residing in the home, the PHA shall pay a monthly homeownership assistance payment on behalf of the family that is equal to the *lower of:*

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

(2) The family's monthly homeownership expenses minus the total tenant payment.

(b) *Payment standard for family.* (1) The payment standard for a family is the lower of:

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

(ii) The payment standard for the size of the home.

(2) If the home is located in an exception payment standard area, the PHA must use the appropriate payment standard for the exception payment standard area.

(3) The payment standard for a family is the greater of:

(i) The payment standard (as determined in accordance with paragraphs (b)(1) and (b)(2) of this section) at the commencement of homeownership assistance for occupancy of the home; or

(ii) The payment standard (as determined in accordance with paragraphs (b)(1) and (b)(2) of this section) at the most recent regular reexamination of family income and composition since the commencement of homeownership assistance for occupancy of the home.

(4) The PHA must use the same payment standard schedule, payment standard amounts, and subsidy standards pursuant to §§ 982.402 and 982.503 for the homeownership option as for the rental voucher program.

(c) *Determination of homeownership expenses.* (1) The PHA shall adopt policies for determining the amount of homeownership expenses to be allowed by the PHA in accordance with HUD requirements.

(2) Homeownership expenses for a homeowner (other than a cooperative member) may only include amounts allowed by the PHA to cover:

(i) Principal and interest on initial mortgage debt, any refinancing of such debt, and any mortgage insurance premium incurred to finance purchase of the home;

(ii) Real estate taxes and public assessments on the home;

(iii) Home insurance;

(iv) The PHA allowance for maintenance expenses;

(v) The PHA allowance for costs of major repairs and replacements;

(vi) The PHA utility allowance for the home;

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

(viii) Land lease payments (where a family does not own fee title to the real property on which the home is located; see § 982.628(b)).

(3) Homeownership expenses for a cooperative member may only include amounts allowed by the PHA to cover:

(i) The cooperative charge under the cooperative occupancy agreement including payment for real estate taxes and public assessments on the home;

(ii) Principal and interest on initial debt incurred to finance purchase of cooperative membership shares and any refinancing of such debt;

(iii) Home insurance;

(iv) The PHA allowance for maintenance expenses;

(v) The PHA allowance for costs of major repairs and replacements;

(vi) The PHA utility allowance for the home; and

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

(4) If the home is a cooperative or condominium unit, homeownership expenses may also include cooperative or condominium operating charges or maintenance fees assessed by the condominium or cooperative homeowner association.

(d) *Payment to lender or family.* The PHA must pay homeownership assistance payments either:

(1) Directly to the family or;

(2) At the discretion of the PHA, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the family.

(e) *Automatic termination of homeownership assistance.* Homeownership assistance for a family terminates automatically 180 calendar days after the last homeownership assistance payment on behalf of the family. However, a PHA has the discretion to grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

[65 FR 55163, Sept. 12, 2000, as amended at 67 FR 64494, Oct. 18, 2002]

§ 982.636 Homeownership option: Portability.

(a) *General.* A family may qualify to move outside the initial PHA jurisdiction with continued homeownership assistance under the voucher program in accordance with this section.

(b) *Portability of homeownership assistance.* Subject to § 982.353(b) and (c), § 982.552, and § 982.553, a family determined eligible for homeownership assistance by the initial PHA may purchase a unit outside of the initial PHA's jurisdiction, if the receiving PHA is administering a voucher homeownership program and is accepting new homeownership families.

(c) *Applicability of Housing Choice Voucher program portability procedures.* In general, the portability procedures described in §§ 982.353 and 982.355 apply to the homeownership option and the administrative responsibilities of the initial and receiving PHA are not altered except that some administrative functions (e.g, issuance of a voucher or execution of a tenancy addendum) do not apply to the homeownership option.

(d) *Family and PHA responsibilities.* The family must attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing for, and the physical condition of the unit, are acceptable. The receiving PHA must promptly notify the initial PHA if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by the PHA.

(e) *Continued assistance under § 982.637.* Such continued assistance under portability procedures is subject to § 982.637.

§ 982.637 Homeownership option: Move with continued tenant-based assistance.

(a) *Move to new unit.* (1) A family receiving homeownership assistance may move to a new unit with continued tenant-based assistance in accordance

with this section. The family may move either with voucher rental assistance (in accordance with rental assistance program requirements) or with voucher homeownership assistance (in accordance with homeownership option program requirements).

(2) The PHA may not commence continued tenant-based assistance for occupancy of the new unit so long as any family member owns any title or other interest in the prior home.

(3) The PHA may establish policies that prohibit more than one move by the family during any one year period.

(b) *Requirements for continuation of homeownership assistance.* The PHA must determine that all initial requirements listed in § 982.626 have been satisfied if a family that has received homeownership assistance wants to move to a new unit with continued homeownership assistance. However, the following requirements do not apply:

(1) The requirement for pre-assistance counseling (§ 982.630) is not applicable. However, the PHA may require that the family complete additional counseling (before or after moving to a new unit with continued assistance under the homeownership option).

(2) The requirement that a family must be a first-time homeowner (§ 982.627) is not applicable.

(c) *When PHA may deny permission to move with continued assistance.* The PHA may deny permission to move to a new unit with continued voucher assistance as follows:

(1) *Lack of funding to provide continued assistance.* The PHA may deny permission to move with continued rental or homeownership assistance if the PHA determines that it does not have sufficient funding to provide continued assistance.

(2) *Termination or denial of assistance under § 982.638.* At any time, the PHA may deny permission to move with continued rental or homeownership assistance in accordance with § 982.638.

§ 982.638 Homeownership option: Denial or termination of assistance for family.

(a) *General.* The PHA shall terminate homeownership assistance for the family, and shall deny voucher rental assistance for the family, in accordance with this section.

(b) *Denial or termination of assistance under basic voucher program.* At any time, the PHA may deny or terminate homeownership assistance in accordance with § 982.552 (Grounds for denial or termination of assistance) or § 982.553 (Crime by family members).

(c) *Failure to comply with family obligations.* The PHA may deny or terminate assistance for violation of participant obligations described in § 982.551 or § 982.633.

(d) *Mortgage default.* The PHA must terminate voucher homeownership assistance for any member of family receiving homeownership assistance that is dispossessed from the home pursuant to a judgment or order of foreclosure on any mortgage (whether FHA-insured or non-FHA) securing debt incurred to purchase the home, or any refinancing of such debt. The PHA, in its discretion, may permit the family to move to a new unit with continued voucher rental assistance. However, the PHA must deny such permission, if:

(1) The family defaulted on an FHA-insured mortgage; and

(2) The family fails to demonstrate that:

(i) The family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and

(ii) The family has moved, or will move, from the home within the period established or approved by HUD.

[65 FR 55163, Sept. 12, 2000, as amended at 66 FR 33613, June 22, 2001]

§ 982.639 Homeownership option: Administrative fees.

The ongoing administrative fee described in § 982.152(b) is paid to the PHA for each month that homeownership assistance is paid by the PHA on behalf of the family.

§ 982.641 Homeownership option: Applicability of other requirements.

(a) *General.* The following types of provisions (located in other subparts of this part) do not apply to assistance under the homeownership option:

(1) Any provisions concerning the Section 8 owner or the HAP contract between the PHA and owner;

(2) Any provisions concerning the assisted tenancy or the lease between the family and the owner;

(3) Any provisions concerning PHA approval of the assisted tenancy;

(4) Any provisions concerning rent to owner or reasonable rent; and

(5) Any provisions concerning the issuance or term of voucher.

(b) *Subpart G requirements.* The following provisions of subpart G of this part do not apply to assistance under the homeownership option:

(1) Section 982.302 (Issuance of voucher; Requesting PHA approval of assisted tenancy);

(2) Section 982.303 (Term of voucher);

(3) Section 982.305 (PHA approval of assisted tenancy);

(4) Section 982.306 (PHA disapproval of owner) (except that a PHA may disapprove a seller for any reason described in paragraph (c), see § 982.631(d)).

(5) Section 982.307 (Tenant screening);

(6) Section 982.308 (Lease and tenancy);

(7) Section 982.309 (Term of assisted tenancy);

(8) Section 982.310 (Owner termination of tenancy);

(9) Section 982.311 (When assistance is paid) (except that § 982.311(c)(3) is applicable to assistance under the homeownership option);

(10) Section 982.313 (Security deposit: Amounts owed by tenant); and

(11) Section 982.314 (Move with continued tenant-based assistance).

(c) *Subpart H requirements.* The following provisions of subpart H of this part do not apply to assistance under the homeownership option:

(1) Section 982.352(a)(6) (Prohibition of owner-occupied assisted unit);

(2) Section 982.352(b) (PHA-owned housing); and

(3) Those provisions of § 982.353(b)(1),(2), and (3) (Where family can lease a unit with tenant-based assistance) and § 982.355 (Portability: Administration by receiving PHA) that are inapplicable per § 982.636;

(d) *Subpart I requirements.* The following provisions of subpart I of this part do not apply to assistance under the homeownership option:

(1) Section 982.403 (Terminating HAP contract when unit is too small);

(2) Section 982.404 (Maintenance: Owner and family responsibility; PHA remedies); and

(3) Section 982.405 (PHA initial and periodic unit inspection).

(e) *Subpart J requirements.* The requirements of subpart J of this part (Housing Assistance Payments Contract and Owner Responsibility) (§§ 982.451–456) do not apply to assistance under the homeownership option.

(f) *Subpart K requirements.* Except for those sections listed below, the requirements of subpart K of this part (Rent and Housing Assistance Payment) (§§ 982.501–521) do not apply to assistance under the homeownership option:

(1) Section 982.503 (Voucher tenancy: Payment standard amount and schedule);

(2) Section 982.516 (Family income and composition: Regular and interim reexaminations); and

(3) Section 982.517 (Utility allowance schedule).

(g) *Subpart L requirements.* The following provisions of subpart L of this part do not apply to assistance under the homeownership option:

(1) Section 982.551(c) (HQS breach caused by family);

(2) Section 982.551(d) (Allowing PHA inspection);

(3) Section 982.551(e) (Violation of lease);

(4) Section 982.551(g) (Owner eviction notice); and

(5) Section 982.551(j) (Interest in unit).

(h) *Subpart M requirements.* The following provisions of subpart M of this part do not apply to assistance under the homeownership option:

(1) Sections 982.602–982.619; and

(2) Sections 982.622–982.624.

[65 FR 55163, Sept. 12, 2000, as amended at 67 FR 64494, Oct. 18, 2002]

§ 982.642 Homeownership option: Pilot program for homeownership assistance for disabled families.

(a) *General.* This section implements the pilot program authorized by section 302 of the American Homeownership and Economic Opportunity Act of 2000. Under the pilot program, a PHA may provide homeownership assistance to a disabled family residing in a home

purchased and owned by one or more members of the family. A PHA that administers tenant-based assistance has the choice whether to offer homeownership assistance under the pilot program (whether or not the PHA has also decided to offer the homeownership option).

(b) *Applicability of homeownership option requirements.* Except as provided in this section, all of the regulations applicable to the homeownership option (as described in §§982.625 through 982.641) are also applicable to the pilot program.

(c) *Initial eligibility requirements.* Before commencing homeownership assistance under the pilot program for a family, the PHA must determine that all of the following initial requirements have been satisfied:

(1) The family is a disabled family (as defined in §5.403 of this title);

(2) The family annual income does not exceed 99 percent of the median income for the area;

(3) The family is not a current homeowner;

(4) The family must close on the purchase of the home during the period starting on July 23, 2001 and ending on July 23, 2004; and

(5) The family meets the initial requirements described in §982.626; however, the following initial requirements do not apply to a family seeking to participate in the pilot program:

(i) The income eligibility requirements of §982.201(b)(1);

(ii) The first-time homeowner requirements of §982.627(b); and

(iii) The mortgage default requirements of §982.627(e), if the PHA determines that the default is due to catastrophic medical reasons or due to the impact of a federally declared major disaster or emergency.

(d) *Amount and distribution of homeownership assistance payments.* (1) While the family is residing in the home, the PHA shall calculate a monthly homeownership assistance payment on behalf of the family in accordance with §982.635 and this section.

(2) A family that is a low income family (as defined at 24 CFR 5.603(b)) as determined by HUD shall receive the full amount of the monthly homeownership assistance payment calculated under §982.635.

(3) A family whose annual income is greater than the low income family ceiling but does not exceed 89 percent of the median income for the area as determined by HUD shall receive a monthly homeownership assistance payment equal to 66 percent of the amount calculated under §982.635.

(4) A family whose annual income is greater than the 89 percent ceiling but does not exceed 99 percent of the median income for the area as determined by HUD shall receive a monthly homeownership assistance payment equal to 33 percent of the amount calculated under §982.635.

(5) A family whose annual income is greater than 99 percent of the median income for the area shall not receive homeownership assistance under the pilot program.

(e) *Assistance payments to lender.* The PHA must make homeownership assistance payments to a lender on behalf of the disabled family. If the assistance payment exceeds the amount due to the lender, the PHA must pay the excess directly to the family. The provisions of §982.635(d), which permit the PHA to make monthly homeownership assistance payments directly to the family, do not apply to the pilot program.

(f) *Mortgage defaults.* The requirements of §982.638(d) regarding mortgage defaults are applicable to the pilot program. However, notwithstanding §982.638(d), the PHA may, in its discretion, permit a family that has defaulted on its mortgage to move to a new unit with continued voucher homeownership assistance if the PHA determines that the default is due to catastrophic medical reasons or due to the impact of a federally declared major disaster or emergency. The requirements of §§982.627(a)(5) and 982.627(e) do not apply to such a family.

[66 FR 33613, June 22, 2001]

§982.643 Homeownership option: Downpayment assistance grants.

(a) *General.* (1) A PHA may provide a single downpayment assistance grant

for a participant that has received tenant-based or project-based rental assistance in the Housing Choice Voucher Program.

(2) The downpayment assistance grant must be applied toward the downpayment required in connection with the purchase of the home and/or reasonable and customary closing costs in connection with the purchase of the home.

(3) If the PHA permits the downpayment grant to be applied to closing costs, the PHA must define what fees and charges constitute reasonable and customary closing costs. However, if the purchase of a home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements, including any requirements concerning closing costs (see §982.632(b) of this part regarding the applicability of FHA requirements to voucher homeownership assistance and §203.27 of this title regarding allowable fees, charges and discounts for FHA-insured mortgages).

(b) *Maximum downpayment grant.* A downpayment assistance grant may not exceed twelve times the difference between the payment standard and the total tenant payment.

(c) *Payment of downpayment grant.* The downpayment assistance grant shall be paid at the closing of the family's purchase of the home.

(d) *Administrative fee.* For each downpayment assistance grant made by the PHA, HUD will pay the PHA a one-time administrative fee in accordance with §982.152(a)(1)(iii).

(e) *Return to tenant-based assistance.* A family that has received a downpayment assistance grant may apply for and receive tenant-based rental assistance, in accordance with program requirements and PHA policies. However, the PHA may not commence tenant-based rental assistance for occupancy of the new unit so long as any member of the family owns any title or other interest in the home purchased with homeownership assistance. Further, eighteen months must have passed since the family's receipt of the downpayment assistance grant.

(f) *Implementation of downpayment assistance grants.* A PHA may not offer downpayment assistance under this paragraph until HUD publishes a notice in the FEDERAL REGISTER.

[67 FR 64494, Oct. 18, 2002]

PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

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

SOURCE: 60 FR 34717, July 3, 1995, unless otherwise noted.

Subpart A—General Information

§983.1 Purpose and applicability.

(a) This part 983 applies to the Section 8 Project-based Certificate (PBC) program.

(b)(1) Except as otherwise expressly modified or excluded by this part 983, provisions of 24 CFR part 982 apply to the PBC program.

(2) The following provisions of 24 CFR part 982 do not apply to the PBC program:

(i) Provisions on tenant-based assistance, on issuance or use of a voucher or certificate; and on portability;

(ii) Provisions on voucher tenancy or over-FMR tenancy;

(iii) In subpart D, §982.158(e) (retention of lease, HAP contract and family application);

(iv) In subpart E, §982.202(b)(3) (where family will live); §982.204(d) (family size); §982.205(a) (waiting lists);

(v) Subpart G, except that the following provisions of subpart G are applicable to the PBC Program: §982.308 (lease); §982.311(a), (b), (c) and (d)(1) (when assistance is paid); §982.312 (absence from unit); and §982.313 (security deposit);

(vi) Subpart H (where family can live and move);

(vii) In subpart I of this part, §982.401(j) (lead-based paint requirements); §982.402(a)(3), §982.402(c) and (d) (Subsidy standards); and §982.403 (Terminating HAP contract when unit is too small);

(viii) In subpart J, §982.451(a), §982.451(b)(2) (term of HAP contract same as lease); §982.454 (termination of HAP contract because of insufficient funding); §982.455 (termination of HAP contract; termination notice);

(ix) Subpart K, except that the following provisions of Subpart K are applicable to the PBC Program: §982.504 (for determination of the FMR/exception rent limit); §982.516 (family income and composition; regular and interim examinations), §982.517 (utility allowance schedule);

(x) In subpart M, all provisions authorizing assistance for shared housing (including §982.615 through §982.618); or assistance for a family occupying a manufactured home (including §982.620 through §982.624).

(3) This part does not apply to the voucher program, or to an over-FMR tenancy under the certificate program. Every tenancy assisted in the PBC program is a regular tenancy under the certificate program.

[63 FR 23870, Apr. 30, 1998, as amended at 64 FR 50230, Sept. 15, 1999; 65 FR 16819, 16823, Mar. 30, 2000]

§983.2 Additional definitions.

The following definitions apply to assistance subject to this part 983, in addition to the definitions in 24 CFR 982.4:

Agreement to enter into housing assistance payments contract (''Agreement''). A written agreement between the owner

and the HA that, upon satisfactory completion of the new construction or the rehabilitation in accordance with requirements specified in the Agreement, the HA will enter into a HAP contract with the owner.

15-percent limit. Fifteen percent of the total number of budgeted units for an HA's Section 8 certificate program.

Funding source. The ACC funding authority from which the HAP contract is to be funded. Each funding increment identified in the ACC is a separate, potential funding source.

Percent limit. The applicable maximum number of budgeted units for an HA's certificate program that may be project-based. (The applicable percent limit is either the 15-percent limit or the 30-percent limit.)

Project-based Certificate (PBC) program. A Section 8 program administered by an HA pursuant to 24 CFR part 983.

Repair or replacement of a major building system or component. The complete electrical rewiring of a unit; the installation of new plumbing supply or waste pipes in a unit; the installation of a new heating distribution system, including piping and ductwork, or the installation of a new boiler or furnace; the installation of a new roof; or the replacement or major repair of exterior structural elements which are essential to achieve a stable general condition with no threat of further deterioration.

State certified appraiser. Any individual who satisfies the requirements for certification as a certified general appraiser in a State that has adopted criteria that currently meet or exceed the minimum certification criteria issued by the Appraiser Qualifications Board of the Appraisal Foundation. The State criteria must include a requirement that the individual have achieved a satisfactory grade upon a State-administered examination consistent with and equivalent to the Uniform State Certification Examination issued or endorsed by the Appraiser Qualifications Board of the Appraisal Foundation. Furthermore, if the Appraisal Foundation has issued a finding that the policies, practices, or procedures of the state are inconsistent with the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, an individual must comply with any additional standards for state certified appraisers imposed by HUD under 24 CFR 267.11(c)(1).

30-Percent limit. Thirty percent of the total number of budgeted units for a HA's Section 8 certificate program.

[60 FR 34717, July 3, 1995, as amended at 63 FR 23870, Apr. 30, 1998]

§ 983.3 Information to be submitted to HUD by the HA concerning its plan to attach assistance to units.

(a) *Requirements.* An HA may attach certificate assistance to units in accordance with this part 983 if:

(1) The number of units to be project-based does not exceed the applicable percent limit.

(2) The number of units to be project-based are not under a tenant-based or project-based HAP contract or otherwise committed (e.g., certificates issued to families searching for housing or units under an Agreement).

(b) *Percent limit.* The applicable percent limit is either the 15-percent limit or the 30-percent limit. The 30-percent limit is only applicable if:

(1) There are no project-based new construction units in the HA's certificate program;

(2) The additional 15 percent of project-based units (in excess of the 15-percent limit) is for the rehabilitation of units in projects assisted under a State program that permits owners to prepay State-assisted or subsidized mortgages; and

(3) The additional 15 percent of project-based units is necessary to provide incentives for project owners to preserve the projects for occupancy by low and moderate income families for the term of the HAP contract, and assist low-income tenants to afford any rent increases.

(c) *HA notification to HUD of intent to attach assistance to units.* Before implementing a PBC program, the HA must submit the following information to the HUD field office for review:

(1) The total number of units for which the HA is requesting approval to attach assistance;

(2) The number of budgeted certificate units;

(3) The number of certificate units available to be project-based; i.e., the

number of budgeted certificate units that are not under a tenant-based or project-based HAP contract or otherwise committed (e.g., certificates issued to families searching for housing or units under an Agreement).

(d) *Amount of assistance.* The HA must ensure that the amount of assistance that is attached to units is within the amounts available under the ACC.

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

[60 FR 34717, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23870, Apr. 30, 1998]

§ 983.4 HUD review of HA plans to attach assistance to units.

(a) *Notice to HA.* (1) If the requirements of § 983.3 are satisfied, the field office must authorize the HA to proceed in accordance with this part 983.

(2) If the submission is approved, the field office must notify the HA that the HA may implement a PBC program subject to the requirements of this part 983, including the requirements for approval by the HUD field office of the HA unit selection policy and advertisement, and competitive selection of eligible units. The approval letter must specify the maximum number of units for which the HA may execute Agreements.

(3) If any of the requirements of § 983.3 are not satisfied, the field office must not approve the HA submission. The field office must notify the HA of the reasons for disapproval.

(b) [Reserved]

§ 983.5 Physical condition standards; physical inspection requirements.

(a) *General.* Housing used in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

(b) *Space and security.* In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.

(c) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to units assisted under this part.

[63 FR 46580, Sept. 1, 1998, as amended at 64 FR 50230, Sept. 15, 1999]

§ 983.6 Site and neighborhood standards.

(a) *Rehabilitation site and neighborhood standards.* In addition to meeting the standards required in § 982.401(l) of this chapter, the proposed sites for rehabilitation units must meet the following site and neighborhood standards:

(1) Be adequate in size, exposure and contour to accommodate the number and type of units proposed; adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with law, may be considered adequate utilities.)

(2) Be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, E.O. 11063, and HUD regulations issued pursuant thereto.

(3) Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(4) Be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(5) Be so located that travel time and cost via public transportation or private automobile from the neighborhood to places of employment providing a range of jobs for lower-income workers is not excessive. (While it is important that housing for the elderly not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.)

(b) *New construction site and neighborhood standards.* The proposed sites for

new construction units must be approved by the HUD field office as meeting the following site and neighborhood standards:

(1) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.

(2) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063, and implementing HUD regulations.

(3)(i) The site must not be located in an area of minority concentration, except as permitted under paragraph (b)(3)(ii) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.

(ii) A project may be located in an area of minority concentration only if:

(A) Sufficient, comparable opportunities exist for housing for minority families, in the income range to be served by the proposed project, outside areas of minority concentration (see paragraph (b)(3)(iii) of this section for further guidance on this criterion); or

(B) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (b)(3)(iv) of this section for further guidance on this criterion).

(iii)(A) ''Sufficient'' does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year, that, over a period of several years, will approach an appropriate balance of housing choices within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for low-income minority families and in relation to the racial mix of the locality's population.

(B) Units may be considered ''comparable opportunities'' if they have the same household type (elderly, disabled, family, large family) and tenure type (owner/renter); require approximately the same tenant contribution towards rent; serve the same income group; are located in the same housing market; and are in standard condition.

(C) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for low-income minority families in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with other factors relevant to housing choice:

(*1*) A significant number of assisted housing units are available outside areas of minority concentration.

(*2*) There is significant integration of assisted housing projects constructed or rehabilitated in the past 10 years, relative to the racial mix of the eligible population.

(*3*) There are racially integrated neighborhoods in the locality.

(*4*) Programs are operated by the locality to assist minority families that wish to find housing outside areas of minority concentration.

(*5*) Minority families have benefited from local activities (*e.g.*, acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority families outside of areas of minority concentration.

(*6*) A significant proportion of minority households has been successful in finding units in non-minority areas under the Section 8 certificate and voucher programs.

(*7*) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.

(iv) Application of the ''overriding housing needs'' criterion, for example, permits approval of sites that are an integral part of an overall local strategy for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is

demonstrably changing the economic character of the area (a ''revitalizing area''). An ''overriding housing need,'' however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, religion, sex, national origin, age, familial status or disability renders sites outside areas of minority concentration unavailable or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

(4) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(5) The neighborhood must not be one which is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.

(6) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

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

§ 983.7 Eligible and ineligible properties and HA-owned units.

(a) Section 982.352 of this chapter, *Eligible Housing,* does not apply. Newly constructed and existing structures of various types may be appropriate for attaching assistance to the units under this part 983, including single-family housing and multifamily structures.

(b) An HA may not attach or pay PBC assistance to units in the following types of housing:

(1) Housing for which the construction is started before Agreement execution;

(2) Housing for which the rehabilitation is started before Agreement execution;

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

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

(5) Housing located in the Coastal Barrier Resources System designated under the Coastal Barrier Resources Act;

(6) Housing located in an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(i)(A) The community in which the area is situated is participating in the National Flood Insurance Program (see 44 CFR parts 59 through 79); or

(B) Less than a year has passed since FEMA notification regarding such hazards; and

(ii) The HA will ensure that flood insurance on the structure is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 *et seq.*);

(7) College or other school dormitories; or

(8) A manufactured home.

(c) An HA may not attach or pay PBC assistance to units in any of the following types of subsidized housing:

(1) Public housing;

(2) A unit subsidized by any other form of Section 8 assistance (tenant-based or project-based);

(3) A unit subsidized with any local or State rent subsidy;

(4) A Section 236 project (insured or noninsured); or a unit subsidized with Section 236 rental assistance payments;

(5) A Rural Development Administration Section 515 project;

(6) A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949 (a Rural Development Administration Program);

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

(8) A Section 221(d)(3) project;

(9) A project with a Section 202 loan;

(10) A Section 202 project for non-elderly persons with disabilities (Section 162 assistance);

(11) Section 202 supportive housing for the elderly;

(12) Section 811 supportive housing for persons with disabilities;

(13) A Section 101 rent supplement project;

(14) A unit subsidized with tenant-based assistance under the HOME program; or

(15) Any unit with 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.

(d) An HA may attach assistance under this part 983 to a highrise elevator project for families with children only if HUD determines there is no practical alternative. HUD may make this determination for an HA's project-based assistance, in whole or in part, and need not review each project on a case-by-case basis.

(e) Assistance may not be attached to a unit that is occupied by an owner; however, cooperatives are considered to be rental housing for purposes of this part 983.

(f)(1) *HA-owned unit* means a unit (other than public housing) that is owned by the HA which administers the assistance under this part 983 pursuant to an ACC between HUD and the HA (including a unit owned by an entity substantially controlled by the HA).

(2) An HA-owned unit may only be assisted under the project-based certificate program if:

(i) The HA-owned unit is not ineligible housing under this section.

(ii) The HUD field office selects the HA-owned unit pursuant to the competitive ranking and rating process specified in the HA's HUD-approved unit selection policy (see § 983.51).

(iii) The HUD field office establishes the initial contract rents.

(iv) The HUD field office has conducted all HA reviews required under this part before execution of the Agreement.

(3) Any adjustment of the contract rent for an HA-owned unit must be approved in advance by the HUD field office.

(4) As owner of an HA-owned unit, the HA is subject to all of the same program requirements that apply to other owners in the program.

(5) HUD headquarters establishes the amount of the administrative fee for an HA-owned unit. The HA will earn a lower ongoing administrative fee for an HA-owned unit than for a unit not owned by the HA, and no fee for the cost to help a family experiencing difficulty in renting appropriate housing.

(6) HA-owned units are subject to the same requirements as units that are not HA-owned, including the ineligibility of units that are currently public or Indian housing and units constructed or rehabilitated with other assistance under the U.S. Housing Act of 1937.

[60 FR 34717, July 3, 1995, as amended at 63 FR 23870, Apr. 30, 1998]

§ 983.8 Rehabilitation: Minimum expenditure requirement.

(a) To qualify as rehabilitation under this part 983, existing structures must require a minimum expenditure of $1000 per assisted unit, including the unit's prorated share of work to be accomplished on common areas or systems, in order to:

(1) Upgrade the property to decent, safe, and sanitary condition to comply with the housing quality standards or other standards approved by HUD, from a condition below those standards;

(2) Repair or replace major building systems or components in danger of failure within two years from the date of the initial HA inspection;

(3) Convert or merge units to provide housing for large families; or

(4) For up to seven percent of the units to be assisted, make accessibility improvements to the property necessary to meet the requirements of Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Amendments Act of 1988.

(b) In determining the minimum expenditure of $1000 per assisted unit, the HA must include the prorated cost of common improvements in the costs of the individual units.

§ 983.9 Prohibition against new construction or rehabilitation with U.S. Housing Act of 1937 assistance and use of flexible subsidy; pledge of Agreement or HAP contract.

(a) Assistance may not be attached to any unit which was in the five years before execution of the Agreement, or will be, constructed or rehabilitated with other assistance under the U.S. Housing Act of 1937 (*e.g.*, public housing (development or modernization), rental rehabilitation grants under 24 CFR part 511, housing development grants under 24 CFR part 850, or other Section 8 programs). In addition, a unit to which assistance is to be attached under this part 983 may not be rehabilitated with flexible subsidy assistance under part 219 of this title. HUD may approve attachment of assistance to a unit that was rehabilitated with public housing modernization funds before conveyance to a resident management corporation under section 21 of the U.S. Housing Act of 1937 (42 U.S.C. 1437s) if attachment of project-based assistance would further the purposes of the sale of the public housing project to the corporation.

(b) If an owner is proposing to pledge the Agreement or HAP contract as security for financing, the owner must submit the financing documents to the HA. In determining the approvability of a pledge arrangement, the HA must review the documents submitted by the owner to ensure that the financing documents do not modify the Agreement or HAP contract, and do not contain any requirements inconsistent with the Agreement or HAP contract. Any pledge of the Agreement or HAP contract must be limited to amounts payable under the HAP contract in accordance with the terms of the HAP contract.

§ 983.10 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* (1) Consistent with the other goals and objectives of this part, an owner must assure that it has taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a rehabilitation project assisted under this part.

(2) Whenever a building or complex is rehabilitated and some, but not all, of the rehabilitated units will be assisted upon completion of the rehabilitation, the relocation requirements described in this section cover the occupants of each rehabilitated unit, whether or not Section 8 assistance will be provided for the unit.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent/utility costs;

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;

(iii) The terms under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the project upon completion of the project; and

(iv) The assistance required under paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A ''displaced person'' (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24. A ''displaced person'' must be advised of his/her rights under the Fair Housing Act (42 U.S.C. 3600–3620), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority is located in an area of minority concentration, such person must also be given, if possible, referrals to comparable and suitable, decent,

safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the HA's determination concerning whether the person qualifies as a ''displaced person,'' or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the HA. A person who is dissatisfied with the HA's determination on the appeal may submit a written request for review of that determination to the HUD field office responsible for administering the URA requirements in the jurisdiction.

(f) *Responsibility of HA.* (1) The HA must provide assurance of compliance as required by 49 CFR part 24 that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the HA to comply with these provisions.

(2) The cost of required relocation assistance may be paid for with funds provided by the owner, or with local public funds, or with funds available from other sources. The cost of HA advisory services for temporary relocation of tenants may be paid from preliminary fees or ongoing administrative fees.

(3) The HA must maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The HA must maintain data on the race, ethnicity, gender, and disability of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term ''displaced person'' includes, but may not be limited to:

(i) A person who moves permanently from the real property after receiving a notice from the owner requiring such move, if the move occurs on or after the date of the submission of the owner application to the HA;

(ii) A person who moves permanently before the submission of the owner application to the HA, if the HA or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) A tenant-occupant of a dwelling unit who moves from the building or complex, permanently, after execution of the Agreement between the owner and the HA, if the move occurs before the tenant is provided written notice offering the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building or complex under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before execution of the Agreement and estimated average monthly utility costs; or

(B) The total tenant payment, as determined under 24 CFR 5.613, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building or complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit and any increased housing costs; or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building or complex permanently after he or she has been required to move to another dwelling unit in the same building or complex in order to carry out the rehabilitation or construction, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-

pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a ''displaced person'' (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the HA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the owner application to the HA and, before signing a lease and commencing occupancy, was provided written notice of the owner application, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a ''displaced person'' (or for any assistance provided under this section) if the owner application is approved;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The HA may request, at any time, HUD's determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing a replacement housing payment to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term ''initiation of negotiations'' means the execution of the Agreement between the owner and the HA.

[60 FR 34717, July 3, 1995, as amended at 63 FR 23871, Apr. 30, 1998]

§ 983.11 Other Federal requirements.

(a) *Equal Opportunity and related requirements.* Participation in this program requires compliance with the Equal Opportunity requirements specified in § 982.53 of this chapter including Section 504 of the Rehabilitation Act of 1973 (24 CFR part 8) and the Fair Housing Amendments Act of 1988 (24 CFR part 100).

(b) *Environmental requirements.* Activities under this part 983 are subject to HUD environmental regulations at 24 CFR part 58. An HA may not attach assistance to a unit unless, before the HA enters into an Agreement to provide project-based assistance for the unit:

(1) The unit of general local government within which the project is located that exercises land use responsibility or, as determined by HUD, the county or State has completed the environmental review required by 24 CFR part 58 and provided to the HA for submission to HUD the completed request for release of funds and certification; and

(2) HUD has approved the request for release of funds.

(c) *Other Federal requirements.* The following requirements must be met, if applicable:

(1) Clean Air Act and Federal Water Pollution Control Act;

(2) Flood Disaster Protection Act of 1973;

(3) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the regulations in 24 CFR part 135;

(4) Executive Order 11246, Equal Employment Opportunity (for all construction contracts of over $10,000);

(5) Executive Order 11625, Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprises;

(6) Executive Orders 12432, Minority Business Enterprise Development, and 12138, Creating a National Women's Business Enterprise Policy; and

(7) Payment of not less than the wages prevailing in the locality, as predetermined by the Secretary of Labor pursuant to the Davis-Bacon Act, to all laborers and mechanics employed in the construction or rehabilitation of the project under an Agreement covering nine or more assisted units, and compliance with the Contract Work

Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other Federal laws and regulations pertaining to labor standards applicable to such an Agreement.

(8) The provisions of part 24 of this title relating to the employment, engagement of services, awarding contracts, or funding of any contractors or subcontractors during any period of debarment, suspension, or placement in ineligibility status.

§ 983.12 Program accounts and records.

(a) 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; and

(2) The application from the family.

(b) During the HAP contract term, and for at least three years thereafter, the HA must keep a copy of:

(1) The HAP contract; and

(2) Records to document the basis for determination of the initial rent to owner, and for the HA determination that rent to owner is a reasonable rent (initially and during the term of the HAP contract).

[63 FR 23871, Apr. 30, 1998]

§ 983.13 Special housing types.

(a) *Applicability*. For applicability of rules on special housing types at 24 CFR part 982, subpart M, see § 983.1(b)(2)(x). In the PBC program, the HA may not provide assistance for shared housing or for manufactured homes.

(b) *Group homes*. A group home may include one or more group home units. There must be a single PBC HAP contract for units in the group home. A separate lease is executed for each elderly person or person with disabilities who resides in a group home.

[63 FR 23871, Apr. 30, 1998]

Subpart B—Owner Application Submission to Agreement

§ 983.51 HA unit selection policy, advertising, and owner application requirements.

(a) *General*. The HA must adopt a written policy establishing competitive procedures for owner submission of applications and for HA selection of units to which assistance is to be attached and must submit the policy to the HUD field office for review and approval. The HA must select units in accordance with its approved selection policy. The HA's written selection policy must comply with the requirements of paragraph (b) of this section.

(b) *Advertising requirements*. The HA must advertise in a newspaper of general circulation that the HA will accept applications for assistance under this part 983 for specific projects. The advertisement must be approved by the HUD field office and may not be published until after the later of HUD authorization to implement a project-based program or ACC execution. The advertisement must: be published once a week for three consecutive weeks; specify an application deadline of at least 30 days after the date the advertisement is last published; specify the number of units the HA estimates it will be able to assist under the funding the HA is making available for this purpose; and state that only applications submitted in response to the advertisement will be considered.

(c) *Selection policy requirements*. The HA's written selection policy must identify, and specify the weight to be given to, the factors the HA will use to rank and select applications. These factors must include consideration of: site; design; previous experience of the owner and other participants in development, marketing, and management; and feasibility of the project as a whole (including likelihood of financing and marketability). The HA may add other factors, such as responsiveness to local objectives specified by the HA.

(d) *Owner application*. The owner's application submitted to the HA must contain the following:

(1) A description of the housing to be constructed or rehabilitated, including the number of units by size (square footage), bedroom count, bathroom count, sketches of the proposed new construction or rehabilitation, unit plans, listing of amenities and services, and estimated date of completion. For rehabilitation, the description must describe the property as is, and must also describe the proposed rehabilitation;

(2) Evidence of site control, and for new construction identification and description of the proposed site, site plan and neighborhood;

(3) Evidence that the proposed new construction or rehabilitation is permitted by current zoning ordinances or regulations or evidence to indicate that the needed rezoning is likely and will not delay the project;

(4) The proposed contract rent per unit, including an indication of which utilities, services, and equipment are included in the rent and which are not included. For those utilities that are not included in the rent, an estimate of the average monthly cost for each unit type for the first year of occupancy;

(5) A statement identifying:

(i) The number of persons (families, individuals, businesses and nonprofit organizations) occupying the property on the date of the submission of the application;

(ii) The number of persons to be displaced, temporarily relocated or moved permanently within the building or complex;

(iii) The estimated cost of relocation payments and services, and the sources of funding; and

(iv) The organization(s) that will carry out the relocation activities;

(v) The identity of the owner and other project principals and the names of officers and principal members, shareholders, investors, and other parties having a substantial interest; certification showing that the above-mentioned parties are not on the U.S. General Services Administration list of parties excluded from Federal procurement and nonprocurement programs; a disclosure of any possible conflict of interest by any of these parties that would be a violation of the Agreement or the HAP contract; and information on the qualifications and experience of the principal participants. Information concerning any participant who is not known at the time of the owner's submission must be provided to the HA as soon as the participant is known;

(vi) The owner's plan for managing and maintaining the units;

(vii) Evidence of financing or lender interest and the proposed terms of financing;

(viii) The proposed term of the HAP contract; and

(ix) Such other information as the HA believes necessary.

(e) *Resident management corporation competitive selection exception*. An HA may select units to which assistance is to be attached, without advertising under paragraph (b) of this section and without applying the selection factors otherwise required by paragraph (c) of this section, if attachment of project-based assistance would further the purposes of the sale of a public housing project to a resident management corporation under section 21 of the U.S. Housing Act of 1937 (42 U.S.C. 1437s).

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

[60 FR 34717, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23871, Apr. 30, 1998]

§ 983.52 Rehabilitation: Initial inspection and determination of unit eligibility.

(a) Before selecting a unit or executing an Agreement, the HA must determine that the application is responsive to and in compliance with the HA's written selection criteria and procedures, and is otherwise in conformity with HUD program regulations and requirements. The HA must inspect the property to determine that rehabilitation has not begun and that the property meets the $1000 per assisted unit rehabilitation requirement under § 983.8 of this chapter. If the property meets this rehabilitation requirement, the HA must determine the specific work items that are needed to bring each unit to be assisted up to the housing quality standards specified in § 983.5 (or other standards as approved in the HA's application), to complete any other repairs needed to meet the $1000 per assisted unit rehabilitation requirement and, in the case of projects of five or more units, any work items necessary to meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973.

(b) Before selecting a unit or executing an Agreement, the HA must also consider whether the property is eligible housing under § 983.7; meets the other Federal requirements in § 983.11

and the site and neighborhood standards cross-referenced in § 983.6; and will be rehabilitated with other than assistance under the U.S. Housing Act of 1937 in accordance with § 983.9. The HA must also determine the number of current tenants that are low-income families. An HA may not select a unit, or enter into an Agreement with respect to a unit, if the unit is occupied by persons who are not eligible for participation in the program.

(c) Before executing an Agreement, the HA must contract with a State certified general appraiser and establish the rents in accordance with § 983.202, or seek and obtain the HUD-determined initial contract rents for any HA owned or controlled units or projects financed with a HUD insured or coinsured multifamily mortgage; obtain subsidy layering contract rent reviews from HUD or a Housing Credit Agency; obtain environmental clearance in accordance with § 983.11; submit a certification to the HUD field office stating that the unit or units were selected in accordance with the HA's approved unit selection policy; and receive approval from the HUD field office to execute an Agreement pursuant to the reviews required in § 983.53.

(d) When the HA administering the ACC or an entity substantially controlled by the HA administering the ACC has submitted an application, the HUD field office will select the owner applications. The HA must submit to the HUD field office all owner applications in response to the advertisement.

(e) The HUD field office may terminate the Agreement or HAP contract upon at least 30 days written notice to the owner by the HUD field office if the HUD field office determines at any time that the units were not selected in accordance with the HA's approved written selection policy or that the units did not initially meet the HUD eligibility requirements.

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[60 FR 34717, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23871, Apr. 30, 1998]

§ 983.53 Rehabilitation: HUD field office review of applications.

(a) The HUD field office must establish initial contract rents for any HA owned units or projects financed with a HUD insured or coinsured multifamily mortgage. HUD (or a Housing Credit Agency) must also conduct subsidy layering contract rent reviews.

(b) When the HA administering the ACC or an entity substantially controlled by the HA administering the ACC has submitted an application, the HA must submit to the HUD field office all owner applications in response to the advertisement. The HUD field office must review the owner applications and make the final selections based on the criteria in the HA selection policy approved by the HUD field office.

§ 983.54 Rehabilitation: Work write-ups.

The owner must prepare work write-ups and, where determined necessary by the HA, specifications and plans. The HA has flexibility to determine the appropriate documentation to be submitted by the owner based on the nature of the identified rehabilitation. The work write-ups must address the specific work items identified by the HA under § 983.52.

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

[60 FR 34717, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995]

§ 983.55 New construction: HA evaluation and technical processing.

(a) Before selecting a unit or executing an Agreement, the HA must determine that the application is responsive to and in compliance with the HA's written selection criteria and procedures, and is otherwise in conformity with HUD program regulations and requirements. For example, the owner must submit with the application evidence of site control and the certification required by § 983.51(d)(5)(v). The HA must determine that construction (foundation work) has not begun. The HA must determine that the proposed initial gross rents are within the fair market rent limitation under § 983.202. The HA must also consider whether the

property is eligible housing within the meaning of § 983.7; meets the other Federal requirements in § 983.11 and the site and neighborhood standards in § 983.6; will be constructed with other than assistance under the U.S. Housing Act of 1937 in accordance with § 983.9; and, in the case of projects of four or more units, whether any work items necessary to meet the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and the Fair Housing Amendments Act of 1988 will be completed.

(b) Before executing an Agreement, the HA must contract with a State certified general appraiser and establish the rents in accordance with § 983.202 or seek and obtain the HUD-determined initial contract rents for any HA owned or controlled units or projects financed with a HUD insured or coinsured multifamily mortgage; seek and obtain subsidy layering contract rent reviews from HUD or a Housing Credit Agency; seek and obtain environmental clearance in accordance with § 983.11; and receive approval from the HUD field office to execute an Agreement pursuant to the reviews required in § 983.56.

(c) If the HA administering the ACC or an entity substantially controlled by the HA administering the ACC has submitted an application, the HA must submit to the HUD field office all owner applications in response to the advertisement. The HUD field office will select the owner applications to be funded from the applications received in response to the HA advertisement.

(d) If there are no HA-owned or controlled applicants, the HA must submit to the HUD field office for the site and neighborhood review only those applications determined by the HA to be eligible for further processing pursuant to paragraph (a) of this section, and must submit a certification to the HUD field office stating that the unit or units were selected in accordance with the HA's approved unit selection policy. The HA's submission must not exceed the number of uncommitted units for which the HA is authorized to project-base assistance in connection with new construction. If the number of units contained in applications the HA has determined to be eligible for further processing exceeds the number for which the HA is authorized to project-base assistance, the HA may submit only the top-ranked applications.

(e) The HUD field office may terminate the Agreement or HAP contract upon at least 30 days written notice to the owner by HUD if the HUD field office determines that the units were not selected in accordance with the HA's approved written selection policy or that the units did not initially meet the HUD eligibility requirements.

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[60 FR 34717, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23871, Apr. 30, 1998]

§ 983.56 New construction: HUD field office review of applications.

(a) The HUD field office must review the owner applications submitted by an HA to determine compliance with requirements concerning the site and neighborhood standards in § 983.6.

(b) The HUD field office must establish initial contract rents for any HA owned units or projects financed with a HUD insured or coinsured multifamily mortgage. HUD (or a Housing Credit Agency) must also conduct subsidy layering contract rent reviews.

(c) When the HA administering the ACC or an entity substantially controlled by the HA administering the ACC has submitted an application, the HA must submit to the HUD field office all owner applications in response to the advertisement. The HUD field office must review the owner applications and make the final selections based on the criteria in the HA selection policy approved by the HUD field office.

§ 983.57 New construction: Working drawings and specifications.

Before an Agreement is executed for new construction units, the owner must submit the design architect's certification that the proposed new construction reflected in the working drawings and specifications complies with housing quality standards, local

codes and ordinances, and zoning requirements.

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

[60 FR 34717, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995]

Subpart C—Agreement and New Construction or Rehabilitation Period

§ 983.101 Agreement to enter into HAP contract, and contract rents in Agreement.

(a) *Agreement.* The HA must enter into an Agreement with the owner in the form prescribed by HUD for assistance provided under this part 983. The Agreement must be executed before the start of any new construction or rehabilitation. Under the Agreement, the owner agrees to construct the units in accordance with the HA-approved working drawings and specifications or to rehabilitate the units in accordance with the HA-approved work write-ups.

(b) *Contract rents in Agreement.* The Agreement must list the initial contract rents that will apply to the units after they are constructed or rehabilitated. The amounts of the contract rents that are listed in the Agreement or, if applicable, as lowered under § 983.103(c), must be the initial contract rents upon execution of the HAP contract. These initial contract rents may only be increased if:

(1) The project is financed with a HUD insured or coinsured multifamily mortgage;

(2) The initial contract rents listed in the Agreement were based on the amount determined by HUD to be necessary to amortize the insured or coinsured mortgage; and

(3) The HUD field office approves a cost increase prior to closing. In such a case, the HUD field office may redetermine the initial contract rents in accordance with § 983.202 except that the field office may use the comparable rents originally used in processing the insured or coinsured mortgage in lieu of the amount determined in accordance with § 983.202.

[60 FR 34717, July 3, 1995, as amended at 63 FR 23871, Apr. 30, 1998]

§ 983.102 Owner selection of contractor.

The owner is responsible for selecting a competent contractor to undertake the new construction or rehabilitation work under the Agreement. The owner may not award contracts to, otherwise engage the services of, or fund any contractor or subcontractor, to perform such work, that fails to provide a certification that neither it nor its principals is presently debarred, suspended, or placed in ineligibility status under 24 CFR part 24, or is on the list of ineligible contractors or subcontractors established and maintained by the Comptroller General under 29 CFR part 5. The HA must promote opportunities for minority contractors to participate in the program.

§ 983.103 New construction or rehabilitation period.

(a) *Timely performance of work.* After the Agreement has been executed, the owner must promptly proceed with the construction or rehabilitation work as provided in the Agreement. In the event the work is not so commenced, diligently continued, or completed, the HA may terminate the Agreement or take other appropriate action.

(b) *Inspections.* The HA must inspect during construction or rehabilitation to ensure that work is proceeding on schedule and is being accomplished in accordance with the terms of the Agreement. The inspection must be carried out to ensure that the work meets the types of materials specified in the work write-ups or working drawings and specifications, and meets typical levels of workmanship in the area.

(c) *Changes.* The owner must obtain prior HA approval for any changes from the work specified in the Agreement that would alter the design or the quality of the required new construction or rehabilitation. The HA may disapprove any changes requested by the owner. HA approval of changes may be conditioned on establishing lower initial contract rents in the amount determined by the HA (or the HUD field office for HA owned units or projects financed with a HUD insured or coinsured multifamily mortgage). If the owner makes any changes without prior HA approval, the HA may lower

the initial contract rents in the amount determined by the HA (or the HUD field office for HA owned units or projects financed with a HUD insured or coinsured multifamily mortgage), and may require the owner to remedy any deficiencies, prior to, and as a condition for, acceptance of the units. Initial contract rents, however, must not be increased because of any change from the work specified in the Agreement as originally executed. When a HUD insured or a HUD coinsured multifamily mortgage is used to finance new construction or rehabilitation of the units to which assistance is to be attached under this part 983, the HUD field office may lower the initial contract rents to reflect any reduction in the amount necessary to amortize the insured or coinsured mortgage.

(d) *Notification of vacancies.* At least 60 days before the scheduled completion of the new construction or rehabilitation, the owner must notify the HA of any units expected to be vacant on the anticipated effective date of the HAP contract. The HA must refer to the owner appropriate-sized families from the HA waiting list. When the HAP contract is executed, the owner must notify the HA which units are vacant. (See also § 983.253).

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

[60 FR 34717, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23871, Apr. 30, 1998]

§ 983.104 New construction or rehabilitation completion.

(a) Notification of completion. The owner must notify the HA when the work is completed and submit to the HA the evidence of completion described in paragraph (b) of this section.

(b) *Evidence of completion.* To demonstrate completion of the work the owner must furnish the HA with:

(1) A certificate of occupancy or other official approvals as required by the locality.

(2) A certification by the owner that:

(i) The work has been completed in accordance with the requirements of the Agreement;

(ii) There are no defects or deficiencies in the work except for items of delayed completion which are minor or which are incomplete because of weather conditions and, in any case, do not preclude or affect occupancy;

(iii) The unit(s) has been constructed or rehabilitated in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials;

(iv) Units are in compliance with the lead-based paint requirements in part 35, subparts A, B, H, and R of this title; and

(v) The owner has complied with any applicable labor standards requirements in the Agreement.

(3) For projects where a HUD field office construction inspection is not required during construction, a certification from the inspecting architect stating that the units have been constructed in accordance with the certified working drawings and specifications, housing quality standards, local codes and ordinances, and zoning requirements.

(c) *Review and inspections.* The HA must review the evidence of completion for compliance with paragraph (b) of this section. The HA also must inspect the unit(s) to be assisted to determine that the unit(s) has been completed in accordance with the Agreement, including meeting the housing quality standards or other standards approved by the HUD field office for the program. If the inspection discloses defects or deficiencies, the inspector must report these in detail.

(d) *Acceptance.* (1) If the HA determines from the review and inspection that the unit(s) has been completed in accordance with the Agreement, the HA must accept the unit(s).

(2) If there are any items of delayed completion that are minor items or that are incomplete because of weather conditions, and in any case that do not preclude or affect occupancy, and all other requirements of the Agreement have been met, the HA may accept the unit(s). The HA must require the owner to deposit in escrow with the HA funds in an amount the HA determines to be sufficient to ensure completion of the delayed items. The HA and owner must also execute a written agreement, specifying the schedule for completion of these items. If the items are not

completed within the agreed time period, the HA may terminate the HAP contract or exercise other rights under the HAP contract.

(3) If other deficiencies exist, the HA must determine whether and to what extent the deficiencies are correctable and whether a time extension is warranted, and HUD must determine whether the contract rents should be reduced.

(4) Otherwise, the unit(s) may not be accepted, and the owner must be notified with a statement of the reasons for nonacceptance.

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

[60 FR 34717, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 64 FR 50230, Sept. 15, 1999]

Subpart D—Housing Assistance Payments Contract

§ 983.151 Housing assistance payments contract (HAP contract).

(a) *Required form.* The HA must enter into a HAP contract with the owner in the form prescribed by HUD for assistance provided under this part 983.

(b) *Term of HAP contract.* (1) The initial HAP contract term may not be less than one year nor more than five years, and may not extend beyond the ACC expiration date for the funding source from which the HAP contract is to be funded.

(2) The contract authority for the funding source must exceed the estimated annual housing assistance payments for all tenant-based and project-based HAP contracts funded from the funding source.

(3) Within these limitations, the HA has the sole discretion to determine the HAP contract term.

(c) *Renewal of HAP contracts.* With HUD field office approval and at the sole option of the HA, HAs may renew expiring HAP contracts for such period or periods as the HUD field office determines appropriate to achieve long-term affordability of the assisted housing, provided that the term does not extend beyond the ACC expiration date for the funding source. HAs must identify the funding source for renewals; different funding sources may be used for the initial term and renewal terms of the HAP contract. In addition to assessing whether the HAP contract should be renewed to achieve long term affordability, HUD will review an HA's renewal request to determine that the requirements listed in § 983.3(a) will be satisfied, and to determine if a rent reduction is warranted pursuant to 24 CFR part 12. The owner and owner's successors in interest must accept all HAP contract renewals agreed to by the HA and approved by HUD.

(d) *Time of execution.* The HA must execute the HAP contract if the HA accepts the unit(s) under § 983.104. The effective date of the HAP contract may not be earlier than the date of HA inspection and acceptance of the unit(s).

(e) *Units under lease.* After commencement of the HAP contract term, the HA must make the monthly housing assistance payments in accordance with the HAP contract for each unit occupied under lease by a family.

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[60 FR 34717, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23871, Apr. 30, 1998]

§ 983.152 Reduction of number of units covered by HAP contract.

(a) *Limitation on leasing to ineligible families.* Owners must lease all assisted units under HAP contract to eligible families. Leasing of vacant, assisted units to ineligible tenants is a violation of the HAP contract and grounds for all available legal remedies, including suspension or debarment from HUD programs and reduction of the number of units under the HAP contract, as set forth in paragraph (b) of this section. Once the HA has determined that a violation exists, the HA must notify the HUD field office of its determination and the suggested remedies. At the direction of the HUD field office, the HA must take the appropriate action.

(b) *Reduction for failure to lease to eligible families.* If, at any time beginning 180 calendar days after the effective date of the HAP contract, the owner fails for a period of 180 continuous calendar days to have the assisted units leased to families receiving housing assistance or to families who were eligible when they initially leased the unit

but are no longer receiving housing assistance, the HA may, on at least 30 calendar days notice, reduce the number of units covered by the HAP contract. The HA may reduce the number of units to the number of units actually leased or available for leasing by eligible families plus 10 percent (rounded up). If the owner has only one unit under HAP contract and if one year has elapsed since the date of the last housing assistance payment, the HAP contract may be terminated with the consent of the owner.

(c) *Restoration.* The HA will agree to an amendment of the HAP contract to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

(1) The HA determines that the restoration is justified by demand,

(2) The owner otherwise has a record of compliance with obligations under the HAP contract; and

(3) Contract authority is available.

Subpart E—Management

§ 983.201 Responsibilities of the HA.

The HA must:

(a) Inspect the project before, during and upon completion of new construction or rehabilitation; and

(b) Ensure that the amount of assistance that is attached to units is within the amounts available under the ACC.

[63 FR 23871, Apr. 30, 1998]

§ 983.202 Responsibilities of the owner.

Section 982.452 of this chapter, *Owner responsibilities,* applies. The owner is also responsible for performing all of the owner responsibilities under the Agreement and the HAP contract, providing the HA with a copy of any termination of tenancy notification, and offering vacant, accessible units to a Family with one or more members with a disability requiring accessibility features of the vacant unit and occupying an assisted unit not having such features.

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

[60 FR 34717, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 63 FR 23871, Apr. 30, 1998]

§ 983.203 Family participation.

Subpart E of part 982 of this chapter, *Selection for Tenant-based Program,* does not apply, except as it is expressly made applicable by this section.

(a) *HA selection for participation.* (1) The following provisions apply to this part: §§ 982.201, 982.202 except paragraph (b)(3), 982.203, 982.204 except paragraph (a) and (d), 982.205 except paragraph (a), 982.206, 982.207.

(2) For purposes of this part, a family becomes a participant when the family and owner execute a lease for a unit with project-based assistance.

(3) An HA may use the tenant-based waiting list, a merged waiting list, or a separate PBC waiting list for admission to the PBC program. If the HA opts to have a separate PBC waiting list, the HA may use a single waiting list for all PBC projects, or may use a separate PBC waiting list for an area not smaller than a county or municipality.

(4) Except for special admissions and admissions pursuant to paragraph (c)(3) of this section, 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.

(5) HAs authorized to use the 30-percent limit to prevent prepayments under State mortgage programs must not count families selected to occupy units in these State-assisted or subsidized projects against the local preference limit.

(6) The selection of eligible in-place families does not count against the local preference limit.

(b) *HA determination of eligibility of in-place families.* Before an HA selects a specific unit to which assistance is to be attached, the HA must determine whether the unit is occupied, and if occupied, whether the unit's occupants are eligible for assistance. If the unit is occupied by an eligible family (including a single person) and the HA selects the unit, the family must be afforded the opportunity to lease that unit or another appropriately sized, project-based assisted unit in the project without requiring the family to be placed on the waiting list. An HA may not select a unit, or enter into an Agreement

with respect to a unit, if the unit is occupied by persons who are not eligible for participation in the program.

(c) *Filling vacant units.* (1) When the owner notifies the HA of vacancies in the units to which assistance is attached, the HA will refer to the owner one or more families of the appropriate size on its waiting list. A family that refuses the offer of a unit assisted under this part 983 keeps its place on the waiting list.

(2) The owner must rent all vacant units to eligible families referred by the HA from its waiting list. The HA must determine eligibility for participation in accordance with HUD requirements.

(3) If the HA does not refer a sufficient number of interested applicants on the HA waiting list to the owner within 30 days of the owner's notification to the HA of a vacancy, the owner may advertise for or solicit applications from eligible very low-income families, or, if authorized by the HA in accordance with HUD requirements, low-income families. The owner must refer these families to the HA to determine eligibility.

(4)(i) The owner is responsible for screening and selection of tenants. The owner must adopt written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families, and reasonably related to program eligibility and an applicant's ability to perform the lease obligations.

(ii)(A) An owner must promptly notify in writing any rejected applicant of the grounds for any rejection.

(B) If the owner rejects an applicant family who believes that the rejection was the result of unlawful discrimination, the family may request the assistance of the HA in resolving the issue. The family may also file a discrimination complaint with the HUD field office or exercise other rights provided by law.

(d) Briefing of families. When a family is selected to occupy a project-based unit, the PHA must provide the family with information concerning the tenant rent and any applicable utility allowance, and a copy of the lead hazard information pamphlet described in § 35.130 of this title, except that the PHA need not provide the pamphlet if the PHA can demonstrate that the pamphlet has already been provided in accordance with § 35.130 of this title. The family also must be provided with a full explanation of the following, either in group or individual sessions:

(1) Family and owner responsibilities under the lease and HAP contract;

(2) Information on Federal, State, and local equal opportunity laws;

(3) The fact that the subsidy is tied to the unit, that the family must occupy a unit constructed or rehabilitated under the program, and that a family that moves from the unit does not have any right to continued assistance;

(4) The likelihood of the family receiving a certificate after the HAP contract expires;

(5) The family's options under the program, if the family is required to move because of a change in family size or composition;

(6) Information on the HA's procedures for conducting informal hearings for participants, including a description of the circumstances in which the HA is required to provide the opportunity for an informal hearing (under § 983.207), and of the procedures for requesting a hearing.

(e) *Continued assistance for a family when the HAP contract is terminated.* If the HAP contract for the unit expires or if the HA terminates the HAP contract for the unit:

(1) The HA must issue the assisted family in occupancy of a unit a certificate of family participation for assistance under the HA's certificate program unless the HA has determined that it does not have sufficient funding for continued assistance for the family, or unless the HA denies issuance of a certificate in accordance with § 982.552 of this chapter.

(2) If the unit is not occupied by an assisted family, then the available funds under the ACC that were previously committed for support of the project-based assistance for the unit must be used for the HA's certificate program.

(f) *Amount of rent payable by family to owner.* The amount of rent payable by

the Family to the owner must be the Tenant Rent.

(g) *Lease requirements.* (1) The lease between the family and the owner must be in accordance with § 983.206 and any other applicable HUD regulations and requirements. The lease must include all provisions required by HUD and must not include any of the provisions prohibited by HUD.

(2) When offering an accessible unit to an applicant not having disabilities requiring the accessibility features of the unit, the owner may require the applicant to agree (and may incorporate this agreement in the Lease) to move to a non-accessible unit when available.

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

[60 FR 34717, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995; 61 FR 9048, Mar. 6, 1996; 61 FR 27163, May 30, 1996; 63 FR 23871, Apr. 30, 1998; 64 FR 50230, Sept. 15, 1999; 69 FR 34276, June 21, 2004]

§ 983.204 Maintenance, operation and inspections.

(a) Section 982.404 of this chapter, *Maintenance: Owner and family responsibility; HA remedies,* pertaining to owner responsibilities and HA remedies, does not apply. Section 982.405 of this chapter, *HA periodic unit inspection,* and § 982.406 of this chapter, *Enforcement of HQS,* do not apply.

(b) *Maintenance and operation.* The owner must provide all the services, maintenance and utilities as agreed under the HAP contract, subject to abatement of housing assistance payments or other applicable remedies if the owner fails to meet these obligations.

(c) *Periodic inspection.* In addition to the inspections required prior to execution of the HAP contract, the HA must inspect or cause to be inspected each dwelling unit under HAP contract at least annually and at such other times as may be necessary to assure that the owner is meeting the obligations to maintain the unit in decent, safe and sanitary condition and to provide the agreed upon utilities and other services. The HA must take into account complaints and any other information coming to its attention in scheduling inspections.

(d) *Units not decent, safe and sanitary.* If the HA notifies the owner that the unit(s) under HAP contract are not being maintained in decent, safe and sanitary condition and the owner fails to take corrective action within the time prescribed in the notice, the HA may exercise any of its rights or remedies under the HAP contract, including abatement of housing assistance payments (even if the family continues in occupancy), termination of the HAP contract on the affected unit(s) and termination of assistance to the family in accordance with § 982.552 of this chapter.

(e) *Enforcement of HQS.* 24 CFR part 982 and this part 983 do not create any right of the family, or any party other than HUD or the HA, to require enforcement of the HQS requirement by HUD or the HA, or to assert any claim against HUD or the HA, for damages, injunction or other relief, for alleged failure to enforce the HQS.

[60 FR 34717, July 3, 1995, as amended at 63 FR 23871, Apr. 30, 1998]

§ 983.205 Overcrowded and underoccupied units.

(a) 24 CFR 982.403, *Terminating HAP contract: When unit is too big or too small,* does not apply.

(b) If the HA determines that a contract unit is not decent, safe, and sanitary because of an increase in family size that causes the unit to be overcrowded or that a contract unit is larger than appropriate for the size of the family in occupancy under the HA's subsidy standards, housing assistance payments with respect to the unit may not be terminated for this reason. The owner, however, must offer the family a suitable alternative unit if one is available and the family shall be required to move. If the owner does not have available a suitable unit within the family's ability to pay the rent, the HA (if it has sufficient funding) must offer Section 8 assistance to the family or otherwise assist the family in locating other standard housing in the HA's jurisdiction within the family's ability to pay, and require the family to move to such a unit as soon as possible. The family must not be forced to move, nor shall housing assistance payments under the HAP contract be terminated

for the reasons specified in this paragraph, unless the family rejects, without good reason, the offer of a unit that the HA judges to be acceptable.

[60 FR 34717, July 3, 1995. Redesignated and amended at 63 FR 23871, Apr. 30, 1998]

§ 983.206 Assisted tenancy and termination of tenancy.

(a) Section 982.309 of this chapter, *Term of assisted tenancy,* and § 982.310 of this chapter, *Owner termination of tenancy,* do not apply.

(b) *Term of lease.* The term of a lease, including a new lease or a lease amendment, executed by the owner and the family must be for at least one year, or the remaining term of the HAP contract if the remaining term of the HAP contract is less than one year.

(c) *Move from unit.* The family must notify the HA and the owner before the family moves out of the unit.

(d) *Termination of tenancy.* (1) Subpart A of part 247 of this title, *Eviction from Certain Subsidized and HUD-Owned Projects,* applies, except § 247.4(d) of this title.

(2) The lease may contain a provision permitting the family to terminate the lease on not more than 60 days advance written notice to the owner. In the case of a lease term for more than one year, the lease must contain a provision permitting the family to terminate the lease on such notice after the first year of the term.

(3) The owner may offer the family a new lease for execution by the family for a term beginning at any time after the first year of the term of the lease. The owner must give the family written notice of the offer at least 60 days before the proposed commencement date of the new lease term. The offer may specify a reasonable time for acceptance by the family. Failure by the family to accept the offer of a new lease in accordance with this paragraph shall be ''other good cause'' for termination of tenancy (under § 247.3(a)(3) of this title).

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

[60 FR 34717, July 3, 1995, as amended at 60 FR 45661, Sept. 1, 1995. Redesignated at 63 FR 23871, Apr. 30, 1998]

§ 983.207 Informal review or hearing.

24 CFR 982.554 (Informal review for applicants) and 24 CFR 982.555 (Informal hearing for participants) are applicable.

[63 FR 23871, Apr. 30, 1998]

Subpart F—Rent and Housing Assistance Payment

SOURCE: 63 FR 23871, Apr. 30, 1998, unless otherwise noted.

§ 983.251 Applicability.

(a) This subpart describes how to determine the amount of the rent to owner and the housing assistance payment in the PBC program.

(b) In subpart K of 24 CFR part 982 (rent and housing assistance payment for tenant-based program), the following are the only sections that apply to the PBC program under this Part: § 982.504 (for determination of the FMR/exception rent limit); § 982.516 (regular and interim examinations of family income and composition); and § 982.517 (utility allowance schedule).

§ 983.252 Limits on initial rent to owner.

(a) *Reasonable rent.* The initial rent to owner for a unit may not exceed the reasonable rent as determined by the HA in accordance with § 983.256.

(b) *FMR/exception rent limit.* The initial gross rent for a unit (rent to owner plus utility allowance) may not exceed the FMR/exception rent limit on the date the Agreement is executed. The FMR/exception rent limit is determined by the HA in accordance with 24 CFR 982.504.

§ 983.253 Initial rent: Who approves.

(a) *For units that are not HUD-insured or HA-owned.* The HA approves the initial rent to owners for PBC units that are not financed with a HUD-insured multifamily mortgage, and are not owned by the HA.

(b) *For units that are insured or HA-owned.* For HA-owned PBC units or PBC units financed with a HUD insured multifamily mortgage, the initial rents must be approved by HUD.

§ 983.254 Annual adjustment of rent to owner.

(a) *Owner request for adjustment and compliance with contract.* At each annual anniversary date of the HAP contract, the HA must adjust the rent to owner in accordance with the following requirements:

(1) The owner must request a rent increase (including a comparability study to determine the amount of such increase) by written notice to the HA at least 120 days before the HAP contract anniversary. The request must be submitted in the form and manner required by the HA.

(2) The HA may not increase the rent at the annual anniversary unless:

(i) The owner requested the increase by the 120 day deadline; and

(ii) During the year before the contract anniversary, the owner complied with all requirements of the HAP contract, including compliance with the HQS for all contract units.

(b) *Amount of annual adjustment.* (1) The adjusted rent to owner equals the lesser of:

(i) The pre-adjustment rent to owner multiplied by the applicable Section 8 annual adjustment factor published by HUD in the FEDERAL REGISTER;

(ii) The reasonable rent as determined by the HA in accordance with § 983.256; or

(iii) The rent requested by owner.

(2) For a HAP contract under an Agreement executed on or after June 1, 1998, the applicable factor is the published annual adjustment factor in effect 60 days before the HAP contract anniversary. For a HAP contract under an Agreement executed before June 1, 1998, the applicable factor is the published annual adjustment factor in effect on the contract anniversary date.

(3) In making the annual adjustment, the pre-adjustment rent to owner does not include any previously approved special adjustments.

(4) The rent to owner may be adjusted up or down in accordance with this section.

(c) *Rent adjustments for HA-owned units.* For HA-owned PBC units, the HA must request HUD approval of the annual adjustment. The HA may not increase the rent at the annual anniversary until and unless HUD has reviewed the HA comparability study, and has approved the adjustment.

(d) *Initial rent.* Except as necessary to correct errors in establishing the initial rent in accordance with HUD requirements, the adjusted rent to owner must not be less than the initial rent.

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

§ 983.255 Special adjustment of rent to owner.

(a) *HUD discretion.* (1) At HUD's sole discretion, HUD may approve a special adjustment of the rent to owner. An HA may only make a special adjustment of the rent to owner if the adjustment has been approved by HUD.

(2) The owner does not have any right to receive a special adjustment.

(b) *Purpose of special adjustment.* A special adjustment may only be approved to reflect increases in the actual and necessary costs of owning and maintaining the contract units because of substantial and general increases in:

(1) Real property taxes;

(2) Special governmental assessments;

(3) Utility rates; or

(4) Costs of utilities not covered by regulated rates.

(c) *Limits on special adjustment.* (1) A special adjustment may only be approved if and to the extent the owner demonstrates that cost increases are not adequately compensated by application of the published annual adjustment factor at the contract anniversary (see § 983.254). The owner must demonstrate that the rent to owner is not sufficient for proper operation of the housing.

(2) The adjusted rent may not exceed the reasonable rent as determined by a comparability study in accordance with § 983.256.

(d) *Financial information.* The owner must submit financial information, as requested by the HA, that supports the grant or continuance of a special adjustment. For HAP contracts of more than twenty units, such financial information must be audited.

(e) *Term of special adjustment.* (1) The HA may withdraw or limit the term of any special adjustment.

(2) If a special adjustment is approved to cover temporary or one-time costs, the special adjustment is only a temporary or one-time increase of the rent to owner.

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

§ 983.256 Reasonable rent.

(a) *Requirement.* (1) The HA may not enter an agreement to enter into housing assistance payments contract until the HA determines that the initial rent to owner under the HAP contract is a reasonable rent.

(2) During the term of a HAP contract, the rent to owner may not exceed the reasonable rent as determined by the HA.

(3) At least annually during the HAP contract term, the HA must redetermine that the current rent to owner does not exceed a reasonable rent.

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

(1) The location, quality, size, unit type, and age of the contract unit; and

(2) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

(c) *Appraisal*—(1) *Determining initial rent.* (i) To determine that the initial rent to owner is reasonable, the HA must use a qualified State-certified appraiser who has no direct or indirect interest in the property or otherwise.

(ii) For each unit type, the appraiser must submit a completed comparability analysis on Form HUD–92273 (Estimates of Market Rent by Comparison—the form is available at the Department of Housing and Urban Development, HUD Custom Service Center, 451 7th Street, SW, Room B–100, Washington, DC 20410) for HA review and approval. The appraisal must use at least three comparable units in the private unassisted market.

(iii) The HA must certify to HUD that the initial rent to owner for a unit does not exceed the reasonable rent.

(2) *Annual Adjustment: Comparability study.* (i) In determining the annual adjustment of rent to owner (in accordance with § 983.254), the adjusted rent to owner must not exceed a reasonable rent as determined by an HA ''comparability study.''

(ii) The comparability study is an analysis of rents charged for comparable units. The HA comparability study must determine the reasonable rent for the contract units as compared with rents for comparable unassisted units. The adjusted rent for a contract unit may not exceed the reasonable rent as shown by the comparability study.

(iii) The comparability study must include a completed comparability analysis for each unit type on Form HUD–92273 (Estimates of Market Rent by Comparison). The comparability study may be prepared by HA staff or by another qualified appraiser. The appraiser may not have any direct or indirect interest in the property or otherwise.

(iv) The comparability study must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units.

(v) If the owner requests a rent increase by the 120 day deadline (in accordance with § 983.254(a)), the HA must submit a comparability study to the owner at least 60 days before the HAP contract anniversary. If the HA does not submit the comparability study to the owner by this deadline, an increase of rent by application of the annual adjustment factor (in accordance with § 983.254(b)) is not subject to the reasonable rent limit.

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

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

§ 983.257 Other subsidy: Effect on rent to owner.

(a) *HOME.* For units assisted under the HOME program, rents are subject to requirements of the HOME program (24 CFR 92.252).

(b) *Combining subsidy.* The HA may only approve or assist a project in accordance with HUD regulations and guidelines designed to ensure that participants do not receive excessive compensation by combining HUD program assistance with assistance from other Federal, State or local agencies, or with low income housing tax credits. (See 42 U.S.C. 3545(d) and section 3545 note.)

(c) *Other subsidy: HA discretion to reduce rent.* The HA may reduce the initial rent to owner because of other governmental subsidies, including tax credit or tax exemption, grants or other subsidized financing.

(d) *Prohibition of other subsidy.* For provisions prohibiting PBC assistance to units in certain types of subsidized housing, see § 983.7(c).

§ 983.258 Rent to owner: Effect of rent control.

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

§ 983.259 Correction of rent.

At any time during the life of the HAP contract, the HA may revise the rent to owner to correct any errors in establishing or adjusting rent to owner in accordance with HUD requirements. The HA may recover any excess payment from the owner.

§ 983.260 Housing assistance payment: Amount and distribution.

(a) *Amount.* The monthly housing assistance payment equals the gross rent, minus the higher of:

(1) The total tenant payment; or

(2) The minimum rent as required by law.

(b) *Distribution.* The monthly housing assistance payment is distributed as follows:

(1) The HA pays the owner the lesser of the housing assistance payment or the rent to owner.

(2) If the housing assistance payment exceeds the rent to owner, the HA may pay the balance of the housing assistance payment either to the family or directly to the utility supplier to pay the utility bill.

§ 983.261 Family share: Family responsibility to pay.

(a) The family share is calculated by subtracting the amount of the housing assistance payment from the gross rent.

(b) The HA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the family share. Payment of the family share is the responsibility of the family.

§ 983.262 Other fees and charges.

(a) The cost of meals or supportive services may not be included in the rent to owner, and the value of meals or supportive services may not be included in the calculation of reasonable rent.

(b) The lease may not require the tenant or family members to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

(c) The owner may not charge the tenant extra amounts for items customarily included in rent in the locality or provided at no additional cost to the unsubsidized tenants in the premises.

PART 984—SECTION 8 AND PUBLIC HOUSING FAMILY SELF-SUFFICIENCY PROGRAM

Subpart A—General

Sec.
984.101 Purpose, scope, and applicability.
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Subpart D—Reporting

984.401 Reporting.

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

SOURCE: 61 FR 8815, Mar. 5, 1996, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 984 appear at 65 FR 16731, Mar. 29, 2000.

Subpart A—General

§ 984.101 Purpose, scope, and applicability.

(a) *Purpose.* (1) The purpose of the Family Self-Sufficiency (FSS) program is to promote the development of local strategies to coordinate the use of public housing assistance and housing assistance under the Section 8 rental certificate and rental voucher programs with public and private resources, to enable families eligible to receive assistance under these programs to achieve economic independence and self-sufficiency.

(2) The purpose of this part is to implement the policies and procedures applicable to operation of a local FSS program, as established under section 23 of the 1937 Act (42 U.S.C. 1437u), under HUD's rental voucher, rental certificate, and public housing programs.

(b) *Scope.* (1) Each PHA that received funding for public housing units under the FY 1991 and FY 1992 FSS incentive award competitions must operate a public housing FSS program.

(2) Each PHA that received funding for Section 8 rental certificates or rental vouchers under the combined FY 1991/1992 FSS incentive award competition must operate a Section 8 FSS program.

(3) Unless the PHA receives an exemption under § 984.105:

(i) Each PHA for which HUD reserved funding (budget authority) for additional rental certificates or rental vouchers in FY 1993 through October 20, 1998 must operate a Section 8 FSS program.

(ii) Each PHA for which HUD reserved funding (budget authority) to acquire or construct additional public housing units in FY 1993 through October 20, 1998 must operate a public housing FSS program.

(c) *Applicability.* This part applies to:

(1) The public housing program, and

(2) The Section 8 certificate and voucher programs.

[61 FR 8815, Mar. 5, 1996, as amended at 65 FR 16731, Mar. 29, 2000]

§ 984.102 Program objectives.

The objective of the FSS program is to reduce the dependency of low-income families on welfare assistance and on Section 8, public, or any Federal, State, or local rent or homeownership subsidies. Under the FSS program, low-income families are provided opportunities for education, job training, counseling, and other forms of social service assistance, while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary to achieve self-sufficiency, as defined in § 984.103 of this subpart A. The Department will measure the success of a local FSS program not only by the number of families who achieve self-sufficiency, but also by the number of FSS families who, as a result of participation in the program, have family members who obtain their first job, or who obtain higher paying jobs; no longer need benefits received under one or more welfare programs; obtain a high school diploma or higher education degree; or accomplish similar goals that will assist the family in obtaining economic independence.

[61 FR 8815, Mar. 5, 1966, as amended at 65 FR 16731, Mar. 29, 2000]

§ 984.103 Definitions.

(a) The terms *1937 Act, Fair Market Rent, HUD, Public Housing, Public Housing Agency* (PHA), *Secretary,* and *Section 8,* as used in this part, are defined in part 5 of this title.

(b) As used in this part:

Certification means a written assertion based on supporting evidence, provided by the FSS family or the PHA, as may be required under this part, and which:

(1) Shall be maintained by the PHA in the case of the family's certification, or by HUD in the case of the PHA's certification;

(2) Shall be made available for inspection by HUD, the PHA, and the public, as appropriate; and

(3) Shall be deemed to be accurate for purposes of this part, unless the Secretary or the PHA, as applicable, determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

Chief executive officer (CEO). The CEO of a unit of general local government means the elected official or the legally designated official, who has the primary responsibility for the conduct of that entity's governmental affairs. The CEO for an Indian tribe is the tribal governing official.

Contract of participation means a contract in a form approved by HUD, entered into between a participating family and a PHA operating an FSS program that sets forth the terms and conditions governing participation in the FSS program. The contract of participation includes all individual training and services plans entered into between the PHA and all members of the family who will participate in the FSS program, and which plans are attached to the contract of participation as exhibits. For additional detail, see §984.303 of this subpart A.

Earned income means income or earnings included in annual income from wages, tips, salaries, other employee compensation, and self-employment. Earned income does not include any pension or annuity, transfer payments, any cash or in-kind benefits, or funds deposited in or accrued interest on the FSS escrow account established by a PHA on behalf of a participating family.

Effective date of contract of participation means the first day of the month following the month in which the FSS family and the PHA entered into the contract of participation.

Eligible families means:

(1) For the public housing FSS program, current residents of public housing. Eligible families also include current residents of public housing who are participants in local public housing self-sufficiency programs; and

(2) For Section 8 FSS program, current Section 8 rental certificate or rental voucher program participants, including participants in the Project Self-Sufficiency or Operation Bootstrap or other local self-sufficiency programs.

Enrollment means the date that the FSS family entered into the contract of participation with the PHA.

Family Self-Sufficiency program or FSS program means the program established by a PHA within its jurisdiction to promote self-sufficiency among participating families, including the provision of supportive services to these families, as authorized by section 23 of the 1937 Act.

FSS account means the FSS escrow account authorized by section 23 of the 1937 Act, and as provided by §984.305 of this subpart A.

FSS credit means the amount credited by the PHA to the participating family's FSS account.

FSS family or participating family means a family that resides in public housing or receives assistance under the rental certificate or rental voucher programs, and that elects to participate in the FSS program, and whose designated head of the family has signed the contract of participation.

FSS related service program means any program, publicly or privately sponsored, that offers the kinds of supportive services described in the definition of ''supportive services'' set forth in this §984.103.

FSS slots refer to the total number of public housing units or the total number of rental certificates or rental vouchers that comprise the minimum size of a PHA's respective public housing FSS program or Section 8 FSS program.

FY means Federal Fiscal Year (starting with October 1, and ending September 30, and designated by the calendar year in which it ends).

Head of FSS family means the adult member of the FSS family who is the head of the household for purposes of

determining income eligibility and rent.

Housing subsidies means assistance to meet the costs and expenses of temporary shelter, rental housing or homeownership, including rent, mortgage or utility payments.

Individual training and services plan means a written plan that is prepared for the head of the FSS family, and each adult member of the FSS family who elects to participate in the FSS program, by the PHA in consultation with the family member, and which sets forth:

(1) The supportive services to be provided to the family member;

(2) The activities to be completed by that family member; and

(3) The agreed upon completion dates for the services and activities. Each individual training and services plan must be signed by the PHA and the participating family member, and is attached to, and incorporated as part of the contract of participation. An individual training and services plan must be prepared for the head of the FSS family.

JOBS Program means the Job Opportunities and Basic Skills Training Program authorized under part F of title IV of the Social Security Act (42 U.S.C. 402(a)(19)).

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Low-income family. As defined in part 5 of this title.

Participating family. See definition for ''FSS family'' in this section.

Program Coordinating Committee or PCC is the committee described in § 984.202 of this part.

Public housing means housing assisted under the 1937 Act, excluding housing assisted under Section 8 of the 1937 Act.

Self-sufficiency means that an FSS family is no longer receiving Section 8, public or Indian housing assistance, or any Federal, State, or local rent or homeownership subsidies or welfare assistance. Achievement of self-sufficiency, although an FSS program objective, is not a condition for receipt of the FSS account funds. (See § 984.305 of this part.)

Supportive services means those appropriate services that a PHA will make available, or cause to be made available to an FSS family under a contract of participation, and may include:

(1) *Child care*—child care of a type that provides sufficient hours of operation and serves an appropriate range of ages;

(2) *Transportation*—transportation necessary to enable a participating family to receive available services, or to commute to their places of employment;

(3) *Education*— remedial education; education for completion of secondary or post secondary schooling;

(4) *Employment*—job training, preparation, and counseling; job development and placement; and follow-up assistance after job placement and completion of the contract of participation;

(5) *Personal welfare*—substance/alcohol abuse treatment and counseling;

(6) *Household skills and management*—training in homemaking and parenting skills; household management; and money management;

(7) *Counseling*—counseling in the areas of:

(i) The responsibilities of homeownership;

(ii) Opportunities available for affordable rental and homeownership in the private housing market, including information on an individual's rights under the Fair Housing Act; and

(iii) Money management; and

(8) *Other services*—any other services and resources, including case management, reasonable accommodations for individuals with disabilities, that the PHA may determine to be appropriate in assisting FSS families to achieve economic independence and self-sufficiency.

Unit size or size of unit refers to the number of bedrooms in a dwelling unit.

Very low-income family. See definitions in 24 CFR 813.102 and 913.102.

Welfare assistance means (for purposes of the FSS program only) income assistance from Federal or State welfare programs, and includes only cash maintenance payments designed to meet a family's ongoing basic needs. Welfare assistance does not include:

(1) Nonrecurrent, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts under TANF;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement and other employment-related services that do not provide basic income support;

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of the Social Security Act, to an individual who is not otherwise receiving assistance;

(8) Amounts solely directed to meeting housing expenses;

(9) Amounts for health care;

(10) Food stamps and emergency rental and utilities assistance; and

(11) SSI, SSDI, or Social Security.

[61 FR 8815, Mar. 5, 1996, as amended at 65 FR 16731, Mar. 29, 2000]

§984.104 Basic requirements of the FSS program.

An FSS program established under this part shall be operated in conformity with:

(a) The regulations of this part, and for a Section 8 FSS program, the rental certificate and rental voucher regulations, codified in 24 CFR parts 882, 887, and 982 respectively, and for a public housing FSS program, the applicable public housing regulations, including the regulations in 24 CFR parts 913, 960, and 966;

(b) An Action Plan, as described in §984.201, and provide comprehensive supportive services as defined in §984.103; and

(c) An FSS program established under this part shall be operated in compliance with the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5, with the exception of Executive Orders 11246, 11625, 12432, and 12138.

§984.105 Minimum program size.

(a) *FSS program size.* (1) *Minimum program size requirement.* A PHA must operate an FSS program of the minimum program size determined in accordance with paragraph (b) of this section.

(2) *Exception or reduction of minimum program size.* Paragraph (c) of this section states when HUD may grant an exception to the minimum program size requirement, and paragraph (d) states when the minimum program size may be reduced.

(3) *Option to operate larger FSS program.* A PHA may choose to operate an FSS program of a larger size than the minimum.

(b) *How to determine FSS minimum program size.* (1) *Public housing.* The minimum size of a PHA's public housing FSS program is equal to the number of public housing units specified below:

(i) The total number of public housing units reserved in FY 1993 through October 20, 1998; plus

(ii) The number of public housing units reserved in FY 1991 and FY 1992 under the FSS incentive award competitions; minus

(iii) The number of families that have graduated from the PHA's public housing FSS program on or after October 21, 1998, by fulfilling their FSS contract of participation obligations.

(2) *Section 8.* The minimum size of a PHA's Section 8 FSS program is equal to the number of Section 8 certificate and voucher program units as calculated below:

(i) *Units included.* (A) The number of rental certificates and rental voucher units reserved under the combined FY 1991/1992 FSS incentive award competition; plus

(B) The number of additional rental certificates and rental voucher units reserved in FY 1993 through October 20, 1998 (not including the renewal of funding for units previously reserved), minus such units that are excluded from minimum program size in accordance with paragraph (b)(2)(ii) of this section; minus

(C) The number of families who have graduated from the PHA's Section 8 FSS program on or after October 21, 1998, by fulfilling their contract of participation obligations.

(ii) *Units excluded.* When determining a PHA's minimum Section 8 FSS program size, funding reserved in FY 1993 through October 20, 1998 for the following program categories is excluded (except as provided in paragraph (b)(2)(ii)(B) of this section):

(A) Funding for families affected by termination, expiration or owner opt-out under Section 8 project-based programs;

(B) Funding for families affected by demolition or disposition of a public housing project or replacement of a public housing project;

(C) Funding for families affected by conversion of assistance from the Section 23 leased housing or housing assistance payments programs to the Section 8 program;

(D) Funding for families affected by the sale of a HUD-owned project; and

(E) Funding for families affected by the prepayment of a mortgage or voluntary termination of mortgage insurance.

(3) *Maintaining minimum program size.* The minimum program size for a PHA's public housing or Section 8 FSS program is reduced by one slot for each family that graduates from the FSS program by fulfilling its FSS contract of participation on or after October 21, 1998. If an FSS slot is vacated by a family that has not completed its FSS contract of participation obligations, the slot must be filled by a replacement family which has been selected in accordance with the FSS family selection procedures set forth in § 984.203.

(c) *Exception to program operation.* (1) Upon approval by HUD, a PHA will not be required to establish and carry out a public housing or a Section 8 FSS program if the PHA provides to HUD a certification, as defined in § 984.103, that the establishment and operation of such an FSS program is not feasible because of local circumstances, which may include, but are not limited to:

(i) Lack of accessible supportive services funding, including lack of the availability of programs under JTPA or JOBS;

(ii) Lack of funding for reasonable administrative costs;

(iii) Lack of cooperation by other units of State or local government; or

(iv) Lack of interest in participating in the FSS program on the part of eligible families.

(2) An exception will not be granted if HUD determines that local circumstances do not preclude the PHA from effectively operating an FSS program that is smaller than the minimum program size.

(d) *Reduction in program size.* Upon approval by HUD, a PHA may be permitted to operate a public housing or a Section 8 FSS program that is smaller than the minimum program size if the PHA provides to HUD a certification, as defined in § 984.103, that the operation of an FSS program of the minimum program size is not feasible because of local circumstances, which may include, but are not limited to:

(1) Decrease in or lack of accessible supportive services, including decrease in the availability of programs under JTPA or JOBS;

(2) Decrease in or lack of funding for reasonable administrative costs;

(3) Decrease in or lack of cooperation by other units of State or local government;

(4) Decrease in or lack of interest in participating in the FSS program on the part of eligible families.

(e) *Expiration of exception.* A full or partial exception to the FSS minimum program size requirement (approved by HUD in accordance with paragraph (c) or (d) of this section) expires three years from the date of HUD approval of the exception. If a PHA seeks to continue an exception after its expiration, the PHA must submit a new request and a new certification to HUD for consideration.

(f) *Review of certification records.* HUD reserves the right to examine, during its management review of the PHA, or at any time, the documentation and data that a PHA relied on in certifying to the unfeasibility of its establishing and operating an FSS program, or of operating an FSS program of less than minimum program size.

[61 FR 8815, Mar. 5, 1996, as amended at 65 FR 16732, Mar. 20, 2000]

Subpart B—Program Development and Approval Procedures

§984.201 Action Plan.

(a) *Requirement for Action Plan.* A PHA must have a HUD-approved Action Plan that complies with the requirements of this section before the PHA implements an FSS program, whether the FSS program is a mandatory or voluntary program.

(b) *Development of Action Plan.* The Action Plan shall be developed by the PHA in consultation with the chief executive officer of the applicable unit of general local government, and the Program Coordinating Committee.

(c) *Plan submission*—(1) *Initial submission*—(i) *Mandatory program.* Unless the dates stated in paragraph (c) of this section are extended by HUD for good cause, a PHA that is establishing its first FSS program must submit an Action Plan to HUD for approval within 90 days after the PHA receives notice from HUD of:

(A) Approval of the PHA's application for incentive award units; or

(B) Approval of other funding that establishes the obligation to operate an FSS program, if the PHA did not receive FSS incentive award units.

(ii) *Voluntary program.* The PHA must submit its Action Plan and obtain HUD approval of the plan before the PHA implements a voluntary FSS program, including a program that exceeds the minimum size for a mandatory program.

(2) *Revision.* Following HUD's initial approval of the Action Plan, no further approval of the Action Plan is required unless the PHA proposes to make policy changes to the Action Plan or increase the size of a voluntary program; or HUD requires other changes. The PHA must submit any changes to the Action Plan to HUD for approval.

(d) *Contents of Plan.* The Action Plan shall describe the policies and procedures of the PHA for operation of a local FSS program, and shall contain, at a minimum, the following information:

(1) *Family demographics.* A description of the number, size, characteristics, and other demographics (including racial and ethnic data), and the supportive service needs of the families expected to participate in the FSS program;

(2) *Estimate of participating families.* A description of the number of eligible FSS families who can reasonably be expected to receive supportive services under the FSS program, based on available and anticipated Federal, tribal, State, local, and private resources;

(3) *Eligible families from other self-sufficiency program.* If applicable, the number of families, by program type, who are participating in Operation Bootstrap, Project Self-Sufficiency, or any other local self-sufficiency program who are expected to agree to execute an FSS contract of participation.

(4) *FSS family selection procedures.* A statement indicating the procedures to be utilized to select families for participation in the FSS program, subject to the requirements governing the selection of FSS families, set forth in §984.203. This statement must include a description of how the PHA's selection procedures ensure that families will be selected without regard to race, color, religion, sex, handicap, familial status, or national origin.

(5) *Incentives to encourage participation—a description of the incentives that the PHA intends to offer eligible families to encourage their participation in the FSS program (incentives plan).* The incentives plan shall provide for the establishment of the FSS account in accordance with the requirements set forth in §984.305, and other incentives, if any, designed by the PHA. The incentives plan shall be part of the Action Plan.

(6) *Outreach efforts.* A description of:

(i) The PHA's efforts, including notification and outreach efforts, to recruit FSS participants from among eligible families; and

(ii) The PHA's actions to be taken to assure that both minority and non-minority groups are informed about the FSS program, and how the PHA will make this information known.

(7) *FSS activities and supportive services.* A description of the activities and supportive services to be provided by both public and private resources to FSS families, and identification of the public and private resources which are expected to provide the supportive services.

(8) *Method for identification of family support needs.* A description of how the FSS program will identify the needs and deliver the services and activities according to the needs of the FSS families;

(9) *Program termination; withholding of services; and available grievance procedures.* A description of the PHA's policies concerning: terminating participation in the FSS program, withholding of supportive services, or terminating or withholding Section 8 assistance, on the basis of a family's failure to comply with the requirements of the contract of participation; and the grievance and hearing procedures available for FSS families.

(10) *Assurances of non-interference with rights of non-participating families.* An assurance that a family's election not to participate in the FSS program will not affect the family's admission to public housing or to the Section 8 program or the family's right to occupancy in accordance with its lease.

(11) *Timetable for program implementation.* A timetable for implementation of the FSS program, as provided in § 984.301(a)(1), including the schedule for filling FSS slots with eligible FSS families, as provided in § 984.301;

(12) *Certification of coordination.* A certification that development of the services and activities under the FSS program has been coordinated with the JOBS Program; the programs provided under the JTPA; and any other relevant employment, child care, transportation, training, and education programs (e.g., Job Training for the Homeless Demonstration program) in the applicable area, and that implementation will continue to be coordinated, in order to avoid duplication of services and activities; and

(13) *Optional additional information.* Such other information that would help HUD determine the soundness of the PHA's proposed FSS program.

(e) *Eligibility of a combined program.* a PHA that wishes to operate a joint FSS program with other PHAs may combine its resources with one or more PHAs to deliver supportive services under a joint Action Plan that will provide for the establishment and operation of a combined FSS program that meets the requirements of this part.

(f) *Single action plan.* PHAs implementing both a Section 8 FSS program and a public or Indian housing FSS program may submit one Action Plan.

[61 FR 8815, Mar. 5, 1996, as amended at 65 FR 16732, Mar. 29, 2000]

§ 984.202 Program Coordinating Committee (PCC).

(a) *General.* Each participating PHA must establish a PCC whose functions will be to assist the PHA in securing commitments of public and private resources for the operation of the FSS program within the PHA's jurisdiction, including assistance in developing the Action Plan and in implementing the program.

(b) *Membership*—(1) *Required membership.* The PCC must: (i) For a public housing FSS program, consist of representatives of the PHA, and the residents of public housing. The public housing resident representatives shall be solicited from one or more of the following groups:

(A) An area-wide or city-wide resident council, if one exists;

(B) If the PHA will be transferring FSS participants to vacant units in a specific public housing development, the resident council or resident management corporation, if one exists, of the public housing development where the public housing FSS program is to be carried out;

(C) Any other public housing resident group, which the PHA believes is interested in the FSS program, and would contribute to the development and implementation of the FSS program; and

(ii) For a Section 8 FSS program, consist of representatives of the PHA, and of residents assisted under the section 8 rental certificate or rental voucher program or under HUD's public or Indian housing programs.

(2) *Recommended membership.* Membership on the PCC also may include representatives of the unit of general local government served by the PHA, local agencies (if any) responsible for carrying out JOBS training programs, or programs under the JTPA, and other organizations, such as other State, local or tribal welfare and employment agencies, public and private education

or training institutions, child care providers, nonprofit service providers, private business, and any other public and private service providers with resources to assist the FSS program.

(c) *Alternative committee.* The PHA may, in consultation with the chief executive officer of the unit of general local government served by the PHA, utilize an existing entity as the PCC if the membership of the existing entity consists or will consist of the individuals identified in paragraph (b)(1) of this section, and also includes individuals from the same or similar organizations identified in paragraph (b)(2) of this section.

§ 984.203 FSS family selection procedures.

(a) *Preference in the FSS selection process.* a PHA has the option of giving a selection preference for up to 50 percent of its public housing FSS slots and of its Section 8 FSS slots respectively to eligible families, as defined in § 984.103, who have one or more family members currently enrolled in an FSS related service program or on the waiting list for such a program. The PHA may limit the selection preference given to participants in and applicants for FSS related service programs to one or more eligible FSS related service programs. a PHA that chooses to exercise the selection preference option must include the following information in its Action Plan:

(1) The percentage of FSS slots, not to exceed 50 percent of the total number of FSS slots for each of its FSS programs, for which it will give a selection preference;

(2) The FSS related service programs to which it will give a selection preference to the programs' participants and applicants; and

(3) The method of outreach to, and selection of, families with one or more members participating in the identified programs.

(b) *FSS selection without preference.* For those FSS slots for which the PHA chooses not to exercise the selection preference provided in paragraph (a) of this section, the FSS slots must be filled with eligible families in accordance with an objective selection system, such as a lottery, the length of time living in subsidized housing, or the date the family expressed an interest in participating in the FSS program. The objective system to be used by the PHA must be described in the PHA's Action Plan.

(c) *Motivation as a selection factor*—(1) *General.* a PHA may screen families for interest, and motivation to participate in the FSS program, provided that the factors utilized by the PHA are those which solely measure the family's interest, and motivation to participate in the FSS program.

(2) *Permissible motivational screening factors.* Permitted motivational factors include requiring attendance at FSS orientation sessions or preselection interviews, and assigning certain tasks which indicate the family's willingness to undertake the obligations which may be imposed by the FSS contract of participation. However, any tasks assigned shall be those which may be readily accomplishable by the family, based on the family members' educational level, and disabilities, if any. Reasonable accommodations must be made for individuals with mobility, manual, sensory, speech impairments, mental or developmental disabilities.

(3) *Prohibited motivational screening factors.* Prohibited motivational screening factors include the family's educational level, educational or standardized motivational test results, previous job history or job performance, credit rating, marital status, number of children, or other factors, such as sensory or manual skills, and any factors which may result in discriminatory practices or treatment toward individuals with disabilities or minority or non-minority groups.

§ 984.204 On-site facilities.

Each PHA may, subject to the approval of HUD, make available and utilize common areas or unoccupied dwelling units in public housing projects (or for IHAs, in Indian housing projects) to provide supportive services under an FSS program, including a Section 8 FSS program.

Subpart C—Program Operation

§ 984.301 Program implementation.

(a) *Program implementation deadline.* (1) *Voluntary program.* There is no deadline for implementation of a voluntary program. A voluntary program, however, may not be implemented before the requirements of § 984.201 have been satisfied.

(2) *Mandatory program*—(i) *Program start-up.* Except as provided in paragraph (a)(3) of this section, operation of a local FSS program must begin within 12 months of the earlier of notification to the PHA of HUD's approval of the incentive award units or of other funding that establishes the obligation to operate an FSS program. Operation means that activities such as outreach, participant selection, and enrollment have begun. Full delivery of the supportive services to be provided to the total number of families required to be served under the program need not occur within 12 months, but must occur by the deadline set forth in paragraph (a)(2) of this section.

(ii) *Full enrollment and delivery of service.* Except as provided in paragraph (a)(3) of this section, the PHA must have completed enrollment of the total number of families required to be served under the FSS program (based on the minimum program size), and must have begun delivery of the supportive services within two years from the date of notification of approval of the application for new public housing units for a public housing FSS program or for new rental certificates or rental vouchers for a Section 8 FSS program.

(iii) *Extension of program deadlines for good cause.* HUD may extend the deadline set forth in either paragraph (a)(1) or paragraph (a)(2) of this section if the PHA requests an extension, and HUD determines that, despite best efforts on the part of the PHA, the development of new public housing units will not occur within the deadlines set forth in this paragraph (a), the commitment by public or private resources to deliver supportive services has been withdrawn, the delivery of such services has been delayed, or other local circumstances warrant an extension of the deadlines set forth in this paragraph (a).

(b) *Program administration.* a PHA may employ appropriate staff, including a service coordinator or program coordinator to administer its FSS program, and may contract with an appropriate organization to establish and administer the FSS program, including the FSS account, as provided by § 984.305.

[61 FR 8815, Mar. 5, 1996, as amended at 65 FR 16733, Mar. 29, 2000]

§ 984.302 Administrative fees.

(a) *Public housing FSS program.* The performance funding system (PFS), provided under section 9(a) of the 1937 Act, shall provide for the inclusion of reasonable and eligible administrative costs incurred by PHAs in carrying out the public housing FSS programs. These costs are subject to appropriations by the Congress. However, a PHA may use other resources for this purpose.

(b) *Section 8 FSS program.* The administrative fees paid to PHAs for HUD-approved costs associated with operation of an FSS program are established by the Congress and subject to appropriations.

[61 FR 8815, Mar. 5, 1996, as amended at 65 FR 16733, Mar. 29, 2000]

§ 984.303 Contract of participation.

(a) *General.* Each family that is selected to participate in an FSS program must enter into a contract of participation with the PHA that operates the FSS program in which the family will participate. The contract of participation shall be signed by the head of the FSS family.

(b) *Form and content of contract*—(1) *General.* The contract of participation, which incorporates the individual training and services plan(s), shall be in the form prescribed by HUD, and shall set forth the principal terms and conditions governing participation in the FSS program, including the rights and responsibilities of the FSS family and of the PHA, the services to be provided to, and the activities to be completed by, the head of the FSS family and each adult member of the family who elects to participate in the program.

(2) *Interim goals.* The individual training and services plan, incorporated in the contract of participation, shall establish specific interim and final goals by which the PHA, and the family, may measure the family's progress toward fulfilling its obligations under the contract of participation, and becoming self-sufficient. For each participating FSS family that is a recipient of welfare assistance, the PHA must establish as an interim goal that the family become independent from welfare assistance and remain independent from welfare assistance at least one year before the expiration of the term of the contract of participation, including any extension thereof.

(3) *Compliance with lease terms.* The contract of participation shall provide that one of the obligations of the FSS family is to comply with the terms and conditions of the respective public housing lease or Section 8-assisted lease.

(4) *Employment obligation*—(i) *Head of family's obligation.* The head of the FSS family shall be required under the contract of participation to seek and maintain suitable employment during the term of the contract and any extension thereof. Although other members of the FSS family may seek and maintain employment during the term of the contract, only the head of the FSS family is required to seek and maintain suitable employment.

(ii) *Seek employment.* The obligation to seek employment means that the head of the FSS family has applied for employment, attended job interviews, and has otherwise followed through on employment opportunities.

(iii) *Determination of suitable employment.* A determination of suitable employment shall be made by the PHA based on the skills, education, and job training of the individual that has been designated the head of the FSS family, and based on the available job opportunities within the jurisdiction served by the PHA.

(5) *Consequences of noncompliance with the contract.* The contract of participation shall specify that if the FSS family fails to comply, without good cause, with the terms and conditions of the contract of participation, which includes compliance with the public housing lease or the Section 8-assisted lease, the PHA may:

(i) Withhold the supportive services;

(ii) Terminate the family's participation in the FSS program; or

(iii) For the Section 8 FSS program, terminate or withhold the family's Section 8 assistance, except in the case where the only basis for noncompliance with the contract of participation is noncompliance with the lease, or failure to become independent from welfare assistance. However, failure to become independent from welfare assistance because of failure of the head of household to meet the employment obligation described in paragraph (a)(4) of this section, or failure of the FSS family to meet any other obligation under the contract of participation, except the interim goal concerning welfare assistance, is grounds for the PHA to terminate or withhold Section 8 assistance.

(c) *Contract term.* The contract of participation shall provide that each FSS family will be required to fulfill those obligations to which the participating family has committed itself under the contract of participation no later than 5 years after the effective date of the contract.

(d) *Contract extension.* The PHA shall, in writing, extend the term of the contract of participation for a period not to exceed two years for any FSS family that requests, in writing, an extension of the contract, provided that the PHA finds that good cause exists for granting the extension. The family's written request for an extension must include a description of the need for the extension. As used in this paragraph (d), ''good cause'' means circumstances beyond the control of the FSS family, as determined by the PHA, such as a serious illness or involuntary loss of employment. Extension of the contract of participation will entitle the FSS family to continue to have amounts credited to the family's FSS account in accordance with §984.304.

(e) *Unavailability of supportive services*—(1) *Good faith effort to replace unavailable services.* If a social service agency fails to deliver the supportive services pledged under an FSS family member's individual training and services plan, the PHA shall make a good

faith effort to obtain these services from another agency.

(2) *Assessment of necessity of services.* If the PHA is unable to obtain the services from another agency, the PHA shall reassess the family member's needs, and determine whether other available services would achieve the same purpose. If other available services would not achieve the same purpose, the PHA shall determine whether the unavailable services are integral to the FSS family's advancement or progress toward self-sufficiency. If the unavailable services are:

(i) Determined not to be integral to the FSS family's advancement toward self-sufficiency, the PHA shall revise the individual training and services plan to delete these services, and modify the contract of participation to remove any obligation on the part of the FSS family to accept the unavailable services, in accordance with paragraph (f) of this section; or

(ii) Determined to be integral to the FSS family's advancement toward self-sufficiency (which may be the case if the affected family member is the head of the FSS family), the PHA shall declare the contract of participation null and void. Nullification of the contract of participation on the basis of unavailability of supportive services shall not be grounds for termination of Section 8 assistance.

(f) *Modification.* The PHA and the FSS family may mutually agree to modify the contract of participation. The contract of participation may be modified in writing with respect to the individual training and services plans, the contract term in accordance with paragraph (d) of this section, and designation of the head of the family.

(g) *Completion of the contract.* The contract of participation is considered to be completed, and a family's participation in the FSS program is considered to be concluded when one of the following occurs:

(1) The FSS family has fulfilled all of its obligations under the contract of participation on or before the expiration of the contract term, including any extension thereof; or

(2) 30 percent of the monthly adjusted income of the FSS family equals or exceeds the published existing housing fair market rent for the size of the unit for which the FSS family qualifies based on the PHA's occupancy standards. The contract of participation will be considered completed and the family's participation in the FSS program concluded on this basis even though the contract term, including any extension thereof, has not expired, and the family members who have individual training and services plans have not completed all the activities set forth in their plans.

(h) *Termination of the contract.* The contract of participation is automatically terminated if the family's Section 8 assistance is terminated in accordance with HUD requirements. The contract of participation may be terminated before the expiration of the contract term, and any extension thereof, by:

(1) Mutual consent of the parties;

(2) The failure of the FSS family to meet its obligations under the contract of participation without good cause, including in the Section 8 FSS program the failure to comply with the contract requirements because the family has moved outside the jurisdiction of the PHA;

(3) The family's withdrawal from the FSS program;

(4) Such other act as is deemed inconsistent with the purpose of the FSS program; or

(5) Operation of law.

(i) *Option to terminate Section 8 housing and supportive service assistance.* The PHA may terminate or withhold Section 8 housing assistance, the supportive services, and the FSS family's participation in the FSS program, if the PHA determines, in accordance with the hearing procedures provided in 24 CFR 982.555 that the FSS family has failed to comply without good cause with the requirements of the contract of participation as provided in paragraph (b)(5) of this section.

(j) *Transitional supportive service assistance.* a PHA may continue to offer to a former FSS family who has completed its contract of participation and whose head of family is employed, appropriate FSS supportive services in becoming self-sufficient (if the family

still resides in public housing, or Section 8-assisted housing), or in remaining self-sufficient (if the family no longer resides in public, Section 8-assisted housing, or other assisted housing).

§ 984.304 Total tenant payment, family rent, and increases in family income.

(a)(1) *Public housing FSS program: Calculation of total tenant payment.* Total tenant payment for a family participating in the public housing FSS program is determined in accordance with the regulations set forth in 24 CFR part 913.

(2) *Section 8 FSS program: Calculation of family rent.* For the rental certificate program, total tenant payment for a family participating in the Section 8 FSS program and the amount of the housing assistance payment is determined in accordance with the regulations set forth in subpart F of 24 CFR part 5, and subpart K of 24 CFR part 982. For the rental voucher program, the housing assistance payment for a family participating in the FSS program is determined in accordance with the regulations set forth in 24 CFR § 982.505.

(b) *Increases in FSS family income.* Any increase in the earned income of an FSS family during its participation in an FSS program may not be considered as income or a resource for purposes of eligibility of the FSS family for other benefits, or amount of benefits payable to the FSS family, under any other program administered by HUD, unless the income of the FSS family equals or exceeds 80 percent of the median income of the area (as determined by HUD, with adjustments for smaller and larger families).

[61 FR 8815, Mar. 5, 1996, as amended at 64 FR 13057, Mar. 16, 1999]

§ 984.305 FSS account.

(a) *Establishment of FSS account*—(1) *General.* The PHA shall deposit the FSS account funds of all families participating in the PHA's FSS program into a single depository account. The PHA must deposit the FSS account funds in one or more of the HUD-approved investments.

(2) *Accounting for FSS account funds*—(i) *Accounting records.* The total of the combined FSS account funds will be supported in the PHA accounting records by a subsidiary ledger showing the balance applicable to each FSS family. During the term of the contract of participation, the PHA shall credit periodically, but not less than annually, to each family's FSS account, the amount of the FSS credit determined in accordance with paragraph (b) of this section.

(ii) *Proration of investment income.* The investment income for funds in the FSS account will be prorated and credited to each family's FSS account based on the balance in each family's FSS account at the end of the period for which the investment income is credited.

(iii) *Reduction of amounts due by FSS family.* If the FSS family has not paid the family contribution towards rent, or other amounts, if any, due under the public housing or section 8-assisted lease, the balance in the family's FSS account shall be reduced by that amount (as reported by the owner to the PHA in the Section 8 FSS program) before prorating the interest income. If the FSS family has fraudulently under-reported income, the amount credited to the FSS account will be based on the income amounts originally reported by the FSS family.

(3) *Reporting on FSS account.* Each PHA will be required to make a report, at least once annually, to each FSS family on the status of the family's FSS account. At a minimum, the report will include:

(i) The balance at the beginning of the reporting period;

(ii) The amount of the family's rent payment that was credited to the FSS account, during the reporting period;

(iii) Any deductions made from the account for amounts due the PHA before interest is distributed;

(iv) The amount of interest earned on the account during the year; and

(v) The total in the account at the end of the reporting period.

(b) *FSS credit*—(1) *Computation of amount.* For purposes of determining the FSS credit, ''family rent'' is: for the public housing program, the total tenant payment as defined in 24 CFR

subpart F of 24 CFR part 5; for the rental certificate program, the total tenant payment as defined in 24 CFR subpart F of 24 CFR part 5; and for the rental voucher program, 30 percent of adjusted monthly income. The FSS credit shall be computed as follows:

(i) For FSS families who are very low-income families, the FSS credit shall be the amount which is the lesser of:

(A) Thirty percent of current monthly adjusted income less the family rent, which is obtained by disregarding any increases in earned income (as defined in § 984.103) from the effective date of the contract of participation; or

(B) The current family rent less the family rent at the time of the effective date of the contract of participation.

(ii) For FSS families who are low-income families but not very low-income families, the FSS credit shall be the amount determined according to paragraph (b)(1)(i) of this section, but which shall not exceed the amount computed for 50 percent of median income.

(2) *Ineligibility for FSS credit.* FSS families who are not low-income families shall not be entitled to any FSS credit.

(3) *Cessation of FSS credit.* The PHA shall not make any additional credits to the FSS family's FSS account when the FSS family has completed the contract of participation, as defined in § 984.303(g), or when the contract of participation is terminated or otherwise nullified.

(c) *Disbursement of FSS account funds*—(1) *General.* The amount in an FSS account, in excess of any amount owed to the PHA by the FSS family, as provided in paragraph (a)(3)(iii) of this section, shall be paid to the head of the FSS family when the contract of participation has been completed as provided in § 984.303(g), and if, at the time of contract completion, the head of the FSS family submits to the PHA a certification, as defined in § 984.103, that, to the best of his or her knowledge and belief, no member of the FSS family is a recipient of welfare assistance.

(2) *Disbursement before expiration of contract term.* (i) If the PHA determines that the FSS family has fulfilled its obligations under the contract of participation before the expiration of the contract term, and the head of the FSS family submits a certification that, to the best of his or her knowledge, no member of the FSS family is a recipient of welfare assistance, the amount in the family's FSS account, in excess of any amount owed to the PHA by the FSS family, as provided in paragraph (a)(3)(iii) of this section, shall be paid to the head of the FSS family.

(ii) If the PHA determines that the FSS family has fulfilled certain interim goals established in the contract of participation and needs a portion of the FSS account funds for purposes consistent with the contract of participation, such as completion of higher education (i.e., college, graduate school), or job training, or to meet start-up expenses involved in creation of a small business, the PHA may, at the PHA's sole option, disburse a portion of the funds from the family's FSS account to assist the family meet those expenses.

(3) *Verification of family certification.* Before disbursement of the FSS account funds to the family, the PHA may verify that the FSS family is no longer a recipient of welfare assistance by requesting copies of any documents which may indicate whether the family is receiving any welfare assistance, and contacting welfare agencies.

(d) *Succession to FSS account.* If the head of the FSS family ceases to reside with other family members in the public housing or the Section 8-assisted unit, the remaining members of the FSS family, after consultation with the PHA, shall have the right to designate another family member to receive the funds in accordance with paragraph (c) (1) or (2) of this section.

(e) *Use of FSS account funds for homeownership.* A public housing FSS family may use its FSS account funds for the purchase of a home, including the purchase of a home under one of HUD's homeownership programs, or other Federal, State, or local homeownership programs unless such use is prohibited by the statute or regulations governing the particular homeownership program.

(f) *Forfeiture of FSS account funds*—(1) *Conditions for forfeiture.* Amounts in the FSS account shall be forfeited upon the occurrence of the following:

(i) The contract of participation is terminated, as provided in § 984.303(e) or § 984.303(h); or

(ii) The contract of participation is completed by the family, as provided in § 984.303(g), but the FSS family is receiving welfare assistance at the time of expiration of the term of the contract of participation, including any extension thereof.

(2) *Treatment of forfeited FSS account funds*—(i) *Public housing FSS program.* FSS account funds forfeited by the FSS family will be credited to the PHA's operating reserves and counted as other income in the calculation of the PFS operating subsidy eligibility for the next budget year.

(ii) *Section 8 FSS program.* FSS account funds forfeited by the FSS family will be treated as program receipts for payment of program expenses under the PHA budget for the applicable Section 8 program, and shall be used in accordance with HUD requirements governing the use of program receipts.

[61 FR 8815, Mar. 5, 1996, as amended at 64 FR 13057, Mar. 16, 1999]

§ 984.306 Section 8 residency and portability requirements.

(a) *Relocating FSS family.* For purposes of this section, the term ''relocating FSS family'' refers to an FSS family that moves from the jurisdiction of a PHA at least 12 months after signing its contract of participation.

(b) *Initial occupancy*—(1) *First 12 months.* A family participating in the Section 8 FSS program must lease an assisted unit, for a minimum period of 12 months after the effective date of the contract of participation, in the jurisdiction of the PHA that selected the family for the FSS program. However, the PHA may approve a family's request to move outside the initial PHA jurisdiction under portability (in accordance with § 982.353 of this chapter) during this period.

(2) *After the first 12 months.* After the first 12 months of the FSS contract of participation, the FSS family may move outside the initial PHA jurisdiction under portability procedures (in accordance with § 982.353 of this chapter).

(c) *Portability: relocation but continued participation in the FSS program of the initial PHA*—(1) *General.* A relocating FSS family may continue in the FSS program of the initial PHA if the family demonstrates to the satisfaction of the initial PHA that, notwithstanding the move, the relocating FSS family will be able to fulfill its responsibilities under the initial or modified contract of participation at its new place of residence. (For example, the FSS family may be able to commute to the supportive services specified in the contract of participation, or the family may move to obtain employment as specified in the contract.)

(2) *Single contract of participation.* If the relocating family remains in the FSS program of the initial PHA, there will only be one contract of participation, which shall be the contract executed by the initial PHA.

(d) *Portability: relocation and participation in the FSS program of the receiving PHA*—(1) *General.* A relocating FSS family may participate in the FSS program of the receiving PHA, if the receiving PHA allows the family to participate in its program. a PHA is not obligated to enroll a relocating FSS family in its FSS program.

(2) *Two contracts of participation.* If the receiving PHA allows the relocating FSS family to participate in its FSS program, the receiving PHA will enter into a new contract of participation with the FSS family for the term on the remaining contract with the initial PHA. The initial PHA will terminate its contract of participation with the family.

(e) *Single FSS account.* Regardless of whether the relocating FSS family remains in the FSS program of the initial PHA or is enrolled in the FSS program of the receiving PHA, there will be a single FSS account which will be maintained by the initial PHA. When an FSS family will be absorbed by the receiving PHA, the initial PHA will transfer the family's FSS account to the receiving PHA.

(f) *FSS program termination; loss of FSS account; and termination of Section 8 assistance.* (1) If an FSS family that relocates to another jurisdiction, as provided under this section, is unable to

fulfill its obligations under the contract of participation, or any modifications thereto, the PHA, which is party to the contract of participation, may:

(i) Terminate the FSS family from the FSS program and the family's FSS account will be forfeited; and

(ii) Terminate the FSS family's Section 8 assistance on the ground that the family failed to meet its obligations under the contract of participation.

(2) In the event of forfeiture of the family's FSS account, the funds in the family's FSS account will revert to the PHA maintaining the FSS account for the family.

[61 FR 8815, Mar. 5, 1996, as amended at 65 FR 16733, Mar. 29, 2000]

Subpart D—Reporting

§ 984.401 Reporting.

Each PHA that carries out an FSS program under this part shall submit to HUD, in the form prescribed by HUD, a report regarding its FSS program. The report shall include the following information:

(a) A description of the activities carried out under the program;

(b) A description of the effectiveness of the program in assisting families to achieve economic independence and self-sufficiency;

(c) A description of the effectiveness of the program in coordinating resources of communities to assist families to achieve economic independence and self-sufficiency; and

(d) Any recommendations by the PHA or the appropriate local program coordinating committee for legislative or administrative action that would improve the FSS program and ensure the effectiveness of the program.

PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

Subpart A—General

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Subpart C—Physical Assessment Component [Reserved]

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

SOURCE: 63 FR 48555, Sept. 10, 1998, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 985 appear 64 FR 67983, Dec. 3, 1999.

Subpart A—General

§ 985.1 Purpose and applicability.

(a) *Purpose.* The Section 8 Management Assessment Program (SEMAP) is designed to assess whether the Section 8 tenant-based assistance programs operate to help eligible families afford decent rental units at the correct subsidy cost. SEMAP also establishes a system for HUD to measure PHA performance in key Section 8 program areas and to assign performance ratings. SEMAP provides procedures for HUD to identify PHA management capabilities and deficiencies in order to target monitoring and program assistance more effectively. PHAs can use the SEMAP performance analysis to assess and improve their own program operations.

(b) *Applicability.* This rule applies to PHA administration of the tenant-based Section 8 rental voucher and rental certificate programs (24 CFR part 982), the project-based component (PBC) of the certificate program (24 CFR part 983) to the extent that PBC family and unit data are reported and measured under the stated HUD verification method, and enrollment levels and contributions to escrow accounts for Section 8 participants under

the family self-sufficiency program (FSS) (24 CFR part 984).

[63 FR 48555, Sept. 10, 1998, as amended at 64 FR 40497, July 26, 1999]

§985.2 Definitions.

(a) The terms *Department, Fair Market Rent, HUD, Secretary,* and *Section 8,* as used in this part, are defined in 24 CFR 5.100.

(b) The definitions in 24 CFR 982.4 apply to this part. As used in this part:

Confirmatory review means an on site review performed by HUD to verify the management performance of an PHA.

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

MTCS means Multifamily Tenant Characteristics System. MTCS is the Department's national database on participants and rental units in the Section 8 rental certificate, rental voucher, and moderate rehabilitation programs and in the Public and Indian Housing programs.

PHA means a Housing Agency.

PHA's quality control sample means an annual sample of files or records drawn in an unbiased manner and reviewed by an PHA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. The minimum size of the PHA's quality control sample is as follows:

Universe	Minimum number of files or records to be sampled
50 or less	5.
51–600	5 plus 1 for each 50 (or part of 50) over 50.
601–2000	16 plus 1 for each 100 (or part of 100) over 600.
Over 2000	30 plus 1 for each 200 (or part of 200) over 2000.

Where the universe is: the number of admissions in the last year for each of the two quality control samples under the SEMAP indicator at §985.3(a) Selection from the Waiting List; the number of families assisted for the SEMAP indicators at §985.3(b) Reasonable Rent, and 985.3(c) Determination of Adjusted Income; the number of units under HAP contract during the last completed PHA fiscal year for the SEMAP indicator at §985.3(e) HQS Quality Control Inspections; and the number of failed HQS inspections in the last year for the SEMAP indicator at §985.3(f) HQS Enforcement.

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

SEMAP certification means the PHA's annual certification to HUD, on the form prescribed by HUD, concerning its performance in key Section 8 program areas.

SEMAP deficiency means any rating of 0 points on a SEMAP performance indicator.

SEMAP profile means a summary prepared by HUD of an PHA's ratings on each SEMAP indicator, its overall SEMAP score, and its overall performance rating (high performer, standard, troubled).

[63 FR 48555, Sept. 10, 1998, as amended at 64 FR 40497, July 26, 1999]

§985.3 Indicators, HUD verification methods and ratings.

This section states the performance indicators that are used to assess PHA Section 8 management. HUD will use the verification method identified for each indicator in reviewing the accuracy of an PHA's annual SEMAP certification. HUD will prepare a SEMAP profile for each PHA and will assign a rating for each indicator as shown. If the HUD verification method for the indicator relies on data in MTCS and HUD determines those data are insufficient to verify the PHA's certification on the indicator due to the PHA's failure to adequately report family data, HUD will assign a zero rating for the indicator. The method for selecting the PHA's quality control sample under paragraphs (a), (b), (c) and (f) of this section must leave a clear audit trail that can be used to verify that the PHA's quality control sample was drawn in an unbiased manner.

An PHA that expends less than $300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor (IA), will not be rated under the SEMAP indicators in paragraphs (a) through (g) of this section for which the annual IA audit report is a HUD verification method. For those PHAs, the SEMAP score and overall performance rating will be determined based only on the remaining indicators in paragraphs (i) through (o) of this section as applicable. Although the SEMAP performance rating will not be determined using the indicators in paragraphs (a) through (g) of this section, PHAs not subject to Federal audit requirements must still complete the SEMAP certification for these indicators and performance under the indicators is subject to HUD confirmatory reviews.

(a) *Selection from the waiting list.* (1) This indicator shows whether the PHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the PHA follows these policies when selecting applicants for admission from the waiting list. (24 CFR 982.54(d)(1) and 982.204(a))

(2) HUD verification method: The independent auditor (IA) annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The PHA's SEMAP certification states that:

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

(B) Based on the PHA's quality control samples, drawn separately for applicants reaching the top of the waiting list and for admissions, documentation shows that at least 98 percent of the families in both samples of applicants and admissions were selected from the waiting list for admission in accordance with these policies and met the selection criteria that determined their places on the waiting list and their order of selection. 15 points.

(ii) The PHA's SEMAP certification does not support the statement in paragraph (a)(3)(i) of this section. 0 points.

(b) *Reasonable rent.* (1) This indicator shows whether the PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units: at the time of initial leasing; if there is any increase in the rent to owner; and at the HAP contract anniversary if there is a 5 percent decrease in the published fair market rent (FMR) in effect 60 days before the HAP contract anniversary. The PHA's method must take into consideration the location, size, type, quality and age of the units, and the amenities, housing services, and maintenance and utilities provided by the owners in determining comparability and the reasonable rent. (24 CFR 982.4, 24 CFR 982.54(d)(15), 982.158(f)(7) and 982.507)

(2) HUD verification method: The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The PHA's SEMAP certification states that:

(A) The PHA has a reasonable written method to determine reasonable rent which considers location, size, type, quality and age of the units and the amenities, housing services, and maintenance and utilities provided by the owners; and

(B) Based on the PHA's quality control sample of tenant files, the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable in accordance with §982.507 for at least 98 percent of units sampled at the time of initial leasing, if there is any increase in the rent to owner and, at the HAP contract anniversary if there is a 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. 20 points.

(ii) The PHA's SEMAP certification includes the statements in paragraph (b)(3)(i) of this section, except that the PHA documents its determination of reasonable rent for only 80 to 97 percent of units sampled at initial leasing, if there is any increase in the rent to owner, and at the HAP contract anniversary if there is a 5 percent decrease

in the published FMR in effect 60 days before the HAP contract anniversary. 15 points.

(iii) The PHA's SEMAP certification does not support the statements in either paragraph (b)(3)(i) or (b)(3)(ii) of this section. 0 points.

(c) *Determination of adjusted income.* (1) This indicator shows whether, at the time of admission and annual reexamination, the PHA verifies and correctly determines adjusted annual income for each assisted family and, where the family is responsible for utilities under the lease, the PHA uses the appropriate utility allowances for the unit leased in determining the gross rent. (24 CFR part 5, subpart F and 24 CFR 982.516)

(2) HUD verification method: The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The PHA's SEMAP certification states that, based on the PHA's quality control sample of tenant files, for at least 90 percent of families:

(A) The PHA obtains third party verification of reported family annual income, the value of assets totalling more than $5,000, expenses related to deductions from annual income, and other factors that affect the determination of adjusted income, and uses the verified information in determining adjusted income, and/or documents tenant files to show why third party verification was not available;

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

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

(ii) The PHA's SEMAP certification includes the statements in paragraph (c)(3)(i) of this section, except that the PHA obtains and uses independent verification of income, properly attributes allowances, and uses the appropriate utility allowances for only 80 to 89 percent of families. 15 points.

(iii) The PHA's SEMAP certification does not support the statements in either paragraph (c)(3)(i) or (c)(3)(ii) of this section. 0 points.

(d) *Utility Allowance Schedule.* (1) This indicator shows whether the PHA maintains an up-to-date utility allowance schedule. (24 CFR 982.517)

(2) HUD verification method: The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The PHA's SEMAP certification states that the PHA reviewed utility rate data within the last 12 months, and adjusted its utility allowance schedule if there has been a change of 10 percent or more in a utility rate since the last time the utility allowance schedule was revised. 5 points.

(ii) The PHA's SEMAP certification does not support the statement in paragraph (d)(3)(i) of this section. 0 points.

(e) *HQS quality control inspections.* (1) This indicator shows whether an PHA supervisor or other qualified person reinspects a sample of units under contract during the PHA fiscal year, which meets the minimum sample size requirements specified at §985.2 under PHA's quality control sample, for quality control of HQS inspections. The PHA supervisor's reinspected sample is to be drawn from recently completed HQS inspections (i.e., performed during the 3 months preceding reinspection) and is to be drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors. (24 CFR 982.405(b))

(2) HUD verification method: The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The PHA's SEMAP certification states that an PHA supervisor or other qualified person performed quality control HQS reinspections during the PHA fiscal year for a sample of units under contract which meets the minimum sample size requirements specified in §983.2 under PHA's quality control sample. The PHA's SEMAP certification also states that the reinspected sample was drawn from recently completed HQS inspections (i.e., performed during the 3 months preceding the quality control

reinspection) and was drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors. 5 points.

(ii) The PHA's SEMAP certification does not support the statements in paragraph (e)(3)(i) of this section. 0 points.

(f) *HQS enforcement.* (1) This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening HQS deficiencies are corrected within 24 hours from the inspection and all other cited HQS deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension. In addition, if HQS deficiencies are not corrected timely, the indicator shows whether the PHA stops (abates) housing assistance payments beginning no later than the first of the month following the specified correction period or terminates the HAP contract or, for family-caused defects, takes prompt and vigorous action to enforce the family obligations. (24 CFR 982.404)

(2) HUD verification method: The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The PHA's SEMAP certification states that the PHA's quality control sample of case files with failed HQS inspections shows that, for all cases sampled, any cited life-threatening HQS deficiencies were corrected within 24 hours from the inspection and, for at least 98 percent of cases sampled, all other cited HQS deficiencies were corrected within no more than 30 calendar days from the inspection or any PHA-approved extension, or, if any life-threatening HQS deficiencies were not corrected within 24 hours and all other HQS deficiencies were not corrected within 30 calendar days or any PHA-approved extension, the PHA stopped (abated) housing assistance payments beginning no later than the first of the month following the correction period, or took prompt and vigorous action to enforce family obligations. 10 points.

(ii) The PHA's SEMAP certification does not support the statement in paragraph (f)(3)(i) of this section. 0 points.

(g) *Expanding housing opportunities.* (1) This indicator applies only to PHAs with jurisdiction in metropolitan FMR areas. The indicator shows whether the PHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs rental voucher holders of the full range of areas where they may lease units both inside and outside the PHA's jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration. (24 CFR 982.54(d)(5), 982.301(a) and 982.301(b)(4) and 982.301(b)(12))

(2) HUD verification method: The IA annual audit report covering the PHA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The PHA's SEMAP certification states that:

(A) The PHA has a written policy in its administrative plan which includes actions the PHA will take to encourage participation by owners of units located outside areas of poverty or minority concentration, and which clearly delineates areas in its jurisdiction that the PHA considers areas of poverty or minority concentration;

(B) PHA documentation shows that the PHA has taken actions indicated in its written policy to encourage participation by owners of units located outside areas of poverty or minority concentration;

(C) The PHA has prepared maps that show various areas with housing opportunities outside areas of poverty or minority concentration both within its jurisdiction and neighboring its jurisdiction; has assembled information about the characteristics of those areas which may include information about job opportunities, schools, transportation and other services in these areas; and can demonstrate that it uses the maps and area characteristics information when briefing rental voucher holders about the full range of areas where they may look for housing;

(D) The PHA's information packet for rental voucher holders contains either a list of owners who are willing to lease (or properties available for lease) under the rental voucher program; or a current list of other organizations that will help families find units and the PHA can demonstrate that the list(s) includes properties or organizations that operate outside areas of poverty or minority concentration;

(E) The PHA's information packet includes an explanation of how portability works and includes a list of portability contact persons for neighboring housing agencies, with the name, address and telephone number of each, for use by families who move under portability; and

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

(ii) The PHA's SEMAP certification does not support the statement in paragraph (g)(3)(i) of this section. 0 points.

(h) *Deconcentration bonus.* (1) Submission of deconcentration data in the HUD-prescribed format for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50th percentile rent to provide access to a broad range of housing opportunities throughout a metropolitan area in accordance with §888.113(c) of this title, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMR set at the 50th percentile rent. Submission of deconcentration data for this indicator is optional for all other PHAs. Additional SEMAP points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit with their SEMAP certifications certain data, in a HUD-prescribed format, on the percent of their tenant-based Section 8 families with children who live in, and who have moved during the PHA fiscal year to, low poverty census tracts in the PHA's principal operating area. For purposes of this indicator, the PHA's principal operating area is the geographic entity for which the Census tabulates data that most closely matches the PHA's geographic jurisdiction under State or local law (e.g., city, county, metropolitan statistical area) as determined by the PHA, subject to HUD review. A low poverty census tract is defined as a census tract where the poverty rate of the tract is at or below 10 percent, or at or below the overall poverty rate for the principal operating area of the PHA, whichever is greater. The PHA determines the overall poverty rate for its principal operating area using the most recent available decennial Census data. Family data used for the PHA's analysis must be the same information as reported to MTCS for the PHA's tenant-based Section 8 families with children. If HUD determines that the quantity of MTCS data is insufficient for adequate analysis, HUD will not award points under this bonus indicator. Bonus points will be awarded if:

(i) Half or more of all Section 8 families with children assisted by the PHA in its principal operating area at the end of the last completed PHA fiscal year reside in low poverty census tracts;

(ii) The percent of Section 8 mover families with children who moved to low poverty census tracts in the PHA's principal operating area during the last completed PHA fiscal year is at least 2 percentage points higher than the percent of all Section 8 families with children who reside in low poverty census tracts at the end of the last completed PHA fiscal year; or

(iii) The percent of Section 8 families with children who moved to low-poverty census tracts in the PHA's principal operating area over the last two completed PHA fiscal years is at least 2 percentage points higher than the percent of all Section 8 families with children who resided in low poverty census tracts at the end of the second to last completed PHA fiscal year.

(iv) State and regional PHAs that provide Section 8 rental assistance in more than one metropolitan area within a State or region make these determinations separately for each metropolitan area or portion of a metropolitan area where the PHA has assisted at least 20 Section 8 families with children in the last completed PHA fiscal year.

(2) HUD verification methods: PHA data submitted for the deconcentration bonus, the IA annual audit report covering the PHA fiscal year entered on the SEMAP certification, and on-site confirmatory review if performed.

(3) Rating: (i) The data submitted by the PHA for the deconcentration bonus shows that the PHA met the requirements for bonus points in paragraph (h)(1)(i), (ii) or (iii) of this section. 5 points.

(ii) The data submitted by the PHA for the deconcentration bonus does not show that the PHA met the requirements for bonus points in paragraph (h)(1)(i), (ii) or (iii) of this section. 0 points.

(i) *Payment standards.* (1) This indicator shows whether the PHA has adopted a payment standard schedule that establishes voucher payment standard amounts by unit size for each FMR area in the PHA jurisdiction, and, if applicable, separate payment standard amounts by unit size for a PHA-designated part of an FMR area, which payment standards do not exceed 110 percent of the current applicable published FMRs and which are not less than 90 percent of the current applicable published FMRs (unless a higher or lower payment standard amount is approved by HUD). (§ 982.503 of this chapter.)

(2) HUD verification method: PHA data submitted on the SEMAP certification form concerning payment standards.

(3) Rating:

(i) The PHA's voucher program payment standard schedule contains payment standards which do not exceed 110 percent of the current applicable published FMR and which are not less than 90 percent of the current applicable published FMR (unless a higher or lower payment standard amount is approved by HUD). 5 points.

(ii) The PHA's voucher program payment standard schedule contains payment standards which exceed 110 percent of the current applicable published FMRs or which are less than 90 percent of the current applicable published FMRs (unless a higher or lower payment standard amount is approved by HUD). 0 points.

(j) *Annual reexaminations.* (1) This indicator shows whether the PHA completes a reexamination for each participating family at least every 12 months. (24 CFR 5.617).

(2) HUD verification method: MTCS report—Shows percent of reexaminations that are more than 2 months overdue. The 2-month allowance is provided only to accommodate a possible lag in the PHA's electronic reporting of the annual reexamination on Form HUD–50058 and to allow the processing of the data into MTCS. The 2-month allowance provided here for rating purposes does not mean that any delay in completing annual reexaminations is permitted.

(3) Rating:

(i) Fewer than 5 percent of all PHA reexaminations are more than 2 months overdue. 10 points.

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

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

(k) *Correct tenant rent calculations.* (1) This indicator shows whether the PHA correctly calculates tenant rent in the rental certificate program and the family's share of the rent to owner in the rental voucher program. (24 CFR 982 subpart K).

(2) HUD verification method: MTCS report—Shows percent of tenant rent and family's share of the rent to owner calculations that are incorrect based on data sent to HUD by the PHA on Forms HUD–50058. The MTCS data used for verification cover only voucher program and regular certificate program tenancies, and do not include rent calculation discrepancies for manufactured home owner rentals of manufactured home spaces under the certificate program or for proration of assistance under the noncitizen rule.

(3) Ratings:

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

(ii) More than 2 percent of PHA tenant rent and family's share of the rent to owner calculations are incorrect. 0 points.

(l) *Pre-contract housing quality standards (HQS) inspections.* (1) This indicator shows whether newly leased units pass HQS inspection on or before the beginning date of the assisted lease and HAP contract. (24 CFR 982.305).

(2) HUD verification method: MTCS report—Shows percent of newly leased units where the beginning date of the assistance contract is before the date the unit passed HQS inspection.

(3) Rating:

(i) 98 to 100 percent of newly leased units passed HQS inspection before the beginning date of the assisted lease and HAP contract. 5 points.

(ii) Fewer than 98 percent of newly leased units passed HQS inspection before the beginning date of the assisted lease and HAP contract. 0 points.

(m) *Annual HQS inspections.* (1) This indicator shows whether the PHA inspects each unit under contract at least annually. (24 CFR 982.405(a))

(2) HUD verification method: MTCS report—Shows percent of HQS inspections that are more than 2 months overdue. The 2-month allowance is provided only to accommodate a possible lag in the PHA's electronic reporting of the annual HQS inspection on Form HUD–50058, and to allow the processing of the data into MTCS. The 2-month allowance provided here for rating purposes does not mean that any delay in completing annual HQS inspections is permitted.

(3) Rating:

(i) Fewer than 5 percent of annual HQS inspections of units under contract are more than 2 months overdue. 10 points.

(ii) 5 to 10 percent of all annual HQS inspections of units under contract are more than 2 months overdue. 5 points.

(iii) More than 10 percent of all annual HQS inspections of units under contract are more than 2 months overdue. 0 points.

(n) *Lease-up.* (1) This indicator shows whether the PHA enters HAP contracts for the number of units reserved under ACC for at least one year.

(2) *HUD verification method:* (i) Percent of units leased during the last completed PHA fiscal year as determined by taking unit months under HAP contract as shown on the PHA's last year-end operating statement recorded in the HUD accounting system, and dividing by the number of unit months available for leasing, based on the number of reserved units for which HUD has obligated funding under ACC and adjusted to exclude units associated with funding increments obligated during the last PHA fiscal year and units obligated for litigation.

(ii) In the event a PHA has not leased the percent of units needed to attain the points specified under paragraph (n)(3) of this section due to escalating housing assistance payments and insufficient allocated budget authority to support that percent of lease-up, HUD will consider alternatively, whether the PHA has expended that percent of allocated budget authority.

(3) *Rating:* (i) The percent of units leased during the last PHA fiscal year was 98 percent or more, or the percent of allocated budget authority expended during the last PHA fiscal year was 98 percent or more. 20 points.

(ii) The percent of units leased during the last PHA fiscal year was 95 to 97 percent, or the percent of allocated budget authority expended during the last PHA fiscal year was 95 to 97 percent. 15 points.

(iii) The percent of units leased during the last PHA fiscal year was less than 95 percent, and the percent of allocated budget authority expended during the last PHA fiscal year was less than 95 percent. 0 points.

(o) *Family self-sufficiency (FSS) enrollment and escrow accounts.* (1) This indicator applies only to PHAs with mandatory FSS programs. The indicator consists of 2 components which show whether the PHA has enrolled families in the FSS program as required, and the extent of the PHA's progress in supporting FSS by measuring the percent of current FSS participants with FSS progress reports entered in MTCS that have had increases in earned income which resulted in escrow account balances. (24 CFR 984.105 and 984.305)

(2) HUD verification method: MTCS report—Shows number of families currently enrolled in FSS. This number is divided by the number of mandatory FSS slots, as determined under § 984.105 of this chapter. An MTCS report also shows the percent of FSS families with FSS progress reports who have escrow account balances. HUD also uses information reported on the SEMAP certification by initial PHAs concerning FSS families enrolled in their FSS programs but who have moved under portability to the jurisdiction of another PHA.

(3) Rating:

(i) The PHA has filled 80 percent or more of its mandatory FSS slots and 30 percent or more of FSS families have escrow account balances. 10 points.

(ii) The PHA has filled 60 to 79 percent of its mandatory FSS slots and 30 percent or more of FSS families have escrow account balances. 8 points.

(iii) The PHA has filled 80 percent or more of its mandatory FSS slots, but fewer than 30 percent of FSS families have escrow account balances. 5 points.

(iv) 30 percent or more of FSS families have escrow account balances, but fewer than 60 percent of the PHA's mandatory FSS slots are filled. 5 points.

(v) The PHA has filled 60 to 79 percent of its mandatory FSS slots, but fewer than 30 percent of FSS families have escrow account balances. 3 points.

(vi) The PHA has filled fewer than 60 percent of its mandatory FSS slots and less than 30 percent of FSS families have escrow account balances. 0 points.

(p) *Success rate of voucher holders.* (1) This indicator shows whether voucher holders were successful in leasing units with voucher assistance. This indicator applies only to PHAs that have received approval to establish success rate payment standard amounts in accordance with § 982.503(e). This indicator becomes initially effective for the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.

(2) HUD verification method: MTCS Report.

(3) *Rating (5 points):* (i) The proportion of families issued rental vouchers during the last PHA fiscal year that have become participants in the voucher program is more than the higher of:

(A) 75 percent; or

(B) The proportion of families issued rental vouchers that became participants in the program during the six month period utilized to determine eligibility for success rate payment standards under § 982.503(e)(1) plus 5 percentage points; and

(ii) The percent of units leased during the last PHA fiscal year was 95 percent or more, or the percent of allocated budget authority expended during the last PHA fiscal year was 95 percent or more following the methodology of § 985.3(n).

[63 FR 48555, Sept. 10, 1998, as amended at 64 FR 40497, July 26, 1999; 64 FR 67983, Dec. 3, 1999; 65 FR 16733, Mar. 29, 2000; 65 FR 16823, Mar. 30. 2000; 65 FR 58875, Oct. 2, 2000; 66 FR 50005, Oct. 1, 2001]

Subpart B—Program Operation

§ 985.101 SEMAP certification.

(a) An PHA must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year.

(1) The certification must be approved by PHA board resolution and signed by the PHA executive director. If the PHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

(2) An PHA that subcontracts administration of its program to one or more subcontractors shall require each subcontractor to submit the subcontractor's own SEMAP certification on the HUD-prescribed form to the PHA in support of the PHA's SEMAP certification to HUD. The PHA shall retain subcontractor certifications for 3 years.

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

(b) Failure of an PHA to submit its SEMAP certification within 60 calendar days after the end of its fiscal year will result in an overall performance rating of troubled and the PHA

will be subject to the requirements at § 985.107.

(c) An PHA's SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time. (Information collection requirements in this section have been approved by the Office of Management and Budget under control number 2577–0215)

[63 FR 48555, Sept. 10, 1998, as amended at 66 FR 50006, Oct. 1, 2001]

§ 985.102 SEMAP profile.

Upon receipt of the PHA's SEMAP certification, HUD will rate the PHA's performance under each SEMAP indicator in accordance with § 985.3. HUD will then prepare a SEMAP profile for each PHA which shows the rating for each indicator, sums the indicator ratings, and divides by the total possible points to arrive at an PHA's overall SEMAP score. SEMAP scores shall be rounded off to the nearest whole percent.

§ 985.103 SEMAP score and overall performance rating.

(a) *High performer rating.* PHAs with SEMAP scores of at least 90 percent shall be rated high performers under SEMAP. PHAs that achieve an overall performance rating of high performer may receive national recognition by the Department and may be given competitive advantage under notices of fund availability.

(b) *Standard rating.* PHAs with SEMAP scores of 60 to 89 percent shall be rated standard.

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

(d) *Modified rating on an indicator.* A rating on any of the indicators at §§ 985.3(a) through 985.3(h) will be subject to change after HUD receives the PHA's annual audit report or after HUD conducts a confirmatory review if the audit report or the confirmatory review report contains information that the PHA's SEMAP certification concerning an indicator is not accurate.

(e) *Modified or withheld overall rating.* (1) Notwithstanding an PHA's SEMAP score, HUD may modify or withhold an PHA's overall performance rating when warranted by circumstances which have bearing on the SEMAP indicators such as an PHA's appeal of its overall rating, adverse litigation, a conciliation agreement under Title VI of the Civil Rights Act of 1964, fair housing and equal opportunity monitoring and compliance review findings, fraud or misconduct, audit findings or substantial noncompliance with program requirements.

(2) Notwithstanding an PHA's SEMAP score, if the latest IA report submitted for the PHA under the Single Audit Act indicates that the auditor is unable to provide an opinion as to whether the PHA's financial statements are presented fairly in all material respects in conformity with generally accepted accounting principals, or an opinion that the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole, the PHA will automatically be given an overall performance rating of troubled and the PHA will be subject to the requirements at § 985.107.

(3) When HUD modifies or withholds a rating for any reason, it shall explain in writing to the PHA the reasons for the modification or for withholding the rating.

[63 FR 48555, Sept. 10, 1998, as amended at 64 FR 40498, July 26, 1999]

§ 985.104 PHA right of appeal of overall rating.

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

§ 985.105 HUD SEMAP responsibilities.

(a) *Frequency of SEMAP assessments.* (1) *Annual review.* Except as provided in paragraph (a)(2) of this section, HUD shall assess each PHA's performance under SEMAP annually and shall assign each PHA a SEMAP score and overall performance rating.

(2) *Biennial review for small PHAs.* HUD shall assess and score the performance of a PHA with less than 250

assisted units once every other PHA fiscal year, unless the PHA:

(i) Elects to have its performance assessed on an annual basis; or

(ii) Is designated as troubled, in accordance with § 985.103.

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

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

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

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

(f) *Corrective action plans.* HUD must review the adequacy and monitor implementation of PHA corrective action plans submitted under § 985.106(c) or § 985.107(c) and provide technical assistance to help the PHA improve program management. If an PHA is assigned an overall performance rating of troubled, the PHA's corrective action plan must be approved in writing by HUD.

[63 FR 48555, Sept. 10, 1998, as amended at 68 FR 37671, June 24, 2003]

§ 985.106 Required actions for SEMAP deficiencies.

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

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

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

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

§ 985.107 Required actions for PHA with troubled performance rating.

(a) *On-site reviews.* (1) *Required reviews for troubled PHAs.* Except as provided in paragraph (a)(2) of this section, HUD will conduct an on-site review of PHA program management for any PHA assigned an overall performance rating of troubled to assess the magnitude and seriousness of the PHA's noncompliance with performance requirements.

(2) *On-site reviews for small PHAs.* Notwithstanding paragraph (a)(1) of this section, HUD may elect not to conduct an on-site review of a troubled PHA, if:

(i) The PHA has less than 250 assisted units; and

(ii) HUD determines that an on-site review is unnecessary to determine the needs of the PHA and the actions required to address the program deficiencies.

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

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

(1) Specify goals to be achieved;

(2) Identify obstacles to goal achievement and ways to eliminate or avoid them;

(3) Identify resources that will be used or sought to achieve goals;

(4) Identify an PHA staff person with lead responsibility for completing each goal;

(5) Identify key tasks to reach each goal;

(6) Specify time frames for achievement of each goal, including intermediate time frames to complete each key task; and

(7) Provide for regular evaluation of progress toward improvement.

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

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

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

(f) *Upgrading poor performance rating.* HUD shall change an PHA's overall performance rating from troubled to standard or high performer if HUD determines that a change in the rating is warranted because of improved PHA performance and an improved SEMAP score.

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

[63 FR 48555, Sept. 10, 1998, as amended at 68 FR 37672, June 24, 2003]

§ 985.108 SEMAP records.

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

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

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

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

Subpart C—Physical Assessment Component [Reserved]

PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM

Subpart A—The Operating Fund Formula

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AUTHORITY: 42 U.S.C. 1437g and 3535(d).

SOURCE: 41 FR 55676, Dec. 21, 1976, unless otherwise noted. Redesignated at 49 FR 6714, Feb. 23, 1984.

NOTE: It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A–107.

Subpart A—The Operating Fund Formula

SOURCE: 66 FR 17287, Mar. 29, 2001, unless otherwise noted.

§ 990.101 Purpose.

This subpart implements section 9(f) of the United States Housing Act of 1937 (42 U.S.C. 1437g) (referred to as ''the 1937 Act''). Section 9(f) establishes an Operating Fund for the purposes of making assistance available to public housing agencies (PHAs) for the operation and management of public housing. The assistance made available from the Operating Fund is determined using a formula developed through negotiated rulemaking procedures. This subpart describes the policies and procedures for operating subsidy calculations under the Operating Fund Formula.

§ 990.102 Definitions.

Allowable Expense Level (AEL). The per unit per month dollar amount of expenses (excluding Utilities and expenses allowed under § 990.108) computed in accordance with § 990.105, which is used to compute the amount of operating subsidy.

Allowable Utilities Consumption Level (AUCL). The amount of Utilities expected to be consumed per unit per month by the PHA during the Requested Budget Year, which is equal to the average amount consumed per unit per month during the Rolling Base Period.

Base Year. The PHA's fiscal year immediately preceding its first fiscal year of receipt of operating subsidy under this part (either under the Operating Fund Formula or its predecessor, the Performance Funding System (PFS)).

Base Year Expense Level. The expense level (excluding Utilities, audits and certain other items) for the Base Year, computed as provided in § 990.105.

Current Budget Year. The fiscal year in which the PHA is currently operating.

Dwelling rent. The amount charged monthly for a dwelling unit occupied by a resident or family eligible for public housing as determined in § 960.253 of this title. For purposes of determining subsidy eligibility, the dwelling rent will not reflect decreases resulting from the PHA's implementation of any optional earned income exclusions.

Formula. The revised formula derived from the actual expenses of the sample group of PHAs receiving assistance under the Operating Fund Formula, which is used to determine the Formula Expense Level and the Range of each PHA (see § 990.105(c)).

FHA-based operating expense level (FHAEL). The per unit per month dollar amount of expenses (excluding utilities and expenses allowed under § 990.108) computed in accordance with § 990.105(e), which is used on a one-time basis to adjust the AEL for selected PHAs.

Formula Expense Level. The per unit per month dollar amount of expenses (excluding Utilities and audits) computed under the Formula, in accordance with § 990.105.

HUD Field Office. The HUD Field Office that has been delegated authority under the U.S. Housing Act of 1937 to perform functions pertaining to this subpart for the area in which the PHA is located.

Local Inflation Factor. The HUD-supplied weighted average percentage increase in local government wages and salaries for the area in which the PHA is located and non-wage expenses.

Long-term vacancy. This term means the same as it is used in the definition of ''Unit Months Available'' in this section.

Nondwelling rent. The amount charged monthly, including utility and equipment charges, to a lessee for a dwelling unit that is being used for nondwelling purposes. For purposes of determining operating subsidy:

(1) If the nondwelling unit has been approved for subsidy (e.g., the unit is being used for economic self-sufficiency services or anti-drug activities) at the rate of the PHA's AEL, the PHA

will include all charges as nondwelling rent;

(2) If the nondwelling unit has not been approved for subsidy, a PHA will include as nondwelling rent only that portion of the charge that exceeds the rate of the PHA's AEL.

Operating budget. The PHA's operating budget and all related documents, as required by HUD, approved by the PHA Board of Commissioners.

Other income. Income from rent billed to lessees of dwelling units rented for nondwelling purposes, and from charges to residents for excess utility consumption for PHA supplied utilities.

Project. Each project under an Annual Contributions Contract to which the Operating Fund Formula is applicable, as provided in §990.103.

Project Units. All dwelling units of a PHA's Projects.

Projected Operating Income Level. The per unit per month dollar amount of dwelling rental income plus other income, computed as provided in §990.109.

Requested Budget Year. The budget year (fiscal year) of a PHA following the Current Budget Year.

Rolling Base Period. The 36-month period that ends 12 months before the beginning of the PHA Requested Budget Year, which is used to determine the Allowable Utilities Consumption Level used to compute the Utilities Expense Level.

Top of Range. Formula Expense Level multiplied by 1.15.

Transition funding. Funding for excessively high-cost PHAs, as provided in §990.106.

Unit Approved for Deprogramming.

(1) A dwelling unit for which HUD has approved the PHA's formal request to remove the dwelling unit from the PHA's inventory and the Annual Contributions Contract but for which removal, i.e., deprogramming, has not yet been completed; or

(2) A nondwelling structure or a dwelling unit used for nondwelling purposes which the PHA has determined will no longer be used for PHA purposes and which HUD has approved for removal from the PHA's inventory and Annual Contributions Contract.

Unit months available. Project Units multiplied by the number of months the Project Units are available for occupancy during a given PHA fiscal year. For purposes of this part, a unit is considered available for occupancy from the date established as the End of the Initial Operating Period for the Project until the time the unit is approved by HUD for deprogramming and is vacated or is approved for nondwelling use. In the case of a PHA development involving the acquisition of scattered site housing, see also §990.104(b). A unit will be considered a long-term vacancy and will not be considered available for occupancy in any given PHA Requested Budget Year if the PHA determines that:

(1) The unit has been vacant for more than 12 months at the time the PHA determines its Actual Occupancy Percentage;

(2) The unit is not either:

(i) A vacant unit undergoing modernization; or

(ii) A unit vacant for circumstances and actions beyond the PHA's control, as these terms are defined in this section; and

(3) The PHA determines that it will have a vacancy percentage of more than 3% and will have more than five vacant units, for its Requested Budget Year, even after adjusting for vacant units undergoing modernization and units that are vacant for circumstances and actions beyond the PHA's control, as defined in this section. (Reference in this part to ''more than five units'' or ''fewer than five units'' shall refer to a circumstance in which five units equals or exceeds 3% of the number of units to which the 3% threshold is applicable.)

Units vacant due to circumstances and actions beyond the PHA's control. Dwelling units that are vacant due to circumstances and actions that prohibit the PHA from occupying, selling, demolishing, rehabilitating, reconstructing, consolidating or modernizing vacant units and are beyond the PHA's control. For purposes of this definition, circumstances and actions beyond the PHA's control are limited to:

(1) *Litigation.* The effect of court litigation such as a court order or settlement agreement that is legally enforceable. An example would be units that are being held vacant as part of a

court-ordered or HUD-approved desegregation plan.

(2) *Laws.* Federal or State laws of general applicability, or their implementing regulations. Units vacant only because they do not meet minimum standards pertaining to construction or habitability under Federal, State, or local laws or regulations will not be considered vacant due to circumstances and actions beyond the PHA's control.

(3) *Changing market conditions.* For example, small PHAs that are located in areas experiencing population loss or economic dislocations may face a lack of demand in the foreseeable future, even after the PHA has taken aggressive marketing and outreach measures.

(4) *Natural disasters.*

(5) *RMC Funding.* The failure of a PHA to fund an otherwise approvable RMC request for Federal modernization funding.

(6) *Casualty Losses.* Delays in repairing damage to vacant units due to the time needed for settlement of insurance claims.

Utilities. Electricity, gas, heating fuel, water and sewerage service.

Utilities expense level. The per unit per month dollar amount of utilities expense, computed as provided in § 990.107.

Vacant unit undergoing modernization. A vacant unit in a project not considered to be obsolete (as determined using the indicia in § 970.6 of this chapter), when the project is undergoing modernization that includes work that is necessary to reoccupy the vacant unit, and in which one of the following conditions is met:

(1) The unit is under construction (i.e., the construction contract has been awarded or force account work has started); or

(2) The treatment of the vacant unit is included in a HUD-approved modernization budget (or its successor under the public housing Capital Fund program), but the time period for placing the vacant unit under construction has not yet expired. The PHA must place the vacant unit under construction within two Federal Fiscal Years (FFYs) after the FFY in which the modernization funds are approved.

§ 990.103 Applicability of the Operating Fund Formula.

(a) *General.* The Operating Fund Formula will be used in determining the amounts of operating subsidy payable to PHAs.

(b) *Applicability of the Operating Fund Formula.* The Operating Fund Formula is applicable to all PHA rental units under Annual Contributions Contracts. The Operating Fund Formula applies to PHAs that have not received operating subsidy payments previously, but are eligible for such payments under the Operating Fund Formula.

(c) *Inapplicability of the Operating Fund Formula.* The Operating Fund Formula, as described in this part, is not applicable to Indian Housing, the Section 23 Leased Housing Program, the Section 23 Housing Assistance Payments Program, the Section 8 Housing Assistance Payments Program, the Mutual Help Program, or the Turnkey III Homeownership Opportunity Programs.

(d) *Applicability of the Operating Fund Formula to the PHAs of the Virgin Islands, Puerto Rico, Guam, and Alaska.* (1) The following provisions of this subpart A are applicable to housing owned by the PHAs of the Virgin Islands, Puerto Rico, Guam, and Alaska:

(i) The definition of ''other income'' at § 990.102;

(ii) Section 990.105 (Computation of allowable expense level). However, § 990.105(e) (Computation of FHA-based operating expense level for application in FY 2001) does not apply to these PHAs;

(iii) Section 990.105(f) (Flood insurance adjustment for FY 2001);

(iv) Section 990.108(e) (Funding for resident participation activities);

(v) Section 990.109(b) (Computation of projected average monthly dwelling rental income);

(vi) Section 990.110(b) (Adjustments to utilities expense level); and

(vii) Section 990.116 (Increases in dwelling rental income).

(2) With the exception of the provisions listed in paragraph (d)(1) of this section, and other provisions of this part necessary to give full effect to the provisions listed in paragraph (d)(1) of this section, the Operating Fund Formula is not applicable to the PHAs of

the Virgin Islands, Puerto Rico, Guam and Alaska. Operating subsidy payments to these PHAs are made in accordance with subpart B of this part.

(e) *Financial management, monitoring and reporting.* The financial management system, monitoring and reporting on program performance and financial reporting will be in compliance with 24 CFR 85.20, 85.40 and 85.41 except to the extent that HUD requirements provide for additional specialized procedures which are determined by HUD to be necessary for the proper management of the program in accordance with the requirements of the U.S. Housing Act of 1937 and the Annual Contributions Contracts between the PHAs and HUD.

§990.104 Determination of amount of operating subsidy under the Operating Fund Formula.

(a) The amount of operating subsidy for which each PHA is eligible shall be determined as follows: The Projected Operating Income Level is subtracted from the total expense level (Allowable Expense Level plus Utilities Expense Level). These amounts are per unit per month dollar amounts, and must be multiplied by the Unit Months Available. Transition Funding, if applicable, and other costs as specified in §990.108 are then added to this total in order to determine the total amount of operating subsidy for the Requested Budget Year, exclusive of consideration of the cost of an independent audit. As an independent operating subsidy eligibility factor, a PHA may receive operating subsidy in an amount, approved by HUD, equal to the actual cost of an independent audit to be prorated to operations of the PHA-owned rental housing. See §990.110 regarding adjustments.

(b) In the case of a PHA development involving the acquisition of scattered site housing, the PHA may submit, and HUD shall review and approve, a revised Development Cost Budget (or its successor under the public housing Capital Fund program) reflecting the number of units that were occupied during the previous six months, and the Unit Months Available used in the calculation of operating subsidy eligibility shall be revised to include the number of months the new/acquired units are actually occupied.

(c) A special phase-down of subsidy to PHAs is applicable when demolition of units is approved by HUD. See §990.114.

(d) The calculation of operating subsidy for a PHA in the Moving to Work demonstration program shall be made in accordance with the applicable Moving to Work Agreement, and any amendments to such agreements, as may be approved by HUD.

§990.105 Computation of allowable expense level.

The PHA shall compute its Allowable Expense Level using forms prescribed by HUD, as follows:

(a) *Computation of Base Year Expense Level.* The Base Year Expense Level includes Payments in Lieu of Taxes (PILOT) required by a Cooperation Agreement even if PILOT is not included in the Operating Budget for the Base Year because of a waiver of the requirements by the local taxing jurisdiction(s). The Base Year Expense Level includes all other operating expenditures as reflected in the PHA's Operating Budget for the Base Year except the following:

(1) Utilities expense;

(2) Cost of an independent audit;

(3) Adjustments applicable to budget years before the Base Year;

(4) Expenditures supported by supplemental subsidy payments applicable to budget years before the Base Year;

(5) All other expenditures which are not normal fiscal year expenditures as to amount or as to the purpose for which expended; and

(6) Expenditures which were funded from a nonrecurring source of income.

(b) *Adjustment.* In compliance with the above six exclusions, the PHA shall adjust the AEL by excluding any of these items from the Base Year Expense Level if this has not already been accomplished. If such adjustment is made in the second or some subsequent fiscal year of receipt of operating subsidy under this part, the AEL shall be adjusted in the year in which the adjustment is made, but the adjustment shall not be applied retroactively. If the PHA does not make these adjustments, the HUD Field Office shall compute the adjustments.

(c) *Computation of Formula Expense Level.* The PHA shall compute its Formula Expense Level in accordance with a HUD-prescribed formula that estimates the cost of operating an average unit in a particular PHA's inventory. It uses weights and a Local Inflation Factor assigned each year to derive a Formula Expense Level for the current year and the requested budget year. The formula is the sum of the following six numbers and the weights of the formula and the formula are subject to updating by HUD:

(1) The number of pre-1940 rental units occupied by poor households in 1980 as a percentage of the 1980 population of the community multiplied by a weight of 7.954. This census-based statistic applies to the county of the PHA, except that, if the PHA has 80% or more of its units in an incorporated city of more than 10,000 persons, it uses city-specific data. County data will exclude data for any incorporated cities of more than 10,000 persons within its boundaries.

(2) The Local Government Wage Rate multiplied by a weight of 116.496. The wage rate used is a figure determined by the Bureau of Labor Statistics. It is a county-based statistic, calibrated to a unit-weighted PHA standard of 1.0. For multi-county PHAs, the local government wage is unit-weighted. For this formula, the local government wage index for a specific county cannot be less than 85% or more than 115% of the average local government wage for counties of comparable population and metro/non-metro status, on a state-by-state basis. In addition, for counties of more than 150,000 population in 1980, the local government wage cannot be less than 85% or more than 115% of the wage index of private employment determined by the Bureau of Labor Statistics and the rehabilitation cost index of labor and materials determined by the R.S. Means Construction Cost Index.

(3) The lesser of the current number of the PHA's two or more bedroom units available for occupancy, or 15,000 units, multiplied by a weight of .002896.

(4) The current ratio of the number of the PHA's two or more bedroom units available for occupancy in high-rise family projects to the number of all the PHA's units available for occupancy multiplied by a weight of 37.294. For this indicator, a high-rise family project is defined as averaging 1.5 or more bedrooms per unit available for occupancy and averaging 35 or more units available for occupancy per building and containing at least one building with units available for occupancy that is 5 or more stories high.

(5) The current ratio of the number of the PHA's three or more bedroom units available for occupancy to the number of all the PHA's units available for occupancy multiplied by a weight of 22.303.

(6) An equation calibration constant of −.2344.

(d) *Computation of Allowable Expense Level (AEL).* The PHA shall compute its Allowable Expense Level as follows:

(1) *AEL for first budget year of operating subsidy under this part where Base Year Expense Level does not exceed the top of the range.* Every PHA whose Base Year Expense Level is less than the top of the range shall compute its AEL for the first budget year of operating subsidy under this part by adding the following to its Base Year Expense Level (before adjustments under § 990.110):

(i) Any increase approved by HUD in accordance with § 990.110;

(ii) The increase (decrease) between the Formula Expense Level for the Base Year and the Formula Expense Level for the first budget year of operating subsidy under this part; and

(iii) The sum of the Base Year Expense Level, and any amounts described in paragraphs (d)(1) (i) and (ii) of this section multiplied by the Local Inflation Factor.

(2) *AEL for first budget year of operating subsidy under this part where Base Year Expense Level exceeds the top of the range.* Every PHA whose Base Year Expense Level exceeds the top of the range shall compute its AEL for the first budget year of operating subsidy under this part by adding the following to the top of the range (not to its Base Year Expense Level, as in paragraph (d)(1) of this section):

(i) The increase (decrease) between the Formula Expense Level for the Base Year and the Formula Expense Level for the first budget year of operating subsidy under this part;

(ii) The sum of the figure equal to the top of the range and the increase (decrease) described in paragraph (d)(2)(i) of this section, multiplied by the Local Inflation Factor. (If the Base Year Expense Level is above the AEL, computed as provided above, the PHA may be eligible for Transition Funding under §990.106.)

(3) *AEL for first budget year of operating subsidy under this part for a new project.* A new project of a new PHA or a new project of an existing PHA that the PHA decides to place under a separate ACC, which did not have a sufficient number of units available for occupancy in the Base Year to have a level of operations representative of a full fiscal year of operation is considered to be a ''new project.'' The AEL for the first budget year of operating subsidy under this part for a ''new project'' will be based on the AEL for a comparable project, as determined by the HUD Field Office. The PHA may suggest a project or projects it believes to be comparable. In determining what constitutes a ''new project'' under this paragraph, HUD will be guided by its public housing development regulations at 24 CFR part 941.

(4) *Adjustment of AEL for budget years after the first budget year of operating subsidy under this part.* HUD may adjust the AEL of budget years after the first year of operating subsidy under this part, in accordance with the provisions of §990.105(b) or §990.108(c).

(5) *Allowable Expense Level for budget years after the first budget year of operating subsidy under this part.* For each budget year after the first budget year of operating subsidy under this part, the AEL shall be computed as follows:

(i) The AEL shall be increased by any increase to the AEL approved by HUD under §990.108(c).

(ii) The AEL for the Current Budget Year also shall be adjusted as follows:

(A) Increased by one-half of one percent (.5%); and

(B) If the PHA has experienced a change in the number of units in excess of 5% or 1,000 units, whichever is less, since the last adjustment to the AEL based on this paragraph, it shall use the increase (decrease) between the Formula Expense Level calculated using the PHA's characteristics that applied to the Requested Year when the last adjustment to the AEL was made based on this paragraph and the Formula Expense Level calculated using the PHA's characteristics for the Requested Budget Year.

(iii) The amount computed in accordance with paragraphs (d)(5)(i) and (ii) of this section shall be multiplied by the Local Inflation Factor.

(6) *Adjustment of AEL for budget years after the first budget year of operating subsidy under this part.* HUD may adjust the AEL of budget years after the first year of operating subsidy under this part, in accordance with the provisions of §990.105(b) or §990.108(c).

(e) *Computation of FHA-based operating expense level (FHAEL) for application in FY 2001.*—(1) *HUD calculation of FHAEL.* For every PHA that is eligible to receive operating subsidy under the Operating Fund Formula, HUD will calculate an FHAEL (based upon FY 2000 data and for application in FY 2001) as follows:

(i) *Step 1: Calculation of average national operating cost.* HUD will calculate an FHA-based national average cost of operating a two-bedroom public housing unit, exclusive of utility costs and property taxes. The average national cost will be calculated using privately managed (FHA multifamily insured and/or assisted) rental housing financial data available to HUD for the most recent year of full reporting and adjusted to reflect a two-bedroom size by using Section 8 Fair Market Rent (FMR) relationships (i.e., increase or decrease the national average cost depending on whether the average cost-weighted bedroom size is greater or less than 2.0 bedrooms per unit). (See 24 CFR part 888 for additional information regarding FMRs.)

(ii) *Step 2: Adjustment of average national two-bedroom operating cost for local cost differences.* HUD will adjust the average national two-bedroom operating cost for local cost differences using the location adjustment factors provided in the R.S. Means Residential Construction Costs Index.

(iii) *Step 3: Adjustment of average national operating cost for PHA-specific bedroom-size distribution.* For each PHA, HUD will further adjust the average

national operating cost for the bedroom size distribution of the PHA using Section 8 FMR cost relationships (i.e., increase or decrease the average national cost depending on whether the average cost-weighted bedroom size for the PHA's inventory is greater or less than 2.0 bedrooms per unit).

(iv) *Step 4: Update of PHA-specific average operating cost to reflect FY 2000 costs.* HUD will update this PHA-specific operating cost to reflect increased FY 2000 operating costs by using the Public Housing AEL inflation factor.

(2) *Availability of FHAEL to PHA.* HUD will make the following information available to each PHA:

(i) *FHAEL.* The FHAEL for the PHA;

(ii) *PHA bedroom distribution.* The PHA bedroom distribution used to make the PHA-specific bedroom adjustment under paragraph (e)(1)(iii) of this section; and

(iii) *Base average national cost.* The two-bedroom base average national cost calculated under paragraph (e)(1)(i) of this section.

(3) *Use of FHAEL for FY 2000 for PHAs with less than 500 units under contract.* Each PHA with less than 500 units shall review the FHAEL and bedroom distribution provided by HUD, and do the following:

(i) *The PHA will determine if the bedroom size distribution used by HUD was appropriate.*—(A) *Mandatory recalculation.* If the bedroom size distribution calculated by the PHA produces a weighted average bedroom size that differs by *more* than .02 from the weighted average used by HUD, the PHA *shall* recalculate its FY 2000 FHAEL using the two-bedroom base average national operating cost provided by HUD.

(B) *Discretionary recalculation.* If the bedroom size distribution calculated by the PHA produces a weighted average bedroom size that differs by *less* than .02 from the weighted average used by HUD, the PHA *may* recalculate its FY 2000 FHAEL using the two-bedroom base average national operating cost provided by HUD.

(ii) *Comparison of FHAEL to AEL.* The PHA shall compare its FHAEL with its approved FY 2000 AEL.

(iii) *If the PHA has less than 250 units.* PHAs with less than 250 units shall use the higher of their current AEL or 85% of the FHAEL. However, in no case will the PHA use an amount that exceeds 120% of its FHAEL for purposes of FY 2001 subsidy determinations under the Operating Fund Formula (see paragraph (e)(3)(v) of this section).

(iv) *If the PHA has 250–499 units.* PHAs with 250–499 units shall use the higher of their current AEL, or 70% of FHAEL. However, in no case will the PHA use an amount that exceeds 120% of its FHAEL for purposes of FY 2001 subsidy determinations under the Operating Fund Formula (see paragraph (e)(3)(v) of this section).

(v) *If the PHA with less than 500 units has an AEL greater than 120% of its FHAEL.* If a PHA with less than 500 units has an FY 2000 AEL that is greater than 120% of its FHAEL, the PHA shall use 120% of its FHAEL in place of its actual FY 2000 AEL for purposes of FY 2001 subsidy determinations under the Operating Fund Formula.

(4) *Use of FHAEL for FY 2000 for PHAs with more than 500 units under contract.* Each PHA with more than 500 units shall review the FHAEL and bedroom distribution provided by HUD and do the following:

(i) *The PHA shall determine if the bedroom size distribution used by HUD was appropriate.*—(A) *Mandatory recalculation.* If the bedroom size distribution calculated by the PHA produces a weighted average bedroom size that differs by *more* than .02 from the weighted average used by HUD, the PHA *shall* recalculate its FY 2000 FHAEL using the two-bedroom base average national operating cost provided by HUD.

(B) *Discretionary recalculation.* If the bedroom size distribution calculated by the PHA produces a weighted average bedroom size that differs by less than .02 from the weighted average used by HUD, the PHA *may* recalculate its FY 2000 FHAEL using the two-bedroom base average national operating cost provided by HUD.

(ii) *Comparison of FHAEL to AEL.* The PHA shall compare its FHAEL with its approved FY 2000 AEL.

(iii) *If the PHA's FY 2000 AEL is less than or equal to 85% of its FHAEL.* If the PHA's FY 2000 AEL is less than or equal to 85% of its FHAEL, the PHA

shall use its FY 2000 AEL for purposes of FY 2001 subsidy determinations under the Operating Fund Formula.

(iv) *If the PHA's FY 2000 AEL is greater than 85% of its FHAEL.* If the PHA's FY 2000 AEL is greater than 85% of its FHAEL, the PHA shall use 98.64% of its FY 2000 AEL for purposes of calculating its FY 2001 subsidy determinations under the Operating Fund Formula.

(v) *Inapplicability of AEL reduction to certain PHAs.* The AEL reduction described in paragraph (e)(4)(iv) of this section does not apply to the PHAs of the Virgin Islands, Puerto Rico, Guam and Alaska. These PHAs will use their FY 2000 AELs for purposes of FY 2001 subsidy determinations, regardless of whether the PHA's AEL is greater than 85% of its FHAEL.

(vi) *Cap on AEL value reduction.* In no instance shall a PHA subject to an AEL reduction, reduce the FY 2000 AEL value used in calculating its FY 2001 AEL for purposes of operating subsidy determinations to a value less than 85% of its FHAEL.

(f) *Flood insurance adjustment for FY 2001.* To simplify the calculation of operating subsidy, the AEL computation for the PHA's fiscal year beginning in 2001 will include an additional step following the determination made in accordance with paragraphs (a) through (e) of this section: the AEL per unit month derived in accordance with those paragraphs is to be adjusted by adding the flood insurance charge per unit month, as reflected in the last HUD approved subsidy calculation for FY 2000. This adjustment is a one-time permanent adjustment made only in FY 2001. However, if the flood map is revised at a future date, HUD will adjust the AEL for the affected PHAs in accordance with this paragraph.

§ 990.106 Transition funding for excessively high-cost PHAs.

(a) *Eligibility.* If a PHA's Base Year Expense Level exceeds its AEL for any budget year under the Operating Fund Formula, the PHA may be eligible for Transition Funding.

(b) *Amounts.* Transition Funding shall be an amount not to exceed the difference between the Base Year Expense Level and the AEL for the Requested Budget Year, multiplied by the number of Unit Months Available.

(c) *Reduction in transition funding.* HUD shall have the right to discontinue payment of all or part of the Transition Funding in the event HUD at any time determines that the PHA has not achieved a satisfactory level of management efficiency, or is not making efforts satisfactory to HUD to improve its management performance.

§ 990.107 Computation of utilities expense level.

(a) *Computation of the utilities expense level.* The PHA's Utilities Expense Level for the requested Budget Year shall be computed by multiplying the Allowable Utilities Consumption Level (AUCL) per unit per month for each utility, determined as provided in paragraph (c) of this section, by the projected utility rate determined as provided in paragraph (b) of this section.

(b) *Utilities rates.* (1) The current applicable rates, with consideration of adjustments and pass-throughs, in effect at the time the Operating Budget is submitted to HUD will be used as the utilities rates for the Requested Budget Year, except that, when the appropriate utility commission has, prior to the date of submission of the Operating Budget to HUD, approved and published rate changes to be applicable during the Requested Budget Year, the future approved rates may be used as the utilities rates for the entire Requested Budget Year.

(2) If a PHA takes action, such as wellhead purchase of natural gas, or administrative appeals or legal action beyond normal public participation in rate-making proceedings to reduce the rate it pays for utilities (including water, fuel oil, electricity, and gas), then the PHA will be permitted to retain one-half of the cost savings during the first 12 months attributable to its actions. Upon determination that the action was cost-effective in the first year, the PHA may be permitted to retain one-half the annual cost savings, if the actions continue to be cost-effective. See also paragraph (e) of this section and § 990.110(b).

(c) *Computation of Allowable Utilities Consumption Level.* The Allowable Utilities Consumption Level used to compute the Utilities Expense Level of PHAs for the Requested Budget Year generally will be based on the availability of consumption data. For project utilities where consumption data are available for the entire Rolling Base Period, the computation will be in accordance with paragraph (c)(1) of this section. Where data are not available for the entire period, the computation will be in accordance with paragraph (c)(2) of this section, unless the project is a new project, in which case the computation will be in accordance with paragraph (c)(3) of this section. For a project where the PHA has taken special energy conservation measures that qualify for special treatment in accordance with paragraph (f)(1) of this section, the computation of the Allowable Utilities Consumption Level may be made in accordance with paragraph (c)(4) of this section. The AUCL for all of a PHA's projects is the sum of the amounts determined using all of these subparagraphs, as appropriate.

(1) *Rolling Base Period System.* (i) For project utilities with consumption data for the entire Rolling Base Period, the AUCL is the average amount consumed per unit per month during the Rolling Base Period adjusted in accordance with paragraph (d) of this section. The PHA shall determine the average amount of each of the utilities consumed during the Rolling Base period (i.e., the 36-month period ending 12 months prior to the first day of the Requested Budget Year).

(ii) An example of a rolling base is as follows:

PHA fiscal year (affected fiscal year)		Rolling base period	
Beginning	Ending	Begins	Ends
1–1–01	12–31–01 (1st year)	1–1–97	12–31–99
1–1–02	12–31–02 (2nd year)	1–1–98	12–31–00

(2) *Alternative method where data is not available for the entire Rolling Base Period.* (i) If the PHA has not maintained or cannot recapture consumption data regarding a particular utility from its records for the whole Rolling Base Period mentioned in paragraph (c)(1) of this section, it shall submit consumption data for that utility for the last 24 months of its Rolling Base Period to the HUD Field Office for approval. If this is not possible, it shall submit consumption data for the last 12 months of its Rolling Base Period. The PHA also shall submit a written explanation of the reasons that data for the whole Rolling Base Period is unavailable.

(ii) In those cases where a PHA has not maintained or cannot recapture consumption data for a utility for the entire Rolling Base Period, comparable consumption for the greatest of either 36, 24, or 12 months, as needed, shall be used for the utility for which the data is lacking. The comparable consumption shall be estimated based upon the consumption experienced during the Rolling Base Period of comparable project(s) with comparable utility delivery systems and occupancy. The use of actual and comparable consumption by each PHA, other than those PHAs defined as New Projects in paragraph (c)(3) of this section, will be determined by the availability of complete data for the entire 36-month Rolling Base Period. Appropriate utility consumption records, satisfactory to HUD, shall be developed and maintained by all PHAs so that a 36-month rolling average utility consumption per unit per month under paragraph (c)(1) of this section can be determined.

(iii) If a PHA cannot develop the consumption data for the Rolling Base Period or for 12 or 24 months of the Rolling Base Period, either from its own project(s) data, or by using comparable consumption data the actual per unit per month (PUM) utility expenses stated in paragraph (d) of this section shall be used as the Utilities Expense Level.

(3) *Computation of Allowable Utilities Consumption Levels for New Projects.* (i) A New Project, for the purpose of establishing the Rolling Base Period and the Utilities Expense Level, is defined as either:

(A) A project which had not been in operation during at least 12 months of the Rolling Base Period, or a project which enters management after the Rolling Base Period and prior to the end of the Requested Budget Year; or

(B) A project which during or after the Rolling Base Period, has experienced conversion from one energy

source to another; interruptable service; deprogrammed units; a switch from resident-purchased to PHA-supplied utilities; or a switch from PHA-supplied to resident-purchased utilities.

(ii) The actual consumption for New Projects shall be determined so as not to distort the Rolling Base Period in accordance with a method prescribed by HUD.

(4) *Freezing the Allowable Utilities Consumption Level.* (i) Notwithstanding the provisions of paragraphs (c)(1) and (c)(2) of this section, if a PHA undertakes energy conservation measures that are approved by HUD under paragraph (f) of this section, the Allowable Utilities Consumption Level for the project and the utilities involved may be frozen during the contract period. Before the AUCL is frozen, it must be adjusted to reflect any energy savings resulting from the use of any HUD funding. The AUCL is then frozen at the level calculated for the year during which the conservation measures initially will be implemented, as determined in accordance with paragraph (f) of this section.

(ii) If the AUCL is frozen during the contract period, the annual three-year rolling base procedures for computing the AUCL shall be reactivated after the PHA satisfies the conditions of the contract. The three years of consumption data to be used in calculating the AUCL after the end of the contract period will be as follows:

(A) *First year:* The energy consumption during the year before the year in which the contract ended and the energy consumption for each of the two years before installation of the energy conservation improvements;

(B) *Second year:* The energy consumption during the year the contract ended, energy consumption during the year before the contract ended, and energy consumption during the year before installation of the energy conservation improvements;

(C) *Third year:* The energy consumption during the year after the contract ended, energy consumption during the year the contract ended, and energy consumption during the year before the contract ended.

(d) *Utilities expense level where consumption data for the full Rolling Base Period is unavailable.* If a PHA does not obtain the consumption data for the entire Rolling Base Period, or for 12 or 24 months of the Rolling Base Period, either for its own project(s) or by using comparable consumption data as required in paragraph (c)(2) of this section, it shall request HUD Field Office approval to use actual PUM utility expenses. These expenses shall exclude Utilities Labor and Other Utilities Expenses. The actual PUM utility expenses shall be taken from the year-end Statement of Operating Receipts and Expenditures, Form HUD–52599, (Office of Management and Budget approval number 2577–0067) prepared for the PHA fiscal year which ended 12 months prior to the beginning of the PHA Requested Budget Year (e.g., for a PHA fiscal year beginning January 1, 2001, the PHA would use data from the fiscal year ended December 31, 1999). Subsequent adjustments will not be approved for a budget year for which the utility expense level is established based upon actual PUM utility expenses.

(e) *Adjustments.* PHAs shall request adjustments of Utilities Expense Levels in accordance with §990.110(b), which requires an adjustment based upon a comparison between actual experience and estimates of consumption and of utility rates.

(f) *Incentives for energy conservation improvements.* If a PHA undertakes energy conservation measures (including those covering water, fuel oil, electricity, and gas) that are financed by an entity other than the Secretary, such as physical improvements financed by a loan from a utility or governmental entity, management of costs under a performance contract, or a shared savings agreement with a private energy service company, the PHA may qualify for one of the two possible incentives under this part. For a PHA to qualify for these incentives, HUD approval must be obtained. Approval will be based upon a determination that payments under the contract can be funded from the reasonably anticipated energy cost savings, and the contract period does not exceed 12 years.

(1) If the contract allows the PHA's payments to be dependent on the cost savings it realizes, the PHA must use

at least 50% of the cost savings to pay the contractor. With this type of contract, the PHA may take advantage of a frozen AUCL under paragraph (c)(4) of this section, and it may use the full amount of the cost savings, as described in § 990.110(b)(2)(ii).

(2) If the contract does not allow the PHA's payments to be dependent on the cost savings it realizes, then the AUCL will continue to be calculated in accordance with paragraphs (c)(1) through (c)(3) of this section, as appropriate; the PHA will be able to retain part of the cost savings, in accordance with § 990.110(b)(2)(i); and the PHA will qualify for additional operating subsidy eligibility (above the amount based on the allowable expense level) to cover the cost of amortizing the cost of the energy conservation measures during the term of the contract, in accordance with § 990.110(c).

§ 990.108 Other costs.

(a) *Cost of independent audits.* (1) Eligibility to receive operating subsidy for independent audits is considered separately from the Operating Fund Formula. However, the PHA shall not request, nor will HUD approve, an operating subsidy for the cost of an independent audit if the audit has already been funded by subsidy in a prior year.

(2) A PHA that is required by the Single Audit Act (31 U.S.C. 7501–7507) (see 24 CFR part 85) to conduct a regular independent audit may receive operating subsidy to cover the cost of the audit. The actual cost of an independent audit, applicable to the operations of PHA-owned rental housing, is not included in the Allowable Expense Level, but it is allowed in full in computing the amount of operating subsidy under § 990.104, above.

(3) A PHA that is exempt from the audit requirements under the Single Audit Act (24 CFR part 85) may receive operating subsidy to offset the actual cost of an independent audit chargeable to operations (after the End of the Initial Operating Period) if the PHA chooses to have an audit.

(b)(1) Costs attributable to units that are approved for deprogramming and vacant may be eligible for inclusion, but must be limited to the minimum services and protection necessary to protect and preserve the units until the units are deprogrammed. Costs attributable to units temporarily unavailable for occupancy because the units are utilized for PHA-related activities are not eligible for inclusion. In determining operating subsidy calculations under the Operating Fund Formula, these units shall not be included in the calculation of Unit Months Available. Units approved for deprogramming shall be listed by the PHA, and supporting documentation regarding direct costs attributable to such units shall be included as a part of the Operating Fund Formula calculation in which the PHA requests operating subsidy for these units. If the PHA requires assistance in this matter, the PHA should contact the HUD Field Office.

(2) Units approved for nondwelling use to promote economic self-sufficiency services and anti-drug activities are eligible for operating subsidy under the conditions provided in this paragraph (b)(2), and the costs attributable to these units are to be included in the operating budget. If a unit satisfies the conditions stated in paragraphs (b)(2)(i) through (v) of this section, it will be eligible for subsidy at the rate of the AEL for the number of months the unit is devoted to such use. Approval will be given for a period of no more than 3 years. HUD may renew the approval to allow payments after that period only if the PHA can demonstrate that no other sources for paying the non-utility operating costs of the unit are available. The conditions the unit must satisfy are:

(i) The unit must be used for either economic self-sufficiency activities directly related to maximizing the number of employed residents or for anti-drug programs directly related to ridding the development of illegal drugs and drug-related crime. The activities must be directed toward and for the benefit of residents of the development.

(ii) The PHA must demonstrate that space for the service or program is not available elsewhere in the locality and that the space used is safe and suitable for its intended use or that the resources are committed to make the space safe and suitable.

(iii) The PHA must demonstrate satisfactorily that other funding is not available to pay for the non-utility operating costs. All rental income generated as a result of the activity must be reported as income in the operating subsidy calculation.

(iv) Operating subsidy may be approved for only one site (involving one or more contiguous units) per public housing development for economic self-sufficiency services or anti-drug programs, and the number of units involved should be the minimum necessary to support the service or program. Operating subsidy for any additional sites per development can only be approved by HUD Headquarters.

(v) The PHA must submit a certification with its Operating Fund Formula Calculation that the units are being used for the purpose for which they were approved and that any rental income generated as a result of the activity is reported as income in the operating subsidy calculation. The PHA must maintain specific documentation of the units covered. Such documentation should include a listing of the units, the street addresses, and project/management control numbers.

(3) Long-term vacant units that are not included in the calculation of Unit Months Available are eligible for operating subsidy in the Requested Budget Year at the rate of 20% of the AEL. Allowable utility costs for long term vacant units will continue to be funded in accordance with § 990.107.

(c) *Costs attributable to changes in Federal law or regulation.* In the event that HUD determines that enactment of a Federal law or revision in HUD or other Federal regulation has caused or will cause a significant increase in expenditures of a continuing nature above the Allowable Expense Level and Utilities Expense Level, HUD may in HUD's sole discretion decide to prescribe a procedure under which the PHA may apply for or may receive an increase in operating subsidy.

(d)(1) *Costs resulting from combination of two or more units.* When a PHA redesigns or rehabilitates a project and combines two or more units into one larger unit and the combination of units results in a unit that houses at least the same number of people as were previously served, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year. The number of people served in a unit will be based on the formula ((2 × No. of Bedrooms) minus 1), which yields the average number of people that would be served. An efficiency unit will be counted as a one bedroom unit for purposes of this calculation.

(2) An exception to paragraph (d)(1) of this section is made when a PHA combines two efficiency units into a one-bedroom unit. In these cases, the AEL for the requested year shall be multiplied by the number of unit months not included in the requested year's unit months available as a result of these combinations that have occurred since the Base Year.

(e) *Funding for resident participation activities.*—(1) *Funding amount.* Each PHA shall include in the operating subsidy eligibility calculation, $25 per occupied unit per year for resident participation activities, including (but not limited to) those described in part 964 of this title. For purposes of this section, a unit may be occupied by a public housing resident, a PHA employee, or a police officer. If, in any fiscal year, appropriations are not sufficient to meet all funding requirements under this part, then the $25 will be subject to pro-ration.

(2) *Use of vacant rental units.* If there is no community or rental space available for providing resident participation activities, HUD may approve, at the request of the PHA, the use of one or more vacant rental units for resident participation purposes. A unit that satisfies the following conditions will be eligible for operating subsidy at the rate of the AEL for the number of months the unit is devoted to such use:

(i) The PHA must demonstrate that safe and suitable space for the resident participation activities is not otherwise readily available;

(ii) One or more contiguous units may be used for resident participation activities. However, the units must be located on a single site per public housing development. Further, the number

of units involved must be the minimum necessary to support the resident participation activities;

(iii) The PHA must submit a certification with its Operating Fund Formula calculation that the units are being used for the purpose for which they were approved and that any rental income generated as a result of the activity is reported as income in the operating subsidy calculation; and

(iv) The PHA must maintain specific documentation of the units covered. Such documentation must include a listing of the units, the street addresses, and project/management control numbers.

§ 990.109 Projected operating income level.

(a) *Policy*. The Operating Fund Formula determines the amount of operating subsidy for a particular PHA based in part upon a projection of the actual dwelling rental income and other income for the particular PHA. The projection of dwelling rental income is obtained by computing the average monthly dwelling rental charge per unit for the PHA, and applying an upward trend factor (subject to updating). This amount is then multiplied by the Projected Occupancy Percentage for the Requested Budget Year. There are special provisions for projection of dwelling rental income for new projects.

(b) *Computation of projected average monthly dwelling rental income.*—(1) *General.* The projected average monthly dwelling rental income per unit for the PHA is calculated as follows:

(i) *Step 1: Calculation of the current year and three year averages.* The PHA calculates:

(A) The average monthly dwelling rental charge per unit for the current budget year (the ''current year average'' calculated in accordance with paragraph (b)(2) of this section); and

(B) The average monthly dwelling rental charge per unit for the current budget year and the immediate past two budget years (the ''three year average'' calculated in accordance with paragraph (b)(3) of this section).

(ii) *Step 2: Adjustment for any increase in dwelling rental income.* If the current year average is greater than the three year average, the PHA has increased dwelling rental income. If a PHA has increased dwelling rental income, it shall perform the following calculation. The PHA shall:

(A) Subtract the three year average from the current year average;

(B) Divide the result by 2; and

(C) Add this sum to the three year average.

(iii) *Step 3: Calculating the amount of increased rental revenue that may be retained.* PHAs shall be allowed to retain 50% of any increases in dwelling rental income, so long as the PHA uses the increased revenue for the provision of resident-related improvements and services as described in § 990.116. The retained income will not be recognized in the PHA's calculation under the Operating Fund Formula. The annual amount of increased revenue retained by the PHA is calculated by subtracting the three year average from the current year average, dividing the result by two, and multiplying the result by the projected occupancy percentage (see § 990.109(b)(6)), and the unit months available (see § 990.102).

(iv) *Step 4: Applying the rental income adjustment factor.* The lower of the amount calculated under paragraph (b)(i)(A) or (b)(ii) of this section is then adjusted by the dwelling rental income adjustment factor described in paragraph (b)(5) of this section.

(2) *Average monthly dwelling rental charge per unit.* (i) The average monthly dwelling rental charge per unit shall be computed using the total dwelling rental charges for all Project Units, as shown on the Tenant Rent Rolls which the PHA is required to maintain, for the first day of the month which is six months before the first day of the Requested Budget Year. However, if a change in the total of the Rent Rolls has occurred in a subsequent month which is before the beginning of the Requested Budget Year, and before the submission of the Requested Budget Year calculation of operating subsidy eligibility, the PHA may use the latest changed Rent Roll for the purpose of the computation.

(ii) This aggregate dollar amount shall be divided by the number of occupied dwelling units as of the same date.

(iii) The Rent Roll used for calculating the projected operating income level will not reflect decreases resulting from the PHA's implementation of an optional earned income exclusion authorized by the explanation of ''annual income'' in 24 CFR 5.609.

(3) *Three year average monthly dwelling rental charge per unit.* The three year average monthly dwelling rental charge shall be computed by averaging the amounts calculated under paragraph (b)(2) of this section for the current budget year and the immediate past two budget years.

(4) *Changes in supply of utilities.* The PHA must adjust the rent rolls used for purposes of the calculations described in paragraphs (b)(2) and (b)(3) of this section to reflect any change from PHA-paid utilities to resident-paid utilities, or vice versa, between the rent roll date and the projected budget year.

(5) *Dwelling rental income adjustment factor.* An adjustment factor will be applied to the calculations described in paragraphs (b)(2) and (b)(3) of this section. In FY 2001, the inflation factor will be 3%. In subsequent years, the average monthly dwelling rental charge per unit will be increased for inflation using a HUD supplied adjustment factor for the requested budget year to obtain the projected average monthly dwelling rental charge per unit of the PHA for the Requested Budget Year.

(6) *Projected occupancy percentage.* The PHA shall determine its projected percentage of occupancy for all Project Units (Projected Occupancy Percentage), as follows:

(i) *General.* Using actual occupancy data collected before the start of the budget year as a beginning point, the PHA will develop estimates for its Requested Budget Year (RBY) of: How many units the PHA will have available for occupancy; how many of the available units will be occupied and how many will be vacant, and what the average occupancy percentage will be for the RBY. The conditions under which the RBY occupancy percentage will be used as the projected occupancy percentage for purposes of determining operating subsidy eligibility are described below.

(ii) *High Occupancy PHA—No adjustments necessary.* If the PHA's RBY Occupancy Percentage, calculated in accordance with §990.117, is equal to or greater than 97%, the PHA's Projected Occupancy Percentage is 97%. If the PHA's RBY Occupancy Percentage is less than 97%, but the PHA demonstrates that it will have an average of five or fewer vacant units in the requested budget year, the PHA will use its RBY Occupancy Percentage as its projected occupancy percentage.

(iii) *Adjustments in determining occupancy.* If the PHA's RBY Occupancy Percentage is less than 97% and the PHA has more than 5 vacant units, the PHA will adjust its estimate of vacant units to exclude vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control. After making this adjustment, the PHA will recalculate its estimated vacancy percentage for the RBY.

(A) *High Occupancy PHA after adjustment.* If the recalculated vacancy percentage is 3% or less (or the PHA would have five or fewer vacant units), the PHA will use its RBY Occupancy Percentage as its projected occupancy percentage.

(B) *Low Occupancy PHA—adjustment for long-term vacancies.* If the recalculated vacancy percentage is greater than 3% (or the PHA would have more than 5 vacant units), the PHA will then further adjust its RBY Occupancy Percentage by excluding from its calculation of Unit Months Available (UMAs), those unit months attributable to units that have been vacant for longer than 12 months that are not vacant units undergoing modernization or are not units vacant due to circumstances and actions beyond the PHA's control.

(iv) *Low Occupancy PHA after all adjustments.* A PHA that has determined its RBY Occupancy Percentage in accordance with paragraph (b)(6)(iii)(B) of this section will be eligible for operating subsidy as follows:

(A) Long-term vacancies removed from the calculation of UMAs will be eligible to receive a reduced operating subsidy calculated at 20% of the PHA's AEL.

(B) If the recalculated RBY Occupancy Percentage is 97% or higher, the PHA will use 97%.

(C) If the recalculated RBY Occupancy Percentage is less than 97%, but the vacancy rate after adjusting for vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control is 3% or less (or the PHA has five or fewer vacant units), the PHA may use its recalculated RBY Occupancy Percentage as its projected occupancy percentage.

(D) If the recalculated RBY Occupancy Percentage is less than 97% and the vacancy percentage is greater than 3% (or the PHA has more than five vacant units) after adjusting for vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control, the PHA will use 97% as its projected occupancy percentage, but will be allowed to adjust the 97% by the number of vacant units undergoing modernization and units that are vacant due to circumstances and actions beyond the PHA's control. For a small PHA using five vacant units as its occupancy objective for the RBY, the PHA will determine what percentage five units represents as a portion of its units available for occupancy and subtract that percentage from 100%. The result will be used as the PHA's projected occupancy percentage, but the PHA will be allowed to adjust the projected occupancy percentage by vacant units undergoing modernization and units that are vacant for circumstances and actions beyond the PHA's control.

(c) *Projected average monthly dwelling rental charge per unit for new Projects.* The projected average monthly dwelling rental charge for new Projects which were not available for occupancy during the budget year prior to the Requested Budget Year and which will reach the End of the Initial Operating Period (EIOP) within the first nine months of the Requested Budget Year, shall be calculated as follows:

(1) If the PHA has another Project or Projects under management which are comparable in terms of elderly and nonelderly resident composition, the PHA shall use the projected average monthly dwelling rental charge for such Project or Projects.

(2) If the PHA has no other Projects which are comparable in terms of elderly and nonelderly resident composition, the HUD Field Office will provide the projected average monthly dwelling rental charge for such Project or Projects, based on comparable Projects located in the area.

(d) *Estimate of additional dwelling rental income.* After implementation of the provisions of any legislation enacted or any HUD administrative action taken subsequent to the effective date of these regulations, which affects rents paid by residents of Projects, HUD may adjust the projected average monthly dwelling rental charge per unit to reflect such change. HUD also shall have complete discretion to reduce or increase the operating subsidy approved for the PHA current fiscal year in an amount equivalent to the change in the rental income.

(e) *PHA's estimate of other income.* All PHAs shall estimate Other Income based on past experience and a reasonable projection for the Requested Budget Year, which estimate shall be subject to HUD approval. The estimated total amount of Other Income, as approved, shall be divided by the number of Unit Months Available to obtain a per unit per month amount.

(f) *Projected operating income level.* The projected average dwelling rental income per unit (calculated under paragraphs (b), (c), and (d) of this section) shall be added to the estimated Other Income (calculated under paragraph (e) of this section) to obtain the Projected Operating Income Level. This amount shall not be subject to the provisions regarding program income in 24 CFR 85.25.

§ 990.110 Adjustments.

Adjustment information submitted to HUD under this section must be accompanied by an original or revised calculation of operating subsidy eligibility.

(a) *Adjustment of base year expense level.*—(1) *Eligibility*. A PHA with projects that have been in management for at least one full fiscal year, for

which operating subsidy is being requested under the Operating Fund Formula for the first time, may, during its first budget year under the Operating Fund Formula, request HUD to increase its Base Year Expense Level. Included in this category are existing PHAs requesting subsidy for a project or projects in operation at least one full fiscal year under separate ACC, for which operating subsidy has never been paid, except for independent audit costs. This request may be granted by HUD, in its discretion, only where the PHA establishes to HUD's satisfaction that the Base Year Expense Level computed under §990.105(a) will result in operating subsidy at a level insufficient to support a reasonable level of essential services. The approved increase cannot exceed the lesser of the per unit per month amount by which the top of the Range exceeds the Base Year Expense Level.

(2) *Procedure.* A PHA that is eligible for an adjustment under paragraph (a)(1) of this section may only make a request for such adjustment once for projects under a particular ACC, at the time it submits the calculation of operating subsidy eligibility for the first budget year under the Operating Fund Formula. Such request shall be submitted to the HUD Field Office, which will review, modify as necessary, and approve or disapprove the request. A request under this paragraph must include a calculation of the amount per unit per month of requested increase in the Base Year Expense Level, and must show the requested increase as a percentage of the Base Year Expense Level.

(b) *Adjustments to Utilities Expense Level.* A PHA receiving operating subsidy under §990.104, excluding those PHAs that receive operating subsidy solely for independent audit (§990.108(a)), must submit an adjustment regarding the Utility Expense Level approved for operating subsidy eligibility purposes. This adjustment, which will compare the actual utility expense and consumption for the PHA fiscal year to the estimates used for subsidy eligibility purposes, shall be submitted on forms prescribed by HUD. This adjustment, applicable to PHA fiscal years beginning on or after January 1, 1999, shall be submitted to the HUD Field Office within 45 days after the close of the PHA fiscal year that is being adjusted. Failure to submit the required adjustment of the Utilities Expense Level by the due date may, in the discretion of HUD, result in the withholding of approval of future obligation of operating subsidies and/or a delay in the recognition of the adjustment. Adjustments under this section normally will be made in the operating subsidy calculation for the second PHA fiscal year following the year being adjusted, unless a repayment plan is necessary as noted in paragraph (d) of this section.

(1) *Rates.* A change in the Utilities Expense Level because of changes in utility rates—to the extent funded by the operating subsidy—will result in an adjustment of future operating subsidy payments. However, where the rate reduction covering utilities, such as water, fuel oil, electricity, and gas, is directly attributable to action by the PHA, such as wellhead purchase of natural gas, or administrative appeals or legal action beyond normal public participation in rate-making proceedings, then the PHA will be permitted to retain one-half of the cost savings attributable to its actions for the first year and, upon determination that the action was cost-effective in the first year, for as long as the actions continue to be cost-effective, and the other one-half of the cost savings will be deducted from operating subsidy otherwise payable.

(2) *Consumption.* (i) Generally, 75% of any decrease in the Utilities Expense Level attributable to decreased consumption after adjustment for any utility rate change, will be retained by the PHA; 25% will be offset by HUD against subsequent payment of operating subsidy.

(ii) However, in the case of a PHA whose energy conservation measures have been approved by HUD as satisfying the requirements of §990.107(f)(1) (regarding non-HUD financed incentives for energy conservation improvements), the PHA operating fund eligibility shall reflect the retention of 100% of the savings from decreased consumption after payment of the amount due the contractor until the term of

the financing agreement is completed. The decreased consumption is to be determined by adjusting for any utility rate changes and may be adjusted, subject to HUD approval, using a heating degree day adjustment for space heating utilities. The savings realized must be applied in the following order:

(A) Retention of up to 50% of the total savings from decreased consumption to cover training of PHA employees, counseling of residents, PHA management of the cost reduction program and any other eligible costs; and

(B) Prepayment of the amount due the contractor under the contract.

(iii) 25% of an increase in the Utilities Expense Level attributable to increased consumption, after adjustment for any utility rate change, will be reflected in the operating subsidy eligibility for the second PHA fiscal year following the year being adjusted, in accordance with § 990.111.

(iv) PHAs are encouraged to:

(A) Provide conservation incentives and training to residents in order to realize increased utility savings;

(B) Share information with residents regarding changes in utility costs related to rate changes and to changes in consumption; and

(C) Explain to residents conservation benefits and impacts of excess consumption on the operating budget.

(3) *Documentation.* Supporting documentation substantiating the requested adjustments shall be retained by the PHA pending HUD audit.

(c) *Energy conservation financing.* If HUD has approved an energy conservation contract under § 990.107(f)(2), then the PHA is eligible for additional operating subsidy each year of the contract to amortize the cost of the energy conservation measures under the contract, subject to a maximum annual limit equal to the cost savings for that year and a maximum contract period of 12 years.

(1) Each year, the energy cost savings would be determined as follows:

(i) The consumption level that would have been expected if the energy conservation measure had not been undertaken would be adjusted for any change in utility rate and may be adjusted, subject to HUD approval, using a heating degree day adjustment for space heating utilities;

(ii) The actual cost of energy (of the type affected by the energy conservation measure) after implementation of the energy conservation measure would be subtracted from the expected energy cost, to produce the energy cost savings for the year. (See also paragraph (b)(2)(i) of this section for retention of consumption savings.)

(2) If the cost savings for any year during the contract period is less than the amount of operating subsidy to be made available under this paragraph (c) to pay for the energy conservation measure in that year, the deficiency will be offset against the PHA's operating subsidy eligibility for the PHA's next fiscal year.

(3) If energy cost savings are less than the amount necessary to meet amortization payments specified in a contract, the contract term may be extended (up to the 12-year limit) if HUD determines that the shortfall is the result of changed circumstances rather than a miscalculation or misrepresentation of projected energy savings by the contractor or PHA. The contract term may only be extended to accommodate payment to the contractor and associated direct costs.

(d) *Additional HUD-initiated adjustments.* Notwithstanding any other provisions of this subpart, HUD may at any time make an upward or downward adjustment in the amount of the PHA's operating subsidy as a result of data subsequently available to HUD which alters projections upon which the approved operating subsidy was based. If a downward adjustment would cause a severe financial hardship on the PHA, the HUD Field Office may establish a recovery schedule which represents the minimum number of years needed for repayment.

§ 990.111 Submission and approval of operating subsidy calculations and budgets.

(a) *Required documentation.* (1) Prior to the beginning of its fiscal year, the PHA shall prepare an operating budget in a manner prescribed by HUD. The Board of Commissioners shall review and approve the budget by resolution. Each fiscal year, the PHA shall submit

to the HUD Field Office, in a time and manner prescribed by HUD, the approved board resolution and the required operating subsidy eligibility calculation forms. The PHA shall submit revised calculations in support of any adjustments based on procedures prescribed by HUD.

(2) HUD may direct the PHA to submit its complete operating budget if the PHA has failed to achieve certain specified operating standards, or for other reasons which in HUD's determination threaten the PHA's future serviceability, efficiency, economy, or stability.

(b) *HUD operating budget review.* (1) The HUD Field Office will perform a detailed review on operating budgets that are subject to HUD review and approval. If the HUD Field Office finds that an operating budget is incomplete, includes illegal or ineligible expenditures, mathematical errors, errors in the application of accounting procedures, or is otherwise unacceptable, the HUD Field Office may at any time require the submission by the PHA of further information regarding an operating budget or operating budget revision.

(2) When the PHA no longer is operating in a manner that threatens the future serviceability, efficiency, economy, or stability of the housing it operates, HUD will notify the PHA that it no longer is required to submit a complete operating budget to HUD for review and approval.

(c) *Compliance with environmental review requirements.*—(1) *General.* Operating subsidy funds made available to a PHA to support the operation and management of public housing are generally for activities that are not subject to environmental review requirements. A PHA, however, may use public housing program resources (including operating subsidy funds, rental and nonrental income, and operating reserves) to carry out non-routine maintenance and capital expenditure activities that may require an environmental review, as those activities are defined in HUD's prescribed Chart of Accounts.

(2) *Initial operating budget.* The ACC requires that operating expenditures may not be incurred except pursuant to an approved operating budget. Before the funding of non-routine maintenance and capital expenditure activities may be incorporated into the PHA's initial operating budget, and before the PHA may commit any funds to such activities, the PHA must obtain either:

(i) An environmental review from the Responsible Entity and submit and receive HUD approval of a Request for Release of Funds under part 58 of this title, or, in cases where HUD has determined to do an environmental review under part 50 of this title, the PHA must obtain an environmental approval from HUD; or

(ii) A determination from the Responsible Entity under part 58 of this title that the PHA's proposed non-routine maintenance and capital expenditure activities are exempt from environmental review in accordance with § 58.34(a)(12) of this title.

(3) *Revisions to operating budget.* If subsequent to adoption of its initial operating budget, a PHA determines to undertake a new non-routine maintenance or capital expenditure activity, the PHA must obtain an environmental review and release of funds, HUD environmental approval, or an exemption from such review, as described in paragraph (c)(2) of this section, before the funding of the activity may be incorporated into a revised operating budget and before the PHA may commit any funds to such activities.

(4) *Determination of exempt activities.* If the Responsible Entity documents that a proposed non-routine maintenance or capital expenditure activity is an exempt activity, as described in paragraph (c)(2)(ii) of this section, no further action is required from the PHA and the activity may be incorporated into the PHA's initial or revised operating budget, as appropriate.

§ 990.112 Payments procedure for operating subsidy under the Operating Fund Formula.

(a) *General.* Subject to the availability of funds, payments of operating subsidy under the Operating Fund Formula shall be made generally by electronic funds transfers, based on a

schedule submitted by the PHA and approved by HUD. The schedule may provide for several payments per month. If a PHA has an unanticipated, immediate need for disbursement of approved operating subsidy, it may make an informal request to HUD to revise the approved schedule. (Requests by telephone are acceptable.)

(b) *Payments procedure.* In the event that the amount of operating subsidy has not been determined by HUD as of the beginning of a PHA's budget year under this part, annual or monthly or quarterly payments of operating subsidy shall be made, as provided in paragraph (a) of this section, based upon the amount of the PHA's operating subsidy for the previous budget year or such other amount as HUD may determine to be appropriate.

(c) *Availability of funds.* In the event that insufficient funds are available to make payments approvable under the Operating Fund Formula for operating subsidy payable by HUD, HUD shall have complete discretion to revise, on a pro rata basis or other basis established by HUD, the amounts of operating subsidy to be paid to PHAs.

§ 990.113 Payments of operating subsidy conditioned upon reexamination of income of families in occupancy.

(a) *Policy.* The income of each family must be reexamined at least annually. PHAs must be in compliance with this reexamination requirement to be eligible to receive full operating subsidy payments.

(b) *PHAs in compliance with requirements.* Each submission of the original calculation of operating subsidy eligibility for a fiscal year shall be accompanied by a certification by the PHA that it is in compliance with the annual income reexamination requirements and that rents have been or will be adjusted in accordance with current HUD requirements.

(c) *PHAs not in compliance with requirements.* Any PHA not in compliance with annual income reexamination requirement at the time of the submission of the calculation of operating subsidy eligibility shall furnish to the HUD Field Office a copy of the procedure it is using to attain compliance and a statement of the number of families that have undergone reexamination during the twelve months preceding the date of the Operating Budget submission, or the revision thereof. If, on the basis of such submission, or any other information, the Field Office Director determines that the PHA is not substantially in compliance with the annual income reexamination requirement, he or she shall withhold payments to which the PHA might otherwise be entitled under this part, equal to his or her estimate of the loss of rental income to the PHA resulting from its failure to comply with those requirements.

§ 990.114 Phase-down of subsidy for units approved for demolition.

(a) *General.* Units that have both been approved by HUD for demolition and been vacated in FY 1995 and after will be excluded from a PHA's determination of Unit Months Available when vacated, but they will remain eligible for subsidy in the following way:

(1) For the first twelve months beginning with the month that a unit meets both conditions of being approved for demolition and vacant, the full AEL will be allowed for the unit.

(2) During the second twelve-month period after meeting both conditions, 66% of the AEL will be allowed for the unit.

(3) During the third twelve-month period after meeting both conditions, 33% of the AEL will be allowed for the unit.

(b) *Special case for long-term vacant units.* Units that have been vacant for longer than 12 months when they are approved for demolition are eligible for funding equal to 20% of the AEL for a 12-month period.

(c) *Treatment of units replaced with Section 8 Certificates or Vouchers.* Units that are replaced with Section 8 Certificates or Vouchers are not subject to the provisions of this section.

(d) *Treatment of units replaced with public housing units.* When replacement conventional public housing units become eligible for operating subsidy, the demolished unit is no longer eligible for any funding under this section.

(e) *Determination of what units are ''replaced.''* For purposes of this section, replacements are applied first

against units that otherwise would fall in paragraph (a) of this section; any remaining replacements should be used to reduce the number of units qualifying under paragraph (b) of this section.

(f) *Treatment of units combined with other units.* Units that are removed from the inventory as a result of being combined with other units are not considered to be demolished units for this purpose.

§ 990.116 Increases in dwelling rental income.

(a) *General.* As described in § 990.109(b)(1), PHAs shall be allowed to retain 50% of any increases in dwelling rental income, so long as the PHA uses the increased income for the provision of resident-related improvements and services. The retained income will not be recognized in the PHA's calculation under the Operating Fund Formula.

(b) *Eligible uses for increased rental revenue.* The uses for the retained income must be developed with front end resident participation and ongoing input and shall be made part of the PHA plan submission. (See 24 CFR part 903). Examples of eligible uses for the retained income include, but are not limited to:

(1) Physical and management improvements that benefit residents;

(2) Resident self-sufficiency services;

(3) Maintenance operations;

(4) Resident employment and training services;

(5) Resident safety and security improvements and services; and

(6) Optional earned income exclusions.

§ 990.117 Determining actual and requested budget year occupancy percentages.

(a) *Actual occupancy percentage.* When submitting Operating Fund Formula calculations for Requested Budget Years, the PHA shall determine an Actual Occupancy Percentage for all Project Units included in the Unit Months Available. The PHA shall have the option of basing this option on either:

(1) The number of units occupied on the last day of the month that ends 6 months before the beginning of the Requested Budget Year; or

(2) The average occupancy during the month ending 6 months before the beginning of the Requested Budget Year. If the PHA elects to use an average occupancy under this paragraph (a)(2), the PHA shall maintain a record of its computation of its Actual Occupancy Percentage.

(b) *Requested budget year occupancy percentage.* The PHA will develop a Requested Budget Year Occupancy Percentage by taking the Actual Occupancy Percentage and adjusting it to reflect changes up or down in occupancy during the Requested Budget Year due to HUD-approved activities such as units undergoing modernization, new development, demolition, or disposition. If after the submission and approval of the Operating Fund Formula calculations for the Requested Budget Year, there are changes up or down in occupancy because of modernization, new development, demolition or disposition that are not reflected in the Requested Budget Year Occupancy Percentage, the PHA may submit a revision to reflect the actual change in occupancy due to these activities.

(c) *Documentation required to be maintained.* The PHA must maintain and, upon HUD's request, make available to HUD specific documentation of the occupancy status of all units, including long-term vacancies, vacant units undergoing modernization, and units vacant due to circumstances and actions beyond the PHA's control. This documentation shall include a listing of the units, street addresses, and project/management control numbers.

§ 990.120 Audit.

PHAs that receive financial assistance under this part shall comply with the audit requirements in 24 CFR part 85.26. If a PHA has failed to submit an acceptable audit on a timely basis in accordance with that part, HUD may arrange for, and pay the costs of, the audit. In such circumstances, HUD may withhold, from assistance otherwise payable to the PHA under this part, amounts sufficient to pay for the

reasonable costs of conducting an acceptable audit, including, when appropriate, the reasonable costs of accounting services necessary to place the PHA's books and records into auditable condition. The costs to place the PHA's books and records into auditable condition do not generate additional subsidy eligibility under this part.

§ 990.121 Effect of rescission.

If there is a rescission of appropriated funds that reduces the level of funding under the Public Housing Capital Fund program, to the extent that the PHA can document that it is not possible to complete all the vacant unit rehabilitation in the PHA's approved Annual Statement, the PHA may seek and HUD may grant a waiver for 1 fiscal year to permit full eligibility under the Operating Fund Formula for those units approved but not funded. (See part 905 of this title for additional information regarding the Capital Fund program.)

Subpart B—Financial Management Systems, Monitoring and Reporting

SOURCE: 53 FR 8067, Mar. 11, 1988, unless otherwise noted.

§ 990.201 Purpose—General policy on financial management, monitoring and reporting.

The financial management systems, reporting and monitoring on program performance and financial reporting will be in compliance with the requirements of 24 CFR 85.20, 85.40 and 85.41 except to the extent that HUD requirements provide for additional specialized procedures necessary to permit the Secretary to make the determinations regarding the payment of operating subsidy specified in section 9(a)(1) of the United States Housing Act of 1937.

§ 990.202 Applicability.

The provisions of this subpart B are applicable to the development, modernization, and operation of the Turnkey III and Turnkey IV Homeownership Opportunity Programs and the housing owned by the PHAs of the Virgin Islands, Guam, Puerto Rico and Alaska.

[57 FR 5588, Feb. 14, 1992]

Subpart C—Project-Based Accounting

SOURCE: 57 FR 61231, Dec. 23, 1992, unless otherwise noted.

§ 990.301 Applicability.

(a) The provisions of this subpart C are applicable to all PHAs that receive operating subsidies pursuant to section 9 of the U.S. Housing Act of 1937 (the Act), both PFS-eligible PHAs and PHAs outside the 48 adjacent states for which operating subsidy eligibility is not calculated in accordance with the PFS.

(b) PHAs that own and operate 250 or more dwelling rental units under title I of the Act, exclusive of section 8 units, are required to develop and maintain project-based accounting systems consistent with § 990.310. Where a portion of a PHA's rental inventory is separately managed (by a resident management corporation, for example), the 250-unit threshold shall apply to the total number of PHA-owned dwelling rental units, including those separately managed.

(c) PHAs that do not receive operating subsidies or that have fewer than 250 rental units may, but are not required to, develop and use project-based accounting systems consistent with the specifications of this subpart.

§ 990.305 Definitions.

Cost Center. A set of units, activities, programs, or staff that are grouped by a PHA for purposes of management, financial monitoring, and analysis. Cost centers can be delineated by administrative departments or divisions within a PHA, by office locations, by individual projects or clusters or communities of projects that consist of one or more contiguous buildings, an area of contiguous row houses, or scattered-site buildings.

Project. A building or set of buildings identifiable as a development project under a HUD-assigned project number.

§990.310 Project-based accounting.

(a) PHAs identified in §990.301(b) shall develop and maintain a system of accounting for operating income and operating costs for each project or operating cost center in a manner capable of generating information to meet HUD consolidated reporting requirements.

(b) Operating income and cost information to be accounted for at a project or cost center level shall include at least rental income and the administrative costs, utilities costs, maintenance costs, repair costs, and such other income and costs identified by the PHA as project-specific for management purposes. The minimum income and expense distribution requirements for project-based accounting information include:

(1) Project-specific operating income credited to a specific project or cost center which shall include, at a minimum, rental income and excess utilities income; and

(2) Project-specific operating expense to be charged to a specific project or cost center level which shall include, at a minimum, utilities expense and direct maintenance (material and labor) expense, in addition to any other operating expenses in the 4000 series of accounts which are identified by the PHA as project-specific for management purposes (for example, tenant services or protective services personnel assigned to a specific project).

(c) Indirect operating income and indirect operating expenses that are not project-specific are not required to be accounted for at, or allocated to, a project or cost center level. Indirect income and expense that is not required to be allocated to the project or cost center level includes non-project-specific income and expense, including PHA central office overhead expense, which is not identifiable with, or readily assignable to, a specific project or cost center.

(d) PHAs may establish operating cost centers on any reasonable basis that reflects the PHA management structure and that meets the financial information needs at the lowest level of line authority within that management structure. A PHA's determination of appropriate cost centers and method of income and cost distribution shall be controlling unless HUD determines there is good cause for requiring some other frame of reference for aggregating financial information.

§990.315 Records and reports.

(a) Each PHA shall maintain fiscal year-end income and expense statements, which reflect the PBA information required by §990.310, for each project or other cost center and shall make these available for review upon request by interested members of the public.

(b) Each PHA shall distribute such year-end financial statements to the Chairman and to each member of the Housing Authority Board of Commissioners, and to such other State and local public officials as the Secretary may specify. Project-based income and expense statements shall be made available to Board chairmen as soon as is practicable after the close of the fiscal period.

§990.320 Certifications.

(a) The PHA shall certify, by the effective date specified in §990.325, in a form acceptable to HUD, that the PHA is aware of and is taking steps to implement project-based accounting and will produce the fiscal year-end reports required under §990.315. The certification shall identify each project or other cost center, the basis upon which each project or other cost center has been established and determined to be in compliance with the definitions of §990.305, above, and where a cost center consists of units in two or more projects (as identified by HUD-assigned development project number) the PHA shall identify the individual development project numbers, the number of units, and a characterization (i.e., high-rise family, mid-rise family, scattered-site, etc.) of each numbered project included in the cost center.

(b) A certification made in accordance with this section shall be updated if the PHA deletes units, adds additional units or projects (as identified by HUD-assigned development project numbers) to its inventory, or otherwise

elects to reconfigure its system of cost centers.

(Approved by the Office of Management and Budget under control number 2577–0159)

§ 990.325 Compliance dates.

(a) The provisions of this subpart shall apply for PHA fiscal years beginning on or after January 1, 1993, for PHAs operating 500 or more public housing rentals units.

(b) The provisions of this subpart shall apply for PHA fiscal years beginning on or after January 1, 1994, for PHAs operating fewer than 500 public housing rental units. In the case of PHAs whose housing programs expand to the point at which their inventory of rental units exceeds the threshold stated in § 990.301(b), the provisions of § 990.310 shall apply at the beginning of the PHA's first fiscal year after the date on which its inventory of rental units reaches that threshold.

Subpart D—Resident Management Corporations Operating Subsidy

SOURCE: 59 FR 43644, Aug. 24, 1994, unless otherwise noted.

§ 990.401 Calculation of operating subsidy.

Operating subsidy will be calculated separately for any project managed by a resident management corporation. This subsidy computation will be the same as the separate computation made for the balance of the projects in the PHA in accordance with this part, with the following exceptions:

(a) The project managed by a resident management corporation will have an Allowable Expense Level based on the actual expenses for the project in the fiscal year immediately preceding management under this subpart. These expenditures will include the project's share of any expenses which are overhead or centralized HA expenditures. The expenses must represent a normal year's expenditures for the project, and must exclude all expenditures which are not normal fiscal year expenditures as to amount or as to the purpose for which expended. Documentation of this expense level must be presented with the project budget and approved by HUD. Any project expenditures funded from a source of income other than operating subsidies or income generated by the locally owned public housing program will be excluded from the subsidy calculation. For budget years after the first budget year under management by the resident management corporation, the Allowable Expense Level will be calculated as it is for all other projects in accordance with § 990.105(e)(4).

(b) The resident management corporation project will estimate dwelling rental income based on the rent roll of the project immediately preceding the assumption of management responsibility under this subpart, increased by the estimate of inflation of tenant income used in calculating PFS subsidy.

(c) The resident management corporation will exclude, from its estimate of other income, any increased income directly generated by activities by the corporation or facilities operated by the corporation.

(d) Any reduction in the subsidy of a HA that occurs as a result of fraud, waste, or mismanagement by the HA shall not affect the subsidy calculation for the resident management corporation project.

[59 FR 43644, Aug. 24, 1994, as amended at 61 FR 17542, Apr. 19, 1996]

§ 990.402 Calculation of total income and preparation of operating budget.

(a) Subject to § 990.403, the amount of funds provided by a HA to a project managed by a resident management corporation under this subpart may not be reduced during the three-year period beginning on February 5, 1988 or on such later date as a resident management corporation first assumes management responsibility for the project.

(b) For purposes of determining the amount of funds provided to a project under § 990.402(a) of this section, the provision of technical assistance by the HA to the resident management corporation will not be included.

(c) The resident management corporation and the HA must submit a separate operating budget, including the calculation of operating subsidy eligibility in accordance with § 990.401,

for the project managed by a resident management corporation to HUD for approval. This budget will reflect all project expenditures and will identify which expenditures are related to the responsibilities of the resident management corporation and which are related to the functions which will continue to be performed by the HA.

(d) Each project or part of a project that is operating in accordance with the ACC amendment relating to this subpart and in accordance with a contract vesting maintenance responsibilities in the resident management corporation will have transferred, into a sub-account of the operating reserve of the host HA, an operating reserve. Where all maintenance responsibilities for the resident-managed project are the responsibility of the corporation, the amount of the reserve made available to projects under this subpart will be the per unit cost amount available to the HA operating reserve, exclusive of all inventories, prepaids and receivables (at the end of the HA fiscal year preceding implementation), multiplied by the number of units in the project operated in accordance with the provisions of this subpart. Where some, but not all, maintenance responsibilities are vested in the resident management corporation, the contract may provide for an appropriately reduced portion of the operating reserve to be transferred into the corporation's sub-account.

(e) The use of the reserve will be subject to all administrative procedures applicable to the conventionally owned public housing program. Any expenditure of funds from the reserve will be for eligible expenditures which are incorporated into an operating budget subject to approval by HUD.

(f) Investment of funds held in the reserve will be in accordance with the provisions of Chapter 4 of the Financial Management Handbook, 7476.1 REV.1 and interest generated will be included in the calculation of operating subsidy in accordance with this part.

§ 990.403 Adjustments to total income.

(a) Operating subsidy calculated in accordance with § 964.401 of this chapter will reflect changes in inflation, utility rates and consumption, and changes in the number of units in the resident management project.

(b) In addition to the amount of income derived from the project (from sources such as rents and charges) and the operating subsidy calculated in accordance with § 990.401 of this subpart, the contract may specify that income be provided to the project from other sources of income of the HA.

(c) The following conditions may not affect the amounts to be provided to a project managed by a resident management corporation under this subpart:

(1) Any reduction in the total income of a HA that occurs as a result of fraud, waste, or mismanagement by the HA.

(2) Any change in the total income of a HA that occurs as a result of project-specific characteristics that are not shared by the project managed by the corporation under this subpart.

§ 990.404 Retention of excess revenues.

(a) Any income generated by a resident management corporation that exceeds the income estimated for the income category involved as specified in the RMC's management contract must be excluded in subsequent years in calculating:

(1) The operating subsidy provided to a HA under part 990, subpart A.

(2) The funds provided by the HA to the resident management corporation.

(b) The management contract must specify the amount of income expected to be derived from the project (from sources such as rents and charges) and the amount of income to be provided to the project from the other sources of income of the HA (such as operating subsidy under part 990, subpart A, interest income, administrative fees, and rents). These income estimates must be calculated consistent with HUD's administrative instructions. Income estimates may provide for proration of anticipated project income between the corporation and the PHA, based upon the management and other project-associated responsibilities (if any) that are to be retained by the PHA under the contract.

§ 990.405 Use of retained revenues.

Any revenues retained by a resident management corporation under § 990.404 of this subpart may only be used for

purposes of improving the maintenance and operation of the project, establishing businesses enterprises that employ residents of public housing, or acquiring additional dwelling units for lower income families. Units acquired by the resident management corporation will not be eligible for payment of operating subsidy.

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

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APPENDIX A TO PART 1000—INDIAN HOUSING BLOCK GRANT FORMULA MECHANICS
APPENDIX B TO PART 1000—IHBG BLOCK GRANT FORMULA MECHANISMS

AUTHORITY: 25 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

SOURCE: 63 FR 12349, Mar. 12, 1998, unless otherwise noted.

Subpart A—General

§ 1000.1 What is the applicability and scope of these regulations?

Under the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) the Department of Housing and Urban Development (HUD) provides grants, loan guarantees, and technical assistance to Indian tribes and Alaska Native villages for the development and operation of low-income housing in Indian areas. The policies and procedures described in this part apply to grants to eligible recipients under the Indian Housing Block Grant (IHBG) program for Indian tribes and Alaska Native villages. This part also applies to loan guarantee assistance under title VI of NAHASDA. The regulations in this part supplement the statutory requirements set forth in NAHASDA. This part, as much as practicable, does not repeat statutory language.

§ 1000.2 What are the guiding principles in the implementation of NAHASDA?

(a) The Secretary shall use the following Congressional findings set forth in section 2 of NAHASDA as the guiding principles in the implementation of NAHASDA:

(1) The Federal government has a responsibility to promote the general welfare of the Nation:

(i) By using Federal resources to aid families and individuals seeking affordable homes in safe and healthy environments and, in particular, assisting responsible, deserving citizens who cannot provide fully for themselves because of temporary circumstances or factors beyond their control;

(ii) By working to ensure a thriving national economy and a strong private housing market; and

(iii) By developing effective partnerships among the Federal government, state, tribal, and local governments, and private entities that allow government to accept responsibility for fostering the development of a healthy marketplace and allow families to prosper without government involvement in their day-to-day activities.

(2) There exists a unique relationship between the Government of the United States and the governments of Indian tribes and a unique Federal responsibility to Indian people.

(3) The Constitution of the United States invests the Congress with plenary power over the field of Indian affairs, and through treaties, statutes, and historical relations with Indian tribes, the United States has undertaken a unique trust responsibility to protect and support Indian tribes and Indian people.

(4) The Congress, through treaties, statutes, and the general course of dealing with Indian tribes, has assumed a trust responsibility for the protection and preservation of Indian tribes and for working with Indian tribes and their members to improve their housing conditions and socioeconomic status so that they are able to take greater responsibility for their own economic condition.

(5) Providing affordable homes in safe and healthy environments is an essential element in the special role of the United States in helping Indian tribes and their members to improve their housing conditions and socioeconomic status.

(6) The need for affordable homes in safe and healthy environments on Indian reservations, in Indian communities, and in Native Alaskan villages is acute and the Federal government should work not only to provide housing assistance, but also, to the extent practicable, to assist in the development of private housing finance mechanisms on Indian lands to achieve the goals of economic self-sufficiency and self-determination for Indian tribes and their members.

(7) Federal assistance to meet these responsibilities should be provided in a manner that recognizes the right of Indian self-determination and tribal self-governance by making such assistance available directly to the Indian tribes or tribally designated entities under authorities similar to those accorded Indian tribes in Public Law 93–638 (25 U.S.C. 450 *et seq.*).

(b) Nothing in this section shall be construed as releasing the United States government from any responsibility arising under its trust responsibilities towards Indians or any treaty or treaties with an Indian tribe or nation.

§ 1000.4 What are the objectives of NAHASDA?

The primary objectives of NAHASDA are:

(a) To assist and promote affordable housing activities to develop, maintain and operate affordable housing in safe and healthy environments on Indian reservations and in other Indian areas for occupancy by low-income Indian families;

(b) To ensure better access to private mortgage markets for Indian tribes and their members and to promote self-sufficiency of Indian tribes and their members;

(c) To coordinate activities to provide housing for Indian tribes and their members and to promote self-sufficiency of Indian tribes and their members;

(d) To plan for and integrate infrastructure resources for Indian tribes with housing development for Indian tribes; and

(e) To promote the development of private capital markets in Indian country and to allow such markets to operate and grow, thereby benefiting Indian communities.

§ 1000.6 What is the nature of the IHBG program?

The IHBG program is formula driven whereby eligible recipients of funding receive an equitable share of appropriations made by the Congress, based upon formula components specified under subpart D of this part. IHBG recipients must have the administrative capacity to undertake the affordable housing activities proposed, including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement.

§ 1000.8 May provisions of these regulations be waived?

Yes. Upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision of this part and delegate this authority in accordance with section 106 of the Department of Housing and

Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)).

§ 1000.10 What definitions apply in these regulations?

Except as noted in a particular subpart, the following definitions apply in this part:

(a) The terms *''Adjusted income,'' ''Affordable housing,'' ''Drug-related criminal activity,'' ''Elderly families and near-elderly families,'' ''Elderly person,'' ''Grant beneficiary,'' ''Indian,'' ''Indian housing plan (IHP),'' ''Indian tribe,'' ''Low-income family,'' ''Near-elderly persons,'' ''Nonprofit,'' ''Recipient,'' Secretary,'' ''State,''* and *''Tribally designated housing entity (TDHE)''* are defined in section 4 of NAHASDA.

(b) In addition to the definitions set forth in paragraph (a) of this section, the following definitions apply to this part:

Affordable housing activities are those activities identified in section 202 of NAHASDA.

Annual Contributions Contract (ACC) means a contract under the 1937 Act between HUD and an IHA containing the terms and conditions under which HUD assists the IHA in providing decent, safe, and sanitary housing for low-income families.

Annual income has one of the following meanings, as determined by the Indian tribe:

(1) ''Annual income'' as defined for HUD's Section 8 programs in 24 CFR part 5, subpart F (except when determining the income of a homebuyer for an owner-occupied rehabilitation project, the value of the homeowner's principal residence may be excluded from the calculation of Net Family assets); or

(2) Annual income as reported under the Census long-form for the most recent available decennial Census. This definition includes:

(i) Wages, salaries, tips, commissions, etc.;

(ii) Self-employment income;

(iii) Farm self-employment income;

(iv) Interest, dividends, net rental income, or income from estates or trusts;

(v) Social security or railroad retirement;

(vi) Supplemental Security Income, Aid to Families with Dependent Children, or other public assistance or public welfare programs;

(vii) Retirement, survivor, or disability pensions; and

(viii) Any other sources of income received regularly, including Veterans' (VA) payments, unemployment compensation, and alimony; or

(3) Adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual Federal annual income tax purposes.

Assistant Secretary means the Assistant Secretary for Public and Indian Housing.

Department or HUD means the Department of Housing and Urban Development.

Family includes, but is not limited to, a family with or without children, an elderly family, a near-elderly family, a disabled family, a single person, as determined by the Indian tribe.

Homebuyer payment means the payment of a family purchasing a home pursuant to a lease purchase agreement.

Homeless family means a family who is without safe, sanitary and affordable housing even though it may have temporary shelter provided by the community, or a family who is homeless as determined by the Indian tribe.

IHBG means Indian Housing Block Grant.

Income means annual income as defined in this subpart.

Indian Area means the area within which an Indian tribe operates affordable housing programs or the area in which a TDHE is authorized by one or more Indian tribes to operate affordable housing programs. Whenever the term ''jurisdiction'' is used in NAHASDA it shall mean ''Indian Area'' except where specific reference is made to the jurisdiction of a court.

Indian Housing Authority (IHA) means an entity that:

(1) Is authorized to engage or assist in the development or operation of low-income housing for Indians under the 1937 Act; and

(2) Is established:

(i) By exercise of the power of self government of an Indian tribe independent of state law; or

(ii) By operation of state law providing specifically for housing authorities for Indians, including regional housing authorities in the State of Alaska.

Median income for an Indian area is the greater of:

(1) The median income for the counties, previous counties, or their equivalent in which the Indian area is located; or

(2) The median income for the United States.

NAHASDA means the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

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

Office of Native American Programs (ONAP) means the office of HUD which has been delegated authority to administer programs under this part. An ''Area ONAP'' is an ONAP field office.

Person with Disabilities means a person who —

(1) Has a disability as defined in section 223 of the Social Security Act;

(2) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act;

(3) Has a physical, mental, or emotional impairment which-

(i) Is expected to be of long-continued and indefinite duration;

(ii) Substantially impedes his or her ability to live independently; and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions.

(4) The term ''person with disabilities'' includes persons who have the disease of acquired immunodeficiency syndrome or any condition arising from the etiologic agent for acquired immunodeficiency syndrome.

(5) Notwithstanding any other provision of law, no individual shall be considered a person with disabilities, for purposes of eligibility for housing assisted under this part, solely on the basis of any drug or alcohol dependence. The Secretary shall consult with Indian tribes and appropriate Federal agencies to implement this paragraph.

(6) For purposes of this definition, the term ''*physical, mental or emotional impairment*'' includes, but is not limited to:

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological condition, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(iii) The term ''*physical, mental, or emotional impairment*'' includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, and emotional illness.

§ 1000.12 What nondiscrimination requirements are applicable?

(a) The requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and HUD's implementing regulations in 24 CFR part 146.

(b) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's regulations at 24 CFR part 8 apply.

(c) The Indian Civil Rights Act (Title II of the Civil Rights Act of 1968; 25 U.S.C. 1301–1303), applies to Federally recognized Indian tribes that exercise powers of self-government.

(d) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) apply to Indian tribes that are not covered by the Indian Civil Rights Act. However, the Title VI and Title VIII requirements do not apply to actions by Indian tribes under section 201(b) of NAHASDA.

§ 1000.14 What relocation and real property acquisition policies are applicable?

The following relocation and real property acquisition policies are applicable to programs developed or operated under NAHASDA:

(a) *Real Property acquisition requirements.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B. Whenever the recipient does not have the authority to acquire the real property through condemnation, it shall:

(1) Before discussing the purchase price, inform the owner:

(i) Of the amount it believes to be the fair market value of the property. Such amount shall be based upon one or more appraisals prepared by a qualified appraiser. However, this provision does not prevent the recipient from accepting a donation or purchasing the real property at less than its fair market value.

(ii) That it will be unable to acquire the property if negotiations fail to result in an amicable agreement.

(2) Request HUD approval of the proposed acquisition price before executing a firm commitment to purchase the property if the proposed acquisition payment exceeds the fair market value. The recipient shall include with its request a copy of the appraisal(s) and a justification for the proposed acquisition payment. HUD will promptly review the proposal and inform the recipient of its approval or disapproval.

(b) *Minimize displacement.* Consistent with the other goals and objectives of this part, recipients shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(c) *Temporary relocation.* The following policies cover residential tenants and homebuyers who will not be required to move permanently but who must relocate temporarily for the project. Such residential tenants and homebuyers shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly housing costs (e.g., rent/utility costs).

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provisions of paragraph (c)(1) of this section.

(d) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(e) *Appeals to the recipient.* A person who disagrees with the recipient's determination concerning whether the person qualifies as a ''displaced person,'' or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the recipient.

(f) *Responsibility of recipient.* (1) The recipient shall certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The recipient shall ensure such compliance notwithstanding any third party's contractual obligation to the recipient to comply with the provisions in this section.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the recipient from any other source.

(3) The recipient shall maintain records in sufficient detail to demonstrate compliance with this section.

(g) *Definition of displaced person.* (1) For purposes of this section, the term ''displaced person'' means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or acquisition for a project assisted under this part. The

term ''displaced person'' includes, but is not limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the submission to HUD of an IHP that is later approved.

(ii) Any person, including a person who moves before the date described in paragraph (g)(1)(i) of this section, that the recipient determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project.

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the execution of the agreement between the recipient and HUD, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant-occupant's monthly rent and estimated average monthly utility costs before the agreement; or

(B) 30 percent of gross household income.

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant-occupant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable.

(v) A tenant-occupant of a dwelling who moves from the building/complex after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant-occupant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a ''displaced person'' (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person moved into the property after the submission of the IHP to HUD, but, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a ''displaced person'' or for any assistance provided under this section as a result of the project.

(ii) The person is ineligible under 49 CFR 24.2(g)(2).

(iii) The recipient determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination.

(3) A recipient may at any time ask HUD to determine whether a specific displacement is or would be covered under this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation or demolition of the real property, the term ''initiation of negotiations'' means the execution of the agreement covering the rehabilitation or demolition (See 49 CFR part 24).

§ 1000.16 What labor standards are applicable?

(a) *Davis-Bacon wage rates.* (1) As described in section 104(b) of NAHASDA, contracts and agreements for assistance, sale or lease under NAHASDA must require prevailing wage rates determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a–276a–5) to be paid to laborers and mechanics employed in the development of affordable housing.

(2) When NAHASDA assistance is only used to assist homebuyers to acquire single family housing, the Davis-

Bacon wage rates apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that NAHASDA assistance will be used to assist homebuyers to buy the housing.

(3) Prime contracts not in excess of $2000 are exempt from Davis-Bacon wage rates.

(b) *HUD-determined wage rates.* Section 104(b) also mandates that contracts and agreements for assistance, sale or lease under NAHASDA require that prevailing wages determined or adopted (subsequent to a determination under applicable state, tribal or local law) by HUD shall be paid to maintenance laborers and mechanics employed in the operation, and to architects, technical engineers, draftsmen and technicians employed in the development, of affordable housing.

(c) *Contract Work Hours and Safety Standards Act.* Contracts in excess of $100,000 to which Davis-Bacon or HUD-determined wage rates apply are subject by law to the overtime provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327).

(d) *Volunteers.* The requirements in 24 CFR part 70 concerning exemptions for the use of volunteers on projects subject to Davis-Bacon and HUD-determined wage rates are applicable.

(e) *Other laws and issuances.* Recipients, contractors, subcontractors, and other participants must comply with regulations issued under the labor standards provisions cited in this section, other applicable Federal laws and regulations pertaining to labor standards, and HUD Handbook 1344.1 (Federal Labor Standards Compliance in Housing and Community Development Programs).

§ 1000.18 What environmental review requirements apply?

The environmental effects of each activity carried out with assistance under this part must be evaluated in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321) and the related authorities listed in HUD's implementing regulations at 24 CFR parts 50 and 58. An environmental review does not have to be completed prior to HUD approval of an IHP.

§ 1000.20 Is an Indian tribe required to assume environmental review responsibilities?

(a) No. It is an option an Indian tribe may choose. If an Indian tribe declines to assume the environmental review responsibilities, HUD will perform the environmental review in accordance with 24 CFR part 50. The timing of HUD undertaking the environmental review will be subject to the availability of resources. A HUD environmental review must be completed for any NAHASDA assisted activities not excluded from review under 24 CFR 50.19(b) before a recipient may acquire, rehabilitate, convert, lease, repair or construct property, or commit HUD or local funds used in conjunction with such NAHASDA assisted activities with respect to the property.

(b) If an Indian tribe assumes environmental review responsibilities:

(1) Its certifying officer must certify that he/she is authorized and consents on behalf of the Indian tribe and such officer to accept the jurisdiction of the Federal courts for the purpose of enforcement of the responsibilities of the certifying officer as set forth in section 105(c) of NAHASDA; and

(2) The Indian tribe must follow the requirements of 24 CFR part 58.

(3) No funds may be committed to a grant activity or project before the completion of the environmental review and approval of the request for release of funds and related certification required by sections 105(b) and 105(c) of NAHASDA, except as authorized by 24 CFR part 58 such as for the costs of environmental reviews and other planning and administrative expenses.

(c) Where an environmental assessment (EA) is appropriate under 24 CFR part 50, instead of an Indian tribe assuming environmental review responsibilities under paragraph (b) of this section or HUD preparing the EA itself under paragraph (a) of this section, an Indian tribe or TDHE may prepare an EA for HUD review. In addition to complying with the requirements of 40 CFR 1506.5(a), HUD shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the EA in accordance with 40 CFR 1506.5(b).

§ 1000.22 Are the costs of the environmental review an eligible cost?

Yes, costs of completing the environmental review are eligible.

§ 1000.24 If an Indian tribe assumes environmental review responsibility, how will HUD assist the Indian tribe in performing the environmental review?

As set forth in section 105(a)(2)(B) of NAHASDA and 24 CFR 58.77, HUD will provide for monitoring of environmental reviews and will also facilitate training for the performance for such reviews by Indian tribes.

§ 1000.26 What are the administrative requirements under NAHASDA?

(a) Except as addressed in § 1000.28, recipients shall comply with the requirements and standards of OMB Circular No. A–87, ''Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments,'' and with the following sections of 24 CFR part 85 ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.'' For purposes of this part, ''grantee'' as defined in 24 CFR part 85 has the same meaning as ''recipient.''

(1) Section 85.3, ''Definitions.''

(2) Section 85.6, ''Exceptions.''

(3) Section 85.12, ''Special grant or subgrant conditions for 'high risk' grantees.''

(4) Section 85.20, ''Standards for financial management systems,'' except paragraph (a).

(5) Section 85.21, ''Payment.''

(6) Section 85.22, ''Allowable costs.''

(7) Section 85.26, ''Non-federal audits.''

(8) Section 85.32, ''Equipment,'' except in all cases in which the equipment is sold, the proceeds shall be program income.

(9) Section 85.33, ''Supplies.''

(10) Section 85.35, ''Subawards to debarred and suspended parties.''

(11) Section 85.36, ''Procurement,'' except paragraph (a). There may be circumstances under which the bonding requirements of § 85.36(h) are inconsistent with other responsibilities and obligations of the recipient. In such circumstances, acceptable methods to provide performance and payment assurance may include:

(i) Deposit with the recipient of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk;

(ii) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the recipient, subject to reduction during any warranty period commensurate with potential risk; or

(iii) Letter of credit for 10 percent of the total contract price unconditionally payable upon demand of the recipient subject to reduction during any warranty period commensurate with potential risk, and compliance with the procedures for monitoring of disbursements by the contractor.

(12) Section 85.37, ''Subgrants.''

(13) Section 85.40, ''Monitoring and reporting program performance,'' except paragraphs (b) through (d) and paragraph (f).

(14) Section 85.41, ''Financial reporting,'' except paragraphs (a), (b), and (e).

(15) Section 85.44, ''Termination for convenience.''

(16) Section 85.51 ''Later disallowances and adjustments.''

(17) Section 85.52, ''Collection of amounts due.''

(b)(1) With respect to the applicability of cost principles, all items of cost listed in Attachment B of OMB Circular A–87 which require prior Federal agency approval are allowable without the prior approval of HUD to the extent that they comply with the general policies and principles stated in Attachment A of this circular and are otherwise eligible under this part, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without specific approval of HUD or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties are unallowable costs to the IHBG program.

(2) In addition, no person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with IHBG funds. In no event,

however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule.

§ 1000.28 May a self-governance Indian tribe be exempted from the applicability of § 1000.26?

Yes. A self-governance Indian tribe shall certify that its administrative requirements, standards and systems meet or exceed the comparable requirements of § 1000.26. For purposes of this section, a self-governance Indian tribe is an Indian tribe that participates in tribal self-governance as authorized under Public Law 93–638, as amended (25 U.S.C. 450 *et seq.*).

§ 1000.30 What prohibitions regarding conflict of interest are applicable?

(a) *Applicability.* In the procurement of supplies, equipment, other property, construction and services by recipients and subrecipients, the conflict of interest provisions of 24 CFR 85.36 shall apply. In all cases not governed by 24 CFR 85.36, the following provisions of this section shall apply.

(b) *Conflicts prohibited.* No person who participates in the decision-making process or who gains inside information with regard to NAHASDA assisted activities may obtain a personal or financial interest or benefit from such activities, except for the use of NAHASDA funds to pay salaries or other related administrative costs. Such persons include anyone with an interest in any contract, subcontract or agreement or proceeds thereunder, either for themselves or others with whom they have business or immediate family ties. Immediate family ties are determined by the Indian tribe or TDHE in its operating policies.

(c) The conflict of interest provision does not apply in instances where a person who might otherwise be included under the conflict provision is low-income and is selected for assistance in accordance with the recipient's written policies for eligibility, admission and occupancy of families for housing assistance with IHBG funds, provided that there is no conflict of interest under applicable tribal or state law. The recipient must make a public disclosure of the nature of assistance to be provided and the specific basis for the selection of the person. The recipient shall provide the appropriate Area ONAP with a copy of the disclosure before the assistance is provided to the person.

§ 1000.32 May exceptions be made to the conflict of interest provisions?

(a) Yes. HUD may make exceptions to the conflict of interest provisions set forth in § 1000.30(b) on a case-by-case basis when it determines that such an exception would further the primary objective of NAHASDA and the effective and efficient implementation of the recipient's program, activity, or project.

(b) A public disclosure of the conflict must be made and a determination that the exception would not violate tribal laws on conflict of interest (or any applicable state laws) must also be made.

§ 1000.34 What factors must be considered in making an exception to the conflict of interest provisions?

In determining whether or not to make an exception to the conflict of interest provisions, HUD must consider whether undue hardship will result, either to the recipient or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict.

§ 1000.36 How long must a recipient retain records regarding exceptions made to the conflict of interest provisions?

A recipient must maintain all such records for a period of at least 3 years after an exception is made.

§ 1000.38 What flood insurance requirements are applicable?

Under the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4001–4128), a recipient may not permit the use of Federal financial assistance for acquisition and construction purposes (including rehabilitation) in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless the following conditions are met:

(a) The community in which the area is situated is participating in the National Flood Insurance Program in accord with section 202(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4106(a)), or less than a year has passed since FEMA notification regarding such flood hazards. For this purpose, the ''community'' is the governmental entity, such as an Indian tribe or authorized tribal organization, an Alaska Native village, or authorized Native organization, or a municipality or county, that has authority to adopt and enforce flood plain management regulations for the area; and

(b) Where the community is participating in the National Flood Insurance Program, flood insurance on the building is obtained in compliance with section 102(a) of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4012(a)); provided, that if the financial assistance is in the form of a loan or an insurance or guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan.

§ 1000.40 Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?

Yes, lead-based paint requirements apply to housing activities assisted under NAHASDA. The applicable requirements for NAHASDA are HUD's regulations at part 35, subparts A, B, H, J, K, M and R of this title, which implement the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822–4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856).

[64 FR 50230, Sept. 15, 1999; 65 FR 3387, Jan. 21, 2000]

§ 1000.42 Are the requirements of section 3 of the Housing and Urban Development Act of 1968 applicable?

(a) *General.* Yes. Recipients shall comply with section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and HUD's implementing regulations in 24 CFR part 135, to the maximum extent feasible and consistent with, but not in derogation of, compliance with section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). Section 3 provides job training, employment, and contracting opportunities for low-income individuals.

(b) *Threshold requirement.* The requirements of section 3 apply only to those section 3 covered projects or activities for which the amount of assistance exceeds $200,000.

§ 1000.44 What prohibitions on the use of debarred, suspended or ineligible contractors apply?

In addition to any tribal requirements, the prohibitions in 24 CFR part 24 on the use of debarred, suspended or ineligible contractors apply.

§ 1000.46 Do drug-free workplace requirements apply?

Yes. In addition to any tribal requirements, the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*) and HUD's implementing regulations in 24 CFR part 24 apply.

§ 1000.48 Are Indian preference requirements applicable to IHBG activities?

(a) *Applicability.* Grants under this part are subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b). Section 7(b) provides that any contract, subcontract, grant or subgrant pursuant to an act authorizing grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(1) Preference and opportunities for training and employment shall be given to Indians, and

(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

(b) *Definitions.*

(1) The Indian Self-Determination and Education Assistance Act defines ''Indian'' to mean a person who is a member of an Indian tribe and defines ''Indian tribe'' to mean any Indian tribe, band, nation, or other organized group or community including any Alaska Native village or regional or

village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) In section 3 of the Indian Financing Act of 1974 ''economic enterprise'' is defined as any Indian-owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51 percent of the enterprise. This act defines ''Indian organization'' to mean the governing body of any Indian tribe or entity established or recognized by such governing body.

§ 1000.50 What Indian preference requirements apply to IHBG administration activities?

To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this part shall be given to Indians.

§ 1000.52 What Indian preference requirements apply to IHBG procurement?

To the greatest extent feasible, recipients shall give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises.

(a) Each recipient shall:

(1) Certify to HUD that the polices and procedures adopted by the recipient will provide preference in procurement activities consistent with the requirements of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C.450e(b)) (An Indian preference policy which was previously approved by HUD for a recipient will meet the requirements of this section); or

(2) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(3) Use a two-stage preference procedure, as follows:

(i) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement or request for proposals limited to Indian-owned firms.

(ii) *Stage 2.* If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises.

(b) If the recipient selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or a proposal to perform the contract at a reasonable cost, then the recipient shall:

(1) Re-advertise the contract, using any of the methods described in paragraph (a) of this section; or

(2) Re-advertise the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(3) If one approvable bid or proposal is received, request Area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder or offeror.

(c) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid or proposal procedures of paragraph (a) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a recipient's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(d) All preferences shall be publicly announced in the advertisement and bidding or proposal solicitation documents and the bidding and proposal documents.

(e) A recipient, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises. Recipients may require prospective contractors to provide the following information before submitting a bid or proposal, or at the time of submission:

(1) Evidence showing fully the extent of Indian ownership and interest;

(2) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(3) Evidence sufficient to demonstrate to the satisfaction of the recipient that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(f) The recipient shall incorporate the following clause (referred to as the section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(1) The work to be performed under this contract is on a project subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) (the Indian Act). Section 7(b) requires that to the greatest extent feasible:

(i) Preferences and opportunities for training and employment shall be given to Indians; and

(ii) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(2) The parties to this contract shall comply with the provisions of section 7(b) of the Indian Act.

(3) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.

(4) The contractor shall include this section 7(b) clause in every subcontract in connection with the project, and shall, at the direction of the recipient, take appropriate action pursuant to the subcontract upon a finding by the recipient or HUD that the subcontractor has violated the section 7(b) clause of the Indian Act.

§ 1000.54 What procedures apply to complaints arising out of any of the methods of providing for Indian preference?

The following procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this part, including alternate methods. Tribal policies that meet or exceed the requirements of this section shall apply.

(a) Each complaint shall be in writing, signed, and filed with the recipient.

(b) A complaint must be filed with the recipient no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.

(c) Upon receipt of a complaint, the recipient shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.

(d) Within 20 calendar days of receipt of a complaint, the recipient shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The recipient shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the recipient. The decision of the recipient shall constitute final administrative action on the complaint.

§ 1000.56 How are NAHASDA funds paid by HUD to recipients?

(a) Each year funds shall be paid directly to a recipient in a manner that recognizes the right of Indian self-determination and tribal self-governance and the trust responsibility of the Federal government to Indian tribes consistent with NAHASDA.

(b) Payments shall be made as expeditiously as practicable.

§ 1000.58 Are there limitations on the investment of IHBG funds?

(a) A recipient may invest IHBG funds for the purposes of carrying out affordable housing activities in investment securities and other obligations as provided in this section.

(b) The recipient may invest IHBG funds so long as it demonstrates to HUD:

(1) That there are no unresolved significant and material audit findings or exceptions in the most recent annual audit completed under the Single Audit Act or in an independent financial audit prepared in accordance with generally accepted auditing principles; and

(2) That it is a self-governance Indian tribe or that it has the administrative capacity and controls to responsibly manage the investment. For purposes of this section, a self-governance Indian tribe is an Indian tribe that participates in tribal self-governance as authorized under Public Law 93–638, as amended (25 U.S.C. 450 *et seq.*).

(c) Recipients shall invest IHBG funds only in:

(1) Obligations of the United States; obligations issued by Government sponsored agencies; securities that are guaranteed or insured by the United States; mutual (or other) funds registered with the Securities and Exchange Commission and which invest only in obligations of the United States or securities that are guaranteed or insured by the United States; or

(2) Accounts that are insured by an agency or instrumentality of the United States or fully collateralized to ensure protection of the funds, even in the event of bank failure.

(d) IHBG funds shall be held in one or more accounts separate from other funds of the recipient. Each of these accounts shall be subject to an agreement in a form prescribed by HUD sufficient to implement the regulations in this part and permit HUD to exercise its rights under § 1000.60.

(e) Expenditure of funds for affordable housing activities under section 204(a) of NAHASDA shall not be considered investment.

(f) A recipient may invest its IHBG annual grant in an amount equal to the annual formula grant amount less any formula grant amounts allocated for the operating subsidy element of the Formula Current Assisted Housing Stock (FCAS) component of the formula (see §§ 1000.316(a) and 1000.320) multiplied by the following percentages, as appropriate:

(1) 50% in Fiscal Years 1998 and 1999;

(2) 75% in Fiscal Year 2000; and

(3) 100% in Fiscal Years 2001 and thereafter.

(g) Investments under this section may be for a period no longer than two years.

§ 1000.60 Can HUD prevent improper expenditure of funds already disbursed to a recipient?

Yes. In accordance with the standards and remedies contained in § 1000.538 relating to substantial noncompliance, HUD will use its powers under a depository agreement and take such other actions as may be legally necessary to suspend funds disbursed to the recipient until the substantial noncompliance has been remedied. In taking this action, HUD shall comply with all appropriate procedures, appeals and hearing rights prescribed elsewhere in this part.

§ 1000.62 What is considered program income and what restrictions are there on its use?

(a) Program income is defined as any income that is realized from the disbursement of grant amounts. Program income does not include any amounts generated from the operation of 1937 Act units unless the units are assisted with grant amounts and the income is attributable to such assistance. Program income includes income from fees for services performed from the use of real or rental of real or personal property acquired with grant funds, from the sale of commodities or items developed, acquired, etc. with grant funds, and from payments of principal and interest earned on grant funds prior to disbursement.

(b) Any program income can be retained by a recipient provided it is used for affordable housing activities in accordance with section 202 of NAHASDA. If the amount of income received in a single year by a recipient and all its subrecipients, which would otherwise be considered program income, does not exceed $25,000, such funds may be retained but will not be considered to be or treated as program income.

(c) If program income is realized from an eligible activity funded with both grant funds as well as other funds (i.e., funds that are not grant funds),

then the amount of program income realized will be based on a percentage calculation that represents the proportional share of funds provided for the activity generating the program income.

(d) Costs incident to the generation of program income shall be deducted from gross income to determine program income.

Subpart B—Affordable Housing Activities

§ 1000.101 What is affordable housing?

Eligible affordable housing is defined in section 4(2) of NAHASDA and is described in title II of NAHASDA.

§ 1000.102 What are eligible affordable housing activities?

Eligible affordable housing activities are those described in section 202 of NAHASDA.

§ 1000.104 What families are eligible for affordable housing activities?

The following families are eligible for affordable housing activities:

(a) Low income Indian families on a reservation or Indian area.

(b) A non-low income Indian family may receive housing assistance in accordance with § 1000.110, except that non low-income Indian families residing in housing assisted under the 1937 Act do not have to meet the requirements of § 1000.110 for continued occupancy.

(c) A non-Indian family may receive housing assistance on a reservation or Indian area if the non-Indian family's housing needs cannot be reasonably met without such assistance and the recipient determines that the presence of that family on the reservation or Indian area is essential to the well-being of Indian families, except that non-Indian families residing in housing assisted under the 1937 Act do not have to meet these requirements for continued occupancy.

§ 1000.106 What families receiving assistance under title II of NAHASDA require HUD approval?

(a) Housing assistance for non low-income Indian families requires HUD approval only as required in §§ 1000.108 and 1000.110.

(b) Assistance under section 201(b)(3) of NAHASDA for non-Indian families does not require HUD approval but only requires that the recipient determine that the presence of that family on the reservation or Indian area is essential to the well-being of Indian families and the non-Indian family's housing needs cannot be reasonably met without such assistance.

§ 1000.108 How is HUD approval obtained by a recipient for housing for non low-income Indian families and model activities?

Recipients are required to submit proposals to operate model housing activities as defined in section 202(6) of NAHASDA and to provide assistance to non low-income Indian families in accordance with section 201(b)(2) of NAHASDA. Assistance to non low-income Indian families must be in accordance with § 1000.110. Proposals may be submitted in the recipient's IHP or at any time by amendment of the IHP, or by special request to HUD at any time. HUD may approve the remainder of an IHP notwithstanding disapproval of a model activity or assistance to non low-income Indian families.

§ 1000.110 Under what conditions may non low-income Indian families participate in the program?

(a) A family who is purchasing housing under a lease purchase agreement and who was low income at the time the lease was signed is eligible without further conditions.

(b) A recipient may provide the following types of assistance to non low-income Indian families under the conditions specified in paragraphs (c), (d) and (e) of this section:

(1) Homeownership activities under section 202(2) of NAHASDA, which may include assistance in conjunction with loan guarantees under the Section 184 program (see 24 CFR part 1005);

(2) Model activities under section 202(6) of NAHASDA; and

(3) Loan guarantee activities under title VI of NAHASDA.

(c) A recipient must determine and document that there is a need for housing for each family which cannot reasonably be met without such assistance.

(d) A recipient may use up to 10 percent of its annual grant amount for families whose income falls within 80 to 100 percent of the median income without HUD approval. HUD approval is required if a recipient plans to use more than 10 percent of its annual grant amount for such assistance or to provide housing for families with income over 100 percent of median income.

(e) Non low-income Indian families cannot receive the same benefits provided low-income Indian families. The amount of assistance non low-income Indian families may receive will be determined as follows:

(1) The rent (including homebuyer payments under a lease purchase agreement) to be paid by a non low-income Indian family cannot be less than: (Income of non low-income family/Income of family at 80 percent of median income) × (Rental payment of family at 80 percent of median income), but need not exceed the fair market rent or value of the unit.

(2) Other assistance, including down payment assistance, to non low-income Indian families, cannot exceed: (Income of family at 80 percent of median income/Income of non low-income family) × (Present value of the assistance provided to family at 80 percent of median income).

(f) The requirements set forth in paragraph (e) of this section do not apply to non low-income Indian families which the recipient has determined to be essential to the well-being of the Indian families residing in the housing area.

§ 1000.112 How will HUD determine whether to approve model housing activities?

HUD will review all proposals with the goal of approving the activities and encouraging the flexibility, discretion, and self-determination granted to Indian tribes under NAHASDA to formulate and operate innovative housing programs that meet the intent of NAHASDA.

§ 1000.114 How long does HUD have to review and act on a proposal to provide assistance to non low-income Indian families or a model housing activity?

Whether submitted in the IHP or at any other time, HUD will have sixty calendar days after receiving the proposal to notify the recipient in writing that the proposal to provide assistance to non low-income Indian families or for model activities is approved or disapproved. If no decision is made by HUD within sixty calendar days of receiving the proposal, the proposal is deemed to have been approved by HUD.

§ 1000.116 What should HUD do before declining a proposal to provide assistance to non low-income Indian families or a model housing activity?

HUD shall consult with a recipient regarding the recipient's proposal to provide assistance to non low-income Indian families or a model housing activity. To the extent resources are available, HUD shall provide technical assistance to the recipient in amending and modifying the proposal if necessary. In case of a denial, HUD shall give the specific reasons for the denial.

§ 1000.118 What recourse does a recipient have if HUD disapproves a proposal to provide assistance to non low-income Indian families or a model housing activity?

(a) Within thirty calendar days of receiving HUD's denial of a proposal to provide assistance to non low-income Indian families or a model housing activity, the recipient may request reconsideration of the denial in writing. The request shall set forth justification for the reconsideration.

(b) Within twenty calendar days of receiving the request, HUD shall reconsider the recipient's request and either affirm or reverse its initial decision in writing, setting forth its reasons for the decision. If the decision was made by the Assistant Secretary, the decision will constitute final agency action. If the decision was made at a lower level, then paragraphs (c) and (d) of this section will apply.

(c) The recipient may appeal any denial of reconsideration by filing an appeal with the Assistant Secretary within twenty calendar days of receiving the denial. The appeal shall set forth the reasons why the recipient does not agree with HUD's decision and set forth justification for the reconsideration.

(d) Within twenty calendar days of receipt of the appeal, the Assistant Secretary shall review the recipient's appeal and act on the appeal, setting forth the reasons for the decision.

§ 1000.120 May a recipient use Indian preference or tribal preference in selecting families for housing assistance?

Yes. The IHP may set out a preference for the provision of housing assistance to Indian families who are members of the Indian tribe or to other Indian families if the recipient has adopted the preference in its admissions policy. The recipient shall ensure that housing activities funded under NAHASDA are subject to the preference.

§ 1000.122 May NAHASDA grant funds be used as matching funds to obtain and leverage funding, including any Federal or state program and still be considered an affordable housing activity?

There is no prohibition in NAHASDA against using grant funds as matching funds.

§ 1000.124 What maximum and minimum rent or homebuyer payment can a recipient charge a low-income rental tenant or homebuyer residing in housing units assisted with NAHASDA grant amounts?

A recipient can charge a low-income rental tenant or homebuyer rent or homebuyer payments not to exceed 30 percent of the adjusted income of the family. The recipient may also decide to compute its rental and homebuyer payments on any lesser percentage of adjusted income of the family. This requirement applies only to units assisted with NAHASDA grant amounts. NAHASDA does not set minimum rents or homebuyer payments; however, a recipient may do so.

§ 1000.126 May a recipient charge flat or income-adjusted rents?

Yes, providing the rental or homebuyer payment of the low-income family does not exceed 30 percent of the family's adjusted income.

§ 1000.128 Is income verification required for assistance under NAHASDA?

(a) Yes, the recipient must verify that the family is income eligible based on anticipated annual income. The family is required to provide documentation to verify this determination. The recipient is required to maintain the documentation on which the determination of eligibility is based.

(b) The recipient may require a family to periodically verify its income in order to determine housing payments or continued occupancy consistent with locally adopted policies. When income verification is required, the family must provide documentation which verifies its income, and this documentation must be retained by the recipient.

§ 1000.130 May a recipient charge a non low-income family rents or homebuyer payments which are more than 30 percent of the family's adjusted income?

Yes. A recipient may charge a non low-income family rents or homebuyer payments which are more than 30 percent of the family's adjusted income.

§ 1000.132 Are utilities considered a part of rent or homebuyer payments?

Utilities may be considered a part of rent or homebuyer payments if a recipient decides to define rent or homebuyer payments to include utilities in its written policies on rents and homebuyer payments required by section 203(a)(1) of NAHASDA. A recipient may define rents and homebuyer payments to exclude utilities.

§ 1000.134 When may a recipient (or entity funded by a recipient) demolish or dispose of current assisted stock?

(a) A recipient (or entity funded by a recipient) may undertake a planned

demolition or disposal of current assisted stock owned by the recipient or an entity funded by the recipient when:

(1) A financial analysis demonstrates that it is more cost-effective or housing program-effective for the recipient to demolish or dispose of the unit than to continue to operate or own it; or

(2) The housing unit has been condemned by the government which has authority over the unit; or

(3) The housing unit is an imminent threat to the health and safety of housing residents; or

(4) Continued habitation of a housing unit is inadvisable due to cultural or historical considerations.

(b) No action to demolish or dispose of the property other than performing the analysis cited in paragraph (a) of this section can be taken until HUD has been notified in writing of the recipient's intent to demolish or dispose of the housing units consistent with section 102(c)(4)(H) of NAHASDA. The written notification must set out the analysis used to arrive at the decision to demolish or dispose of the property and may be set out in a recipient's IHP or in a separate submission to HUD.

(c) In any disposition sale of a housing unit, a sale process designed to maximize the sale price will be used. However, where the sale is to a low-income Indian family, the home may be disposed of without maximizing the sale price so long as such price is consistent with a recipient's IHP. The sale proceeds from the disposition of any housing unit are program income under NAHASDA and must be used in accordance with the requirements of NAHASDA and these regulations.

§ 1000.136 What insurance requirements apply to housing units assisted with NAHASDA grants?

(a) The recipient shall provide adequate insurance either by purchasing insurance or by indemnification against casualty loss by providing insurance in adequate amounts to indemnify the recipient against loss from fire, weather, and liability claims for all housing units owned or operated by the recipient.

(b) The recipients shall not require insurance on units assisted by grants to families for privately owned housing if there is no risk of loss or exposure to the recipient or if the assistance is in an amount less than $5000, but will require insurance when repayment of all or part of the assistance is part of the assistance agreement.

(c) The recipient shall require contractors and subcontractors to either provide insurance covering their activities or negotiate adequate indemnification coverage to be provided by the recipient in the contract.

(d) These requirements are in addition to applicable flood insurance requirements under § 1000.38.

§ 1000.138 What constitutes adequate insurance?

Insurance is adequate if it is a purchased insurance policy from an insurance provider or a plan of self-insurance in an amount that will protect the financial stability of the recipient's IHBG program. Recipients may purchase the required insurance without regard to competitive selection procedures from nonprofit insurance entities which are owned and controlled by recipients and which have been approved by HUD.

§ 1000.140 May a recipient use grant funds to purchase insurance for privately owned housing to protect NAHASDA grant amounts spent on that housing?

Yes. All purchases of insurance must be in accordance with §§ 1000.136 and 1000.138.

§ 1000.142 What is the "useful life" during which low-income rental housing and low-income homebuyer housing must remain affordable as required in sections 205(a)(2) and 209 of NAHASDA?

Each recipient shall describe in its IHP its determination of the useful life of each assisted housing unit in each of its developments in accordance with the local conditions of the Indian area of the recipient. By approving the plan, HUD determines the useful life in accordance with section 205(a)(2) of NAHASDA and for purposes of section 209.

§ 1000.144 Are Mutual Help homes developed under the 1937 Act subject to the useful life provisions of section 205(a)(2)?

No.

§ 1000.146 Are homebuyers required to remain low-income throughout the term of their participation in a housing program funded under NAHASDA?

No. The low-income eligibility requirement applies only at the time of purchase. However, families purchasing housing under a lease purchase agreement who are not low-income at the time of purchase are eligible under § 1000.110.

§ 1000.150 How may Indian tribes and TDHEs receive criminal conviction information on adult applicants or tenants?

(a) As required by section 208 of NAHASDA, the National Crime Information Center, police departments, and other law enforcement agencies shall provide criminal conviction information to Indian tribes and TDHEs upon request. Information regarding juveniles shall only be released to the extent such release is authorized by the law of the applicable state, Indian tribe or locality.

(b) For purposes of this section, the term ''*tenants*'' includes homebuyers who are purchasing a home pursuant to a lease purchase agreement.

§ 1000.152 How is the recipient to use criminal conviction information?

The recipient shall use the criminal conviction information described in § 1000.150 only for applicant screening, lease enforcement and eviction actions. The information may be disclosed only to any person who has a job related need for the information and who is an authorized officer, employee, or representative of the recipient or the owner of housing assisted under NAHASDA.

§ 1000.154 How is the recipient to keep criminal conviction information confidential?

(a) The recipient will keep all the criminal conviction record information it receives from the official law enforcement agencies listed in § 1000.150 in files separate from all other housing records.

(b) These criminal conviction records will be kept under lock and key and be under the custody and control of the recipient's housing executive director/lead official and/or his designee for such records.

(c) These criminal conviction records may only be accessed with the written permission of the Indian tribe's or TDHE's housing executive director/lead official and/or his designee and are only to be used for the purposes stated in section 208 of NAHASDA and these regulations.

§ 1000.156 Is affordable housing developed, acquired, or assisted under the IHBG program subject to limitations on cost or design standards?

Yes. Affordable housing must be of moderate design. For these purposes, moderate design is defined as housing that is of a size and with amenities consistent with unassisted housing offered for sale in the Indian tribe's general geographic area to buyers who are at or below the area median income. The local determination of moderate design applies to all housing assisted under an affordable housing activity, including development activities (*e.g.*, acquisition, new construction, reconstruction, moderate or substantial rehabilitation of affordable housing and homebuyer assistance) and model activities. Acquisition includes assistance to a family to buy housing. Units with the same number of bedrooms must be comparable with respect to size, cost and amenities.

[66 FR 49790, Sept. 28, 2001]

§ 1000.158 How will a NAHASDA grant recipient know that the housing assisted under the IHBG program meets the requirements of § 1000.156?

(a) A recipient must use one of the methods specified in paragraph (b) or (c) of this section to determine if an assisted housing project meets the moderate design requirements of § 1000.156. For purposes of this requirement, a project is one or more housing units, of comparable size, cost, amenities and design, developed with assistance provided by the Act.

(b) The recipient may adopt written standards for its affordable housing programs that reflect the requirement specified in § 1000.156. The standards must describe the type of housing, explain the basis for the standards, and use similar housing in the Indian tribe's general geographic area. For each affordable housing project, the recipient must maintain documentation substantiating compliance with the adopted housing standards. The standards and documentation substantiating compliance for each activity must be available for review by the general public and, upon request, by HUD. Prior to awarding a contract for the construction of housing or beginning construction using its own workforce, the recipient must complete a comparison of the cost of developing or acquiring/rehabilitating the affordable housing with the limits provided by the TDC discussed in paragraph (c) of this section and may not, without prior HUD approval, exceed by more than 10 percent the TDC maximum cost for the project. In developing standards under this paragraph, the recipient must establish, maintain, and follow policies that determine a local definition of moderate design which considers:

(1) Gross area;

(2) Total cost to provide the housing;

(3) Environmental concerns and mitigations;

(4) Climate;

(5) Comparable housing in geographical area;

(6) Local codes, ordinances and standards;

(7) Cultural relevance in design;

(8) Design and construction features that are reasonable, and necessary to provide decent, safe, sanitary and affordable housing; and

(9) Design and construction features that are accessible to persons with a variety of disabilities.

(c) If the recipient has not adopted housing standards specified in paragraph (b) of this section, Total Development Cost (TDC) limits published periodically by HUD establish the maximum amount of funds (from all sources) that the recipient may use to develop or acquire/rehabilitate affordable housing. The recipient must complete a comparison of the cost of developing or acquiring/rehabilitating the affordable housing with the limits provided by the TDC and may not, without prior HUD approval, exceed the TDC maximum cost for the project.

[66 FR 49790, Sept. 28, 2001]

§ 1000.160 Are non-dwelling structures developed, acquired or assisted under the IHBG program subject to limitations on cost or design standards?

Yes. Non-dwelling structures must be of a design, size and with features or amenities that are reasonable and necessary to accomplish the purpose intended by the structures. The purpose of a non-dwelling structure must be to support an affordable housing activity, as defined by the Act.

[66 FR 49790, Sept. 28, 2001]

§ 1000.162 How will a recipient know that non-dwelling structures assisted under the IHBG program meet the requirements of 1000.160?

(a) The recipient must use one of the methods described in paragraph (b) or (c) of this section to determine if a non-dwelling structure meets the limitation requirements of § 1000.160. If the recipient develops, acquires, or rehabilitates a non-dwelling structure with funds from NAHASDA and other sources, then the cost limit standard established under these regulations applies to the entire structure. If funds are used from two different sources, the standards of the funding source with the more restrictive rules apply.

(b)(1) The recipient may adopt written standards for non-dwelling structures. The standards must describe the type of structures and must clearly describe the criteria to be used to guide the cost, size, design, features, amenities, performance or other factors. The standards for such structures must be able to support the reasonableness and necessity for these factors and to clearly identify the affordable housing activity that is being provided.

(2) When the recipient applies a standard to particular structures, it must document the following: (i) Identification of targeted population to benefit from the structures;

(ii) Identification of need or problem to be solved;

(iii) Affordable housing activity provided or supported by the structures;

(iv) Alternatives considered;

(v) Provision for future growth and change;

(vi) Cultural relevance of design;

(vii) Size and scope supported by population and need;

(viii) Design and construction features that are accessible to persons with a variety of disabilities;

(ix) Cost; and

(x) Compatibility with community infrastructure and services.

(c) If the recipient has not adopted program standards specified in paragraph (b) of this section, then it must demonstrate and document that the non-dwelling structure is of a cost, size, design and with amenities consistent with similarly designed and constructed structures in the recipient's general geographic area.

[66 FR 49790, Sept. 28, 2001]

Subpart C—Indian Housing Plan (IHP)

§ 1000.201 How are funds made available under NAHASDA?

Every fiscal year HUD will make grants under the IHBG program to recipients who have submitted to HUD for that fiscal year an IHP in accordance with § 1000.220 to carry out affordable housing activities.

§ 1000.202 Who are eligible recipients?

Eligible recipients are Indian tribes, or TDHEs when authorized by one or more Indian tribes.

§ 1000.204 How does an Indian tribe designate itself as recipient of the grant?

(a) By resolution of the Indian tribe; or

(b) When such authority has been delegated by an Indian tribe's governing body to a tribal committee(s), by resolution or other written form used by such committee(s) to memorialize the decisions of that body, if applicable.

§ 1000.206 How is a TDHE designated?

(a)(1) By resolution of the Indian tribe or Indian tribes to be served; or

(2) When such authority has been delegated by an Indian tribe's governing body to a tribal committee(s), by resolution or other written form used by such committee(s) to memorialize the decisions of that body, if applicable.

(b) In the absence of a designation by the Indian tribe, the default designation as provided in section 4(21) of NAHASDA shall apply.

§ 1000.208 What happens if an Indian tribe had two IHAs as of September 30, 1996?

Indian tribes which had established and were operating two IHAs as of September 30, 1996, under the 1937 Act shall be allowed to form and operate two TDHEs under NAHASDA. Nothing in this section shall affect the allocation of funds otherwise due to an Indian tribe under the formula.

§ 1000.210 What happens to existing 1937 Act units in those jurisdictions for which Indian tribes do not or cannot submit an IHP?

NAHASDA does not provide the statutory authority for HUD to grant NAHASDA grant funds to an Indian housing authority, Indian tribe or to a default TDHE which cannot obtain a tribal certification, if the requisite IHP is not submitted by an Indian tribe or is determined to be out of compliance by HUD. There may be circumstances where this may happen, and in those cases, other methods of tribal, Federal, or private market support may have to be sought to maintain and operate those 1937 Act units.

§ 1000.212 Is submission of an IHP required?

Yes. An Indian tribe or, with the consent of its Indian tribe(s), the TDHE, must submit an IHP to HUD to receive funding under NAHASDA, except as provided in section 101(b)(2) of NAHASDA. If a TDHE has been designated by more than one Indian tribe, the TDHE can submit a separate IHP for each Indian tribe or it may submit a single IHP based on the requirements of § 1000.220 with the approval of the Indian tribes.

§ 1000.214 What is the deadline for submission of an IHP?

IHPs must be initially sent by the recipient to the Area ONAP no later than July 1. Grant funds cannot be provided until the plan is submitted and determined to be in compliance with section 102 of NAHASDA and funds are available.

§ 1000.216 What happens if the recipient does not submit the IHP to the Area ONAP by July 1?

If the IHP is not initially sent by July 1, the recipient will not be eligible for IHBG funds for that fiscal year. Any funds not obligated because an IHP was not received before the deadline has passed shall be distributed by formula in the following year.

§ 1000.218 Who prepares and submits an IHP?

An Indian tribe, or with the authorization of a Indian tribe, in accordance with section 102(d) of NAHASDA a TDHE may prepare and submit a plan to HUD.

§ 1000.220 What are the minimum requirements for the IHP?

The minimum IHP requirements are set forth in sections 102(b) and 102(c) of NAHASDA. In addition, §§ 1000.56, 1000.108, 1000.120, 1000.134, 1000.142, 1000.238, 1000.328, and 1000.504 require or permit additional items to be set forth in the IHP for HUD determinations required by those sections. Recipients are only required to provide IHPs that contain these minimum elements in a form prescribed by HUD. If a TDHE is submitting a single IHP that covers two or more Indian tribes, the IHP must contain a separate certification in accordance with section 102(d) of NAHASDA and IHP Tables for each Indian tribe when requested by such Indian tribes. However, Indian tribes are encouraged to perform comprehensive housing needs assessments and develop comprehensive IHPs and not limit their planning process to only those housing efforts funded by NAHASDA. An IHP should be locally driven.

§ 1000.222 Are there separate IHP requirements for small Indian tribes and small TDHEs?

No. HUD requirements for IHPs are reasonable.

§ 1000.224 Can any part of the IHP be waived?

Yes. HUD has general authority under section 101(b)(2) of NAHASDA to waive any IHP requirements when an Indian tribe cannot comply with IHP requirements due to circumstances beyond its control. The waiver authority under section 101(b)(2) of NAHASDA provides flexibility to address the needs of every Indian tribe, including small Indian tribes. The waiver may be requested by the Indian tribe or its TDHE (if such authority is delegated by the Indian tribe).

§ 1000.226 Can the certification requirements of section 102(c)(5) of NAHASDA be waived by HUD?

Yes. HUD may waive these certification requirements as provided in section 101(b)(2) of NAHASDA.

§ 1000.228 If HUD changes its IHP format will Indian tribes be involved?

Yes. HUD will first consult with Indian tribes before making any substantial changes to HUD's IHP format.

§ 1000.230 What is the process for HUD review of IHPs and IHP amendments?

HUD will conduct the IHP review in the following manner:

(a) HUD will conduct a limited review of the IHP to ensure that its contents:

(1) Comply with the requirements of section 102 of NAHASDA which outlines the IHP submission requirements;

(2) Are consistent with information and data available to HUD;

(3) Are not prohibited by or inconsistent with any provision of NAHASDA or other applicable law; and

(4) Include the appropriate certifications.

(b) If the IHP complies with the provisions of paragraphs (a)(1), (a)(2), and (a)(3) of this section, HUD will notify the recipient of IHP compliance within 60 days after receiving the IHP. If HUD fails to notify the recipient, the IHP

shall be considered to be in compliance with the requirements of section 102 of NAHASDA and the IHP is approved.

(c) If the submitted IHP does not comply with the provisions of paragraphs (a)(1), and (a)(3) of this section, HUD will notify the recipient of the determination of non-compliance. HUD will provide this notice no later than 60 days after receiving the IHP. This notice will set forth:

(1) The reasons for noncompliance;

(2) The modifications necessary for the IHP to meet the submission requirements; and

(3) The date by which the revised IHP must be submitted.

(d) If the recipient does not submit a revised IHP by the date indicated in the notice provided under paragraph (c) of this section, the IHP will be determined by HUD to be in non-compliance unless a waiver is requested and approved under section 101(b)(2) of NAHASDA. If the IHP is determined by HUD to be in non-compliance and no waiver is granted, the recipient may appeal this determination following the appeal process in § 1000.234.

(e)(1) If the IHP does not contain the certifications identified in paragraph (a)(4) of this section, the recipient will be notified within 60 days of submission of the IHP that the plan is incomplete. The notification will include a date by which the certification must be submitted.

(2) If the recipient has not complied or cannot comply with the certification requirements due to circumstances beyond the control of the Indian tribe(s), within the timeframe established, the recipient can request a waiver in accordance with section 101(b)(2) of NAHASDA. If the waiver is approved, the recipient is eligible to receive its grant in accordance with any conditions of the waiver.

§ 1000.232 Can an Indian tribe or TDHE amend its IHP?

Yes. Section 103(c) of NAHASDA specifically provides that a recipient may submit modifications or revisions of its IHP to HUD. Unless the initial IHP certification provided by an Indian tribe allowed for the submission of IHP amendments without further tribal certifications, a tribal certification must accompany submission of IHP amendments by a TDHE to HUD. HUD's review of an amendment and determination of compliance will be limited to modifications of an IHP which adds new activities or involve a decrease in the amount of funds provided to protect and maintain the viability of housing assisted under the 1937 Act. HUD will consider these modifications to the IHP in accordance with § 1000.230. HUD will act on amended IHPs within 30 days.

§ 1000.234 Can HUD's determination regarding the non-compliance of an IHP or a modification to an IHP be appealed?

(a) Yes. Within 30 days of receiving HUD's disapproval of an IHP or of a modification to an IHP, the recipient may submit a written request for reconsideration of the determination. The request shall include the justification for the reconsideration.

(b) Within 21 days of receiving the request, HUD shall reconsider its initial determination and provide the recipient with written notice of its decision to affirm, modify, or reverse its initial determination. This notice will also contain the reasons for HUD's decision.

(c) The recipient may appeal any denial of reconsideration by filing an appeal with the Assistant Secretary within 21 days of receiving the denial. The appeal shall set forth the reasons why the recipient does not agree with HUD's decision and include justification for the reconsideration.

(d) Within 21 days of receipt of the appeal, the Assistant Secretary shall review the recipient's appeal and act on the appeal. The Assistant Secretary will provide written notice to the recipient setting forth the reasons for the decision. The Assistant Secretary's decision constitutes final agency action.

§ 1000.236 What are eligible administrative and planning expenses?

(a) Eligible administrative and planning expenses of the IHBG program include, but are not limited to:

(1) Costs of overall program and/or administrative management;

(2) Coordination monitoring and evaluation;

(3) Preparation of the IHP including data collection and transition costs;

(4) Preparation of the annual performance report; and

(5) Challenge to and collection of data for purposes of challenging the formula.

(b) Staff and overhead costs directly related to carrying out affordable housing activities can be determined to be eligible costs of the affordable housing activity or considered administration or planning at the discretion of the recipient.

§ 1000.238 What percentage of the IHBG funds can be used for administrative and planning expenses?

The recipient can use up to 20 percent of its annual grant amount for administration and planning. The recipient shall identify the percentage of grant funds which will be used in the IHP. HUD approval is required if a higher percentage is requested by the recipient. When HUD approval is required, HUD must take into consideration any cost of preparing the IHP, challenges to and collection of data, the recipient's grant amount, approved cost allocation plans, and any other relevant information with special consideration given to the circumstances of recipients receiving minimal funding.

§ 1000.240 When is a local cooperation agreement required for affordable housing activities?

The requirement for a local cooperation agreement applies only to rental and lease-purchase homeownership units assisted with IHBG funds which are owned by the Indian tribe or TDHE.

§ 1000.242 When does the requirement for exemption from taxation apply to affordable housing activities?

The requirement for exemption from taxation applies only to rental and lease-purchase homeownership units assisted with IHBG funds which are owned by the Indian tribe or TDHE.

Subpart D—Allocation Formula

§ 1000.301 What is the purpose of the IHBG formula?

The IHBG formula is used to allocate equitably and fairly funds made available through NAHASDA among eligible Indian tribes. A TDHE may be a recipient on behalf of an Indian tribe.

§ 1000.302 What are the definitions applicable for the IHBG formula?

Allowable Expense Level (AEL) factor. In rental projects, AEL is the per-unit per-month dollar amount of expenses which was used to compute the amount of operating subsidy used prior to October 1, 1997 for the Low Rent units developed under the 1937 Act. The ''AEL factor'' is the relative difference between a local area AEL and the national weighted average for AEL.

Date of Full Availability (DOFA) means the last day of the month in which substantially all the units in a housing development are available for occupancy.

Fair Market Rent (FMR) factors are gross rent estimates; they include shelter rent plus the cost of all utilities, except telephones. HUD estimates FMRs on an annual basis for 354 metropolitan FMR areas and 2,355 non-metropolitan county FMR areas. The ''FMR factor'' is the relative difference between a local area FMR and the national weighted average for FMR.

Formula Annual Income. For purposes of the IHBG formula, annual income is a household's total income as currently defined by the U.S. Census Bureau.

Formula area. (1) Formula area is the geographic area over which an Indian tribe could exercise court jurisdiction or is providing substantial housing services and, where applicable, the Indian tribe or TDHE has agreed to provide housing services pursuant to a Memorandum of Agreement with the governing entity or entities (including Indian tribes) of the area, including but not limited to:

(i) A reservation;

(ii) Trust land;

(iii) Alaska Native Village Statistical Area;

(iv) Alaska Native Claims Settlement Act Corporation Service Area;

(v) Department of the Interior Near-Reservation Service Area;

(vi) Former Indian Reservation Areas in Oklahoma as defined by the Census as Tribal Jurisdictional Statistical Area;

(vii) Congressionally Mandated Service Area; and

(viii) State legislatively defined Tribal Areas as defined by the Census as Tribal Designated Statistical Areas.

(2) For additional areas beyond those identified in the above list of eight, the Indian tribe must submit on the Formula Response Form the area that it wishes to include in its Formula Area and what previous and planned investment it has made in the area. HUD will review this submission and determine whether or not to include this area. HUD will make its judgment using as its guide whether this addition is fair and equitable for all Indian tribes in the formula.

(3) In some cases the population data for an Indian tribe within its formula area is greater than its tribal enrollment. In general, for those cases to maintain fairness for all Indian tribes, the population data will not be allowed to exceed twice an Indian tribe's enrolled population. However, an Indian tribe subject to this cap may receive an allocation based on more than twice its total enrollment if it can show that it is providing housing assistance to substantially more non-member Indians and Alaska Natives who are members of another Federally recognized Indian tribe than it is to members.

(4) In cases where an Indian tribe is seeking to receive an allocation more than twice its total enrollment, the tribal enrollment multiplier will be determined by the total number of Indians and Alaska Natives the Indian tribe is providing housing assistance (on July 30 of the year before funding is sought) divided by the number of members the Indian tribe is providing housing assistance. For example, an Indian tribe which provides housing to 300 Indians and Alaska Natives, of which 100 are members, would then be able to receive an allocation for up to three times its tribal enrollment if the Indian and Alaska Native population in the area is three or more times the tribal enrollment.

Formula Median Income. For purposes of the formula median income is determined in accordance with section 567 of the Housing and Community Development Act of 1987 (42 U.S.C. 1437a note).

Formula Response Form is the form recipients use to report changes to their Formula Current Assisted stock, formula area, and other formula related information before each year's formula allocation.

Indian Housing Authority (IHA) financed means a homeownership program where title rests with the homebuyer and a security interest rests with the IHA.

Mutual Help Occupancy Agreement (MHOA) means a lease with option to purchase contract between an IHA and a homebuyer under the 1937 Act.

Overcrowded means households with more than 1.01 persons per room as defined by the U.S. Decennial Census.

Section 8 means the making of housing assistance payments to eligible families leasing existing housing pursuant to the provisions of the 1937 Act.

Section 8 unit means the contract annualized housing assistance payments (certificates, vouchers, and project based) under the Section 8 program.

Total Development Cost (TDC) is the sum of all costs for a project including all undertakings necessary for administration, planning, site acquisition, demolition, construction or equipment and financing (including payment of carrying charges) and for otherwise carrying out the development of the project, excluding off site water and sewer. Total Development Cost amounts will be based on a moderately designed house and will be determined by averaging the current construction costs as listed in not less than two nationally recognized residential construction cost indices.

Without kitchen or plumbing means, as defined by the U.S. Decennial Census, an occupied house without one or more of the following items:

(1) Hot and cold piped water;

(2) A flush toilet;

(3) A bathtub or shower;

(4) A sink with piped water;

(5) A range or cookstove; or

(6) A refrigerator.

§ 1000.304 May the IHBG formula be modified?

Yes, as long as any modification does not conflict with the requirements of NAHASDA.

§ 1000.306 How can the IHBG formula be modified?

(a) The IHBG formula can be modified upon development of a set of measurable and verifiable data directly related to Indian and Alaska Native housing need. Any data set developed shall be compiled with the consultation and involvement of Indian tribes and examined and/or implemented not later than 5 years from the date of issuance of these regulations and periodically thereafter.

(b) Furthermore, the IHBG formula shall be reviewed within five years to determine if subsidy is needed to operate and maintain NAHASDA units or any other changes are needed in respect to funding under the Formula Current Assisted Stock component of the formula.

(c) During the five year review of housing stock for formula purposes, the Section 8 units shall be reduced by the same percentage as the current assisted rental stock has diminished since September 30, 1999.

§ 1000.308 Who can make modifications to the IHBG formula?

HUD can make modifications in accordance with § 1000.304 and § 1000.306 provided that any changes proposed by HUD are published and made available for public comment in accordance with applicable law before their implementation.

§ 1000.310 What are the components of the IHBG formula?

The IHBG formula consists of two components:

(a) Formula Current Assisted Housing Stock (FCAS); and

(b) Need.

§ 1000.312 What is current assisted stock?

Current assisted stock consists of housing units owned or operated pursuant to an ACC. This includes all low rent, Mutual Help, and Turnkey III housing units under management as of September 30, 1997, as indicated in the Formula Response Form.

§ 1000.314 What is formula current assisted stock?

Formula current assisted stock is current assisted stock as described in § 1000.312 plus 1937 Act units in the development pipeline when they become owned or operated by the recipient and are under management as indicated in the Formula Response Form. Formula current assisted stock also includes Section 8 units when their current contract expires and the Indian tribe continues to manage the assistance in a manner similar to the Section 8 program, as reported on the Formula Response Form.

§ 1000.316 How is the Formula Current Assisted Stock (FCAS) Component developed?

The Formula Current Assisted Stock component consists of two elements. They are:

(a) *Operating subsidy*. The operating subsidy consists of three variables which are:

(1) The number of low-rent FCAS units multiplied by the FY 1996 national per unit subsidy (adjusted to full funding level) multiplied by an adjustment factor for inflation;

(2) The number of Section 8 units whose contract has expired but had been under contract on September 30, 1997, multiplied by the FY 1996 national per unit subsidy adjusted for inflation; and

(3) The number of Mutual Help and Turnkey III FCAS units multiplied by the FY 1996 national per unit subsidy (adjusted to full funding level) multiplied by an adjustment factor for inflation.

(b) *Modernization allocation*. Modernization allocation consists of the number of Low Rent, Mutual Help, and Turnkey III FCAS units multiplied by the national per unit amount of allocation for FY 1996 modernization multiplied by an adjustment factor for inflation.

§ 1000.317 Who is the recipient for funds for current assisted stock which is owned by state-created Regional Native Housing Authorities in Alaska?

If housing units developed under the 1937 Act are owned by a state-created Regional Native Housing Authority in Alaska, and are not located on an Indian reservation, then the recipient for funds allocated for the current assisted stock portion of NAHASDA funds for the units is the regional Indian tribe.

§ 1000.318 When do units under Formula Current Assisted Stock cease to be counted or expire from the inventory used for the formula?

(a) Mutual Help and Turnkey III units shall no longer be considered Formula Current Assisted Stock when the Indian tribe, TDHE, or IHA no longer has the legal right to own, operate, or maintain the unit, whether such right is lost by conveyance, demolition, or otherwise, provided that:

(1) Conveyance of each Mutual Help or Turnkey III unit occurs as soon as practicable after a unit becomes eligible for conveyance by the terms of the MHOA; and

(2) The Indian tribe, TDHE, or IHA actively enforce strict compliance by the homebuyer with the terms and conditions of the MHOA, including the requirements for full and timely payment.

(b) Rental units shall continue to be included for formula purposes as long as they continue to be operated as low income rental units by the Indian tribe, TDHE, or IHA.

(c) Expired contract Section 8 units shall continue as rental units and be included in the formula as long as they are operated as low income rental units as included in the Indian tribe's or TDHE's Formula Response Form.

§ 1000.320 How is Formula Current Assisted Stock adjusted for local area costs?

There are two adjustment factors that are used to adjust the allocation of funds for the Current Assisted Stock portion of the formula. They are:

(a) Operating Subsidy as adjusted by the greater of the AEL factor or FMR factor (AELFMR); and

(b) Modernization as adjusted by TDC.

§ 1000.322 Are IHA financed units included in the determination of Formula Current Assisted Stock?

No. If these units are not owned or operated at the time (September 30, 1997) pursuant to an ACC then they are not included in the determination of Formula Current Assisted Stock.

§ 1000.324 How is the need component developed?

After determining the FCAS allocation, remaining funds are allocated by need component. The need component consists of seven criteria. They are:

(a) American Indian and Alaskan Native (AIAN) Households with housing cost burden greater than 50 percent of formula annual income weighted at 22 percent;

(b) AIAN Households which are overcrowded or without kitchen or plumbing weighted at 25 percent;

(c) Housing Shortage which is the number of AIAN households with an annual income less than or equal to 80 percent of formula median income reduced by the combination of current assisted stock and units developed under NAHASDA weighted at 15 percent;

(d) AIAN households with annual income less than or equal to 30 percent of formula median income weighted at 13 percent;

(e) AIAN households with annual income between 30 percent and 50 percent of formula median income weighted at 7 percent;

(f) AIAN households with annual income between 50 percent and 80 percent of formula median income weighted at 7 percent;

(g) AIAN persons weighted at 11 percent.

§ 1000.325 How is the need component adjusted for local area costs?

The need component is adjusted by the TDC.

§ 1000.326 What if a formula area is served by more than one Indian tribe?

(a) If an Indian tribe's formula area overlaps with the formula area of one or more other Indian tribes, the funds

allocated to that Indian tribe for the geographic area in which the formula areas overlap will be divided based on:

(1) The Indian tribe's proportional share of the population in the overlapping geographic area; and

(2) The Indian tribe's commitment to serve that proportional share of the population in such geographic area.

(3) In cases where a State recognized Indian tribe's formula area overlaps with a Federally recognized Indian tribe, the Federally recognized Indian tribe receives the allocation for the overlapping area.

(b) Tribal membership in the geographic area (not to include dually enrolled tribal members) will be based on data that all Indian tribes involved agree to use. Suggested data sources include tribal enrollment lists, Indian Health Service User Data, and Bureau of Indian Affairs data.

(c) If the Indian tribes involved cannot agree on what data source to use, HUD will make the decision on what data will be used to divide the funds between the Indian tribes by August 1.

§ 1000.327 What is the order of preference for allocating the IHBG formula needs data for Indian tribes in Alaska not located on reservations due to the unique circumstances in Alaska?

(a) Data in areas without reservations. The data on population and housing within an Alaska Native Village is credited to the Alaska Native Village. Accordingly, the village corporation for the Alaska Native Village has no needs data and no formula allocation. The data on population and housing outside the Alaska Native Village is credited to the regional Indian tribe, and if there is no regional Indian tribe, the data will be credited to the regional corporation.

(b) Deadline for notification on whether an IHP will be submitted. By September 15 of each year, each Indian tribe in Alaska not located on a reservation, including each Alaska Native village, regional Indian tribe, and regional corporation, or its TDHE must notify HUD in writing whether it or its TDHE intends to submit an IHP. If an Alaska Native village notifies HUD that it does not intend either to submit an IHP or to designate a TDHE to do so, or if HUD receives no response from the Alaska Native village or its TDHE, the formula data which would have been credited to the Alaska Native village will be credited to the regional Indian tribe, or if there is no regional Indian tribe, to the regional corporation.

§ 1000.328 What is the minimum amount an Indian tribe can receive under the need component of the formula?

In the first year of NAHASDA participation, an Indian tribe whose allocation is less than $50,000 under the need component of the formula shall have its need component of the grant adjusted to $50,000. The Indian tribe's IHP shall contain a certification of the need for the $50,000 funding. In subsequent years, but not to extend beyond Federal Fiscal Year 2006, an Indian tribe whose allocation is less than $25,000 under the need component of the formula shall have its need component of the grant adjusted to $25,000. The need for this section will be reviewed in accordance with § 1000.306.

[70 FR 4001, Jan. 27, 2005]

§ 1000.330 What are data sources for the need variables?

The sources of data for the need variables shall be data available that is collected in a uniform manner that can be confirmed and verified for all AIAN households and persons living in an identified area. Initially, the data used are U.S. Decennial Census data.

§ 1000.332 Will data used by HUD to determine an Indian tribe's or TDHE's formula allocation be provided to the Indian tribe or TDHE before the allocation?

Yes. HUD shall provide notice to the Indian tribe or TDHE of the data to be used for the formula and projected allocation amount by August 1.

§ 1000.334 May Indian tribes, TDHEs, or HUD challenge the data from the U.S. Decennial Census or provide an alternative source of data?

Yes. Provided that the data are gathered, evaluated, and presented in a manner acceptable to HUD and that the standards for acceptability are consistently applied throughout the Country.

§ 1000.336 How may an Indian tribe, TDHE, or HUD challenge data?

(a) An Indian tribe, TDHE, or HUD may challenge data used in the IHBG formula. The challenge and collection of data for this purpose is an allowable cost for IHBG funds.

(b) An Indian tribe or TDHE that has data in its possession that it contends are more accurate than data contained in the U.S. Decennial Census, and the data were collected in a manner acceptable to HUD, may submit the data and proper documentation to HUD. Beginning with the Fiscal Year 1999 allocation, in order for the challenge to be considered for the upcoming Fiscal Year allocation, documentation must be submitted by June 15. HUD shall respond to such data submittal not later than 45 days after receipt of the data and either approve or challenge the validity of such data. Pursuant to HUD's action, the following shall apply:

(1) In the event HUD challenges the validity of the submitted data, the Indian tribe or TDHE and HUD shall attempt in good faith to resolve any discrepancies so that such data may be included in formula allocation. Should the Indian tribe or TDHE and HUD be unable to resolve any discrepancy by the date of formula allocation, the dispute shall be carried forward to the next funding year and resolved in accordance with the dispute resolution procedures set forth in this part for model housing activities (§ 1000.118).

(2) Pursuant to resolution of the dispute:

(i) If the Indian tribe or TDHE prevails, an adjustment to the Indian tribe's or TDHE's subsequent allocation for the subsequent year shall be made retroactive to include only the disputed Fiscal Year(s); or

(ii) If HUD prevails, no further action shall be required.

(c) In the event HUD questions that the data contained in the formula does not accurately represent the Indian tribe's need, HUD shall request the Indian tribe to submit supporting documentation to justify the data and provide a commitment to serve the population indicated in the geographic area.

§ 1000.340 What if an Indian tribe is allocated less funding under the block grant formula than it received in Fiscal Year 1996 for operating subsidy and modernization?

If an Indian tribe is allocated less funding under the formula than an IHA received on its behalf in Fiscal Year 1996 for operating subsidy and modernization, its grant is increased to the amount received in Fiscal Year 1996 for operating subsidy and modernization. The remaining grants are adjusted to keep the allocation within available appropriations.

Subpart E—Federal Guarantees for Financing of Tribal Housing Activities

§ 1000.401 What terms are used throughout this subpart?

As used throughout title VI of NAHASDA and in this subpart:

Applicant means the entity that requests a HUD guarantee under the provisions of this subpart.

Borrower means an Indian tribe or TDHE that receives funds in the form of a loan with the obligation to repay in full, with interest, and has executed notes or other obligations that evidence that transaction.

Issuer means an Indian tribe or TDHE that issues or executes notes or other obligations. An issuer can also be a borrower.

§ 1000.402 Are State recognized Indian tribes eligible for guarantees under title VI of NAHASDA?

Those State recognized Indian tribes that meet the definition set forth in section 4(12)(C) of NAHASDA are eligible for guarantees under title VI of NAHASDA.

§ 1000.404 What lenders are eligible for participation?

Eligible lenders are those approved under and meeting the qualifications established in this subpart, except that loans otherwise insured or guaranteed by an agency of the United States, or made by an organization of Indians from amounts borrowed from the United States, shall not be eligible for

guarantee under this part. The following lenders are deemed to be eligible under this subpart:

(a) Any mortgagee approved by HUD for participation in the single family mortgage insurance program under title II of the National Housing Act;

(b) Any lender whose housing loans under chapter 37 of title 38, United States Code, are automatically guaranteed pursuant to section 1802(d) of such title;

(c) Any lender approved by the Department of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949;

(d) Any other lender that is supervised, approved, regulated, or insured by any agency of the United States; and

(e) Any other lender approved by the Secretary.

§ 1000.406 What constitutes tribal approval to issue notes or other obligations under title VI of NAHASDA?

Tribal approval is evidenced by a written tribal resolution that authorizes the issuance of notes or obligations by the Indian tribe or a TDHE on behalf of the Indian tribe.

§ 1000.408 How does an Indian tribe or TDHE show that it has made efforts to obtain financing without a guarantee and cannot complete such financing in a timely manner?

The Indian tribe or TDHE shall submit a certification that states that the Indian tribe has attempted to obtain financing and cannot complete such financing consistent with the timely execution of the program plans without such guarantee. Written documentation shall be maintained by the Indian tribe or TDHE to support the certification.

§ 1000.410 What conditions shall HUD prescribe when providing a guarantee for notes or other obligations issued by an Indian tribe?

HUD shall provide that:

(a) Any loan, note or other obligation guaranteed under title VI of NAHASDA may be sold or assigned by the lender to any financial institution that is subject to examination and supervision by an agency of the Federal government, any State, or the District of Columbia without destroying or otherwise negatively affecting the guarantee; and

(b) Indian tribes and housing entities are encouraged to explore creative financing mechanisms and in so doing shall not be limited in obtaining a guarantee. These creative financing mechanisms include but are not limited to:

(1) Borrowing from private or public sources or partnerships;

(2) Issuing tax exempt and taxable bonds where permitted; and

(3) Establishing consortiums or trusts for borrowing or lending, or for pooling loans.

(c) The repayment period may exceed twenty years and the length of the repayment period cannot be the sole basis for HUD disapproval; and

(d) Lender and issuer/borrower must certify that they acknowledge and agree to comply with all applicable tribal laws.

§ 1000.412 Can an issuer obtain a guarantee for more than one note or other obligation at a time?

Yes. To obtain multiple guarantees, the issuer shall demonstrate that:

(a) The issuer will not exceed a total for all notes or other obligations in an amount equal to five times its grant amount, excluding any amount no longer owed on existing notes or other obligations; and

(b) Issuance of additional notes or other obligations is within the financial capacity of the issuer.

§ 1000.414 How is an issuer's financial capacity demonstrated?

An issuer must demonstrate its financial capacity to:

(a) Meet its obligations; and

(b) Protect and maintain the viability of housing developed or operated pursuant to the 1937 Act.

§ 1000.416 What is a repayment contract in a form acceptable to HUD?

(a) The Secretary's signature on a contract shall signify HUD's acceptance of the form, terms and conditions of the contract.

(b) In loans under title VI of NAHASDA, involving a contract between an issuer and a lender other than

HUD, HUD's approval of the loan documents and guarantee of the loan shall be deemed to be HUD's acceptance of the sufficiency of the security furnished. No other security can or will be required by HUD at a later date.

§ 1000.418 Can grant funds be used to pay costs incurred when issuing notes or other obligations?

Yes. Other costs that can be paid using grant funds include but are not limited to the costs of servicing and trust administration, and other costs associated with financing of debt obligations.

§ 1000.420 May grants made by HUD under section 603 of NAHASDA be used to pay net interest costs incurred when issuing notes or other obligations?

Yes. Other costs that can be paid using grant funds include but are not limited to the costs of servicing and trust administration, and other costs associated with financing of debt obligations, not to exceed 30 percent of the net interest cost.

§ 1000.422 What are the procedures for applying for loan guarantees under title VI of NAHASDA?

(a) The borrower applies to the lender for a loan using a guarantee application form prescribed by HUD.

(b) The lender provides the loan application to HUD to determine if funds are available for the guarantee. HUD will reserve these funds for a period of 90 days if the funds are available and the applicant is otherwise eligible under this subpart. HUD may extend this reservation period for an extra 90 days if additional documentation is necessary.

(c) The borrower and lender negotiate the terms and conditions of the loan in consultation with HUD.

(d) The borrower and lender execute documents.

(e) The lender formally applies for the guarantee.

(f) HUD reviews and provides a written decision on the guarantee.

§ 1000.424 What are the application requirements for guarantee assistance under title VI of NAHASDA?

The application for a guarantee must include the following:

(a) An identification of each of the activities to be carried out with the guaranteed funds and a description of how each activity qualifies as an affordable housing activity as defined in section 202 of NAHASDA.

(b) A schedule for the repayment of the notes or other obligations to be guaranteed that identifies the sources of repayment, together with a statement identifying the entity that will act as the borrower.

(c) A copy of the executed loan documents, if applicable, including, but not limited to, any contract or agreement between the borrower and the lender.

(d) Certifications by the borrower that:

(1) The borrower possesses the legal authority to pledge and that it will, if approved, make the pledge of grants required by section 602(a)(2) of NAHASDA.

(2) The borrower has made efforts to obtain financing for the activities described in the application without use of the guarantee; the borrower will maintain documentation of such efforts for the term of the guarantee; and the borrower cannot complete such financing consistent with the timely execution of the program plans without such guarantee.

(3) It possesses the legal authority to borrow or issue obligations and to use the guaranteed funds in accordance with the requirements of this subpart.

(4) Its governing body has duly adopted or passed as an official act a resolution, motion, or similar official action that:

(i) Identifies the official representative of the borrower, and directs and authorizes that person to provide such additional information as may be required; and

(ii) Authorizes such official representative to issue the obligation or to execute the loan or other documents, as applicable.

(5) The borrower has complied with section 602(a) of NAHASDA.

(6) The borrower will comply with the requirements described in subpart

A of this part and other applicable laws.

§ 1000.426 How does HUD review a guarantee application?

The procedure for review of a guarantee application includes the following steps:

(a) HUD will review the application for compliance with title VI of NAHASDA and these implementing regulations.

(b) HUD will accept the certifications submitted with the application. HUD may, however, consider relevant information that challenges the certifications and require additional information or assurances from the applicant as warranted by such information.

§ 1000.428 For what reasons may HUD disapprove an application or approve an application for an amount less than that requested?

HUD may disapprove an application or approve a lesser amount for any of the following reasons:

(a) HUD determines that the guarantee constitutes an unacceptable risk. Factors that will be considered in assessing financial risk shall include, but not be limited to, the following:

(1) The ratio of the expected annual debt service requirements to the expected available annual grant amount, taking into consideration the obligations of the borrower under the provisions of section 203(b) of NAHASDA;

(2) Evidence that the borrower will not continue to receive grant assistance under this part during the proposed repayment period;

(3) The borrower's inability to furnish adequate security pursuant to section 602(a) of NAHASDA; and

(4) The amount of program income the proposed activities are reasonably estimated to contribute toward repayment of the guaranteed loan or other obligations.

(b) The loan or other obligation for which the guarantee is requested exceeds any of the limitations specified in sections 601(d) or section 605(d) of NAHASDA.

(c) Funds are not available in the amount requested.

(d) Evidence that the performance of the borrower under this part has been determined to be unacceptable pursuant to the requirements of subpart F of this part, and that the borrower has failed to take reasonable steps to correct performance.

(e) The activities to be undertaken are not eligible under section 202 of NAHASDA.

(f) The loan or other obligation documents for which a guarantee is requested do not meet the requirements of this subpart.

§ 1000.430 When will HUD issue notice to the applicant if the application is approved at the requested or reduced amount?

(a) HUD shall make every effort to approve a guarantee within 30 days of receipt of a completed application including executed documents and, if unable to do so, will notify the applicant within the 30 day timeframe of the need for additional time and/or if additional information is required.

(b) HUD shall notify the applicant in writing that the guarantee has either been approved, reduced, or disapproved. If the request is reduced or disapproved, the applicant will be informed of the specific reasons for reduction or disapproval.

(c) HUD shall issue a certificate to guarantee the debt obligation of the issuer subject to compliance with NAHASDA including but not limited to sections 105, 601(a), and 602(c) of NAHASDA, and such other reasonable conditions as HUD may specify in the commitment documents in a particular case.

§ 1000.432 Can an amendment to an approved guarantee be made?

(a) Yes. An amendment to an approved guarantee can occur if an applicant wishes to allow a borrower/issuer to carry out an activity not described in the loan or other obligation documents, or substantially to change the purpose, scope, location, or beneficiaries of an activity.

(b) Any changes to an approved guarantee must be approved by HUD.

§ 1000.434 How will HUD allocate the availability of loan guarantee assistance?

(a) Each fiscal year HUD may allocate a percentage of the total available loan guarantee assistance to each Area

ONAP equal to the percentage of the total NAHASDA grant funds allocated to the Indian tribes in the geographic area of operation of that office.

(b) These allocated amounts shall remain exclusively available for loan guarantee assistance for Indian tribes or TDHEs in the area of operation of that office until committed by HUD for loan guarantees or until the end of the second quarter of the fiscal year. At the beginning of the third quarter of the fiscal year, any residual loan guarantee commitment amount shall be made available to guarantee loans for Indian tribes or TDHEs regardless of their location. Applications for residual loan guarantee money must be submitted on or after April 1.

(c) In approving applications for loan guarantee assistance, HUD shall seek to maximize the availability of such assistance to all interested Indian tribes or TDHEs. HUD may limit the proportional share approved to any one Indian tribe or TDHE to its proportional share of the block grant allocation based upon the annual plan submitted by the Indian tribe or TDHE indicating intent to participate in the loan guarantee allocation process.

§ 1000.436 How will HUD monitor the use of funds guaranteed under this subpart?

HUD will monitor the use of funds guaranteed under this subpart as set forth in section 403 of NAHASDA, and the lender is responsible for monitoring performance with the documents.

Subpart F—Recipient Monitoring, Oversight and Accountability

§ 1000.501 Who is involved in monitoring activities under NAHASDA?

The recipient, the grant beneficiary and HUD are involved in monitoring activities under NAHASDA.

§ 1000.502 What are the monitoring responsibilities of the recipient, the grant beneficiary and HUD under NAHASDA?

(a) The recipient is responsible for monitoring grant activities, ensuring compliance with applicable Federal requirements and monitoring performance goals under the IHP. The recipient is responsible for preparing at least annually: a compliance assessment in accordance with section 403(b) of NAHASDA; a performance report covering the assessment of program progress and goal attainment under the IHP; and an audit in accordance with the Single Audit Act, as applicable. The recipient's monitoring should also include an evaluation of the recipient's performance in accordance with performance objectives and measures. At the request of a recipient, other Indian tribes and/or TDHEs may provide assistance to aid the recipient in meeting its performance goals or compliance requirements under NAHASDA.

(b) Where the recipient is a TDHE, the grant beneficiary (Indian tribe) is responsible for monitoring programmatic and compliance requirements of the IHP and NAHASDA by requiring the TDHE to prepare periodic progress reports including the annual compliance assessment, performance and audit reports.

(c) HUD is responsible for reviewing the recipient as set forth in § 1000.520.

(d) HUD monitoring will consist of on-site as well as off-site review of records, reports and audits. To the extent funding is available, HUD or its designee will provide technical assistance and training, or funds to the recipient to obtain technical assistance and training. In the absence of funds, HUD shall make best efforts to provide technical assistance and training.

§ 1000.504 What are the recipient performance objectives?

Performance objectives are developed by each recipient. Performance objectives are criteria by which the recipient will monitor and evaluate its performance. For example, if in the IHP the recipient indicates it will build new houses, the performance objective may be the completion of the homes within a certain time period and within a certain budgeted amount.

§ 1000.506 If the TDHE is the recipient, must it submit its monitoring evaluation/results to the Indian tribe?

Yes. The Indian tribe as the grant beneficiary must receive a copy of the monitoring evaluation/results so that

it can fully carry out its oversight responsibilities under NAHASDA.

§ 1000.508 If the recipient monitoring identifies programmatic concerns, what happens?

If the recipient's monitoring activities identify areas of concerns, the recipient will take corrective actions which may include but are not limited to one or more of the following actions:

(a) Depending upon the nature of the concern, the recipient may obtain additional training or technical assistance from HUD, other Indian tribes or TDHEs, or other entities.

(b) The recipient may develop and/or revise policies, or ensure that existing policies are better enforced.

(c) The recipient may take appropriate administrative action to remedy the situation.

(d) The recipient may refer the concern to an auditor or to HUD for additional corrective action.

§ 1000.510 What happens if tribal monitoring identifies compliance concerns?

The Indian tribe shall have the responsibility to ensure that appropriate corrective action is taken.

§ 1000.512 Are performance reports required?

Yes. An annual report shall be submitted by the recipient to HUD and the Indian tribe being served in a format acceptable by HUD. Annual performance reports shall contain:

(a) The information required by sections 403(b) and 404(b) of NAHASDA;

(b) Brief information on the following:

(1) A comparison of actual accomplishments to the objectives established for the period;

(2) The reasons for slippage if established objectives were not met; and

(3) Analysis and explanation of cost overruns or high unit costs; and

(c) Any information regarding the recipient's performance in accordance with HUD's performance measures, as set forth in section § 1000.524.

§ 1000.514 When must the annual performance report be submitted?

The annual performance report must be submitted within 60 days of the end of the recipient's program year. If a justified request is submitted by the recipient, the Area ONAP may extend the due date for submission of the performance report.

§ 1000.516 What reporting period is covered by the annual performance report?

For the first annual performance report to be submitted under NAHASDA, the period to be covered is October 1, 1997, through September 30, 1998. This first report must be submitted by January 31, 1999. Subsequent annual performance reports must cover the period that coincides with the recipient's program year.

[64 FR 3015, Jan. 20, 1999]

§ 1000.518 When must a recipient obtain public comment on its annual performance report?

The recipient must make its report publicly available to tribal members, non-Indians served under NAHASDA, and other citizens in the Indian area, in sufficient time to permit comment before submission of the report to HUD. The recipient determines the manner and times for making the report available.

The recipient shall include a summary of any comments received by the grant beneficiary or recipient from tribal members, non-Indians served under NAHASDA, and other citizens in the Indian area.

§ 1000.520 What are the purposes of HUD review?

At least annually, HUD will review each recipient's performance to determine whether the recipient:

(a) Has carried out its eligible activities in a timely manner, has carried out its eligible activities and certifications in accordance with the requirements and the primary objective of NAHASDA and with other applicable laws and has a continuing capacity to carry out those activities in a timely manner;

(b) Has complied with the IHP of the grant beneficiary; and

(c) Whether the performance reports of the recipient are accurate.

§ 1000.521 After the receipt of the recipient's performance report, how long does HUD have to make recommendations under section 404(c) of NAHASDA?

60 days.

§ 1000.522 How will HUD give notice of on-site reviews?

HUD shall generally provide a 30 day written notice of an impending on-site review to the Indian tribe and TDHE. Prior written notice will not be required in emergency situations. All notices shall state the general nature of the review.

§ 1000.524 What are HUD's performance measures for the review?

HUD has the authority to develop performance measures which the recipient must meet as a condition for compliance under NAHASDA. The performance measures are:

(a) Within 2 years of grant award under NAHASDA, no less than 90 percent of the grant must be obligated.

(b) The recipient has complied with the required certifications in its IHP and all policies and the IHP have been made available to the public.

(c) Fiscal audits have been conducted on a timely basis and in accordance with the requirements of the Single Audit Act, as applicable. Any deficiencies identified in audit reports have been addressed within the prescribed time period.

(d) Accurate annual performance reports were submitted to HUD within 60 days after the completion of the recipient's program year.

(e) The recipient has met the IHP goals and objectives in the 1-year plan and demonstrated progress on the 5-year plan goals and objectives.

(f) The recipient has substantially complied with the requirements of 24 CFR part 1000 and all other applicable Federal statutes and regulations.

§ 1000.526 What information will HUD use for its review?

In reviewing each recipient's performance, HUD may consider the following:

(a) The approved IHP and any amendments thereto;

(b) Reports prepared by the recipient;

(c) Records maintained by the recipient;

(d) Results of HUD's monitoring of the recipient's performance, including on-site evaluation of the quality of the work performed;

(e) Audit reports;

(f) Records of drawdown(s) of grant funds;

(g) Records of comments and complaints by citizens and organizations within the Indian area;

(h) Litigation; and

(i) Any other reliable relevant information which relates to the performance measures under § 1000.524.

§ 1000.528 What are the procedures for the recipient to comment on the result of HUD's review when HUD issues a report under section 405(b) of NAHASDA?

HUD will issue a draft report to the recipient and Indian tribe within thirty (30) days of the completion of HUD's review. The recipient will have at least thirty (30) days to review and comment on the draft report as well as provide any additional information relating to the draft report. HUD shall consider the comments and any additional information provided by the recipient. HUD may also revise the draft report based on the comments and any additional information provided by the recipient. HUD shall make the recipient's comments and a final report readily available to the recipient, grant beneficiary, and the public not later than thirty (30) days after receipt of the recipient's comments and additional information.

§ 1000.530 What corrective and remedial actions will HUD request or recommend to address performance problems prior to taking action under § 1000.532 or § 1000.538?

(a) The following actions are designed, first, to prevent the continuance of the performance problem(s); second, to mitigate any adverse effects or consequences of the performance problem(s); and third, to prevent a recurrence of the same or similar performance problem. The following actions, at least one of which must be taken prior to a sanction under paragraph (b), may be taken by HUD singly

or in combination, as appropriate for the circumstances:

(1) Issue a letter of warning advising the recipient of the performance problem(s), describing the corrective actions that HUD believes should be taken, establishing a completion date for corrective actions, and notifying the recipient that more serious actions may be taken if the performance problem(s) is not corrected or is repeated;

(2) Request the recipient to submit progress schedules for completing activities or complying with the requirements of this part;

(3) Recommend that the recipient suspend, discontinue, or not incur costs for the affected activity;

(4) Recommend that the recipient redirect funds from affected activities to other eligible activities;

(5) Recommend that the recipient reimburse the recipient's program account in the amount improperly expended; and

(6) Recommend that the recipient obtain appropriate technical assistance using existing grant funds or other available resources to overcome the performance problem(s).

(b) Failure of a recipient to address performance problems specified in paragraph (a) above may result in the imposition of sanctions as prescribed in § 1000.532 (providing for adjustment, reduction, or withdrawal of future grant funds, or other appropriate actions), or § 1000.538 (providing for termination, reduction, or limited availability of payments, or replacement of the TDHE).

§ 1000.532 What are the adjustments HUD makes to a recipient's future year's grant amount under section 405 of NAHASDA?

(a) HUD may, subject to the procedures in paragraph (b) below, make appropriate adjustments in the amount of the annual grants under NAHASDA in accordance with the findings of HUD pursuant to reviews and audits under section 405 of NAHASDA. HUD may adjust, reduce, or withdraw grant amounts, or take other action as appropriate in accordance with the reviews and audits, except that grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided on behalf of an Indian tribe.

(b) Before undertaking any action in accordance with paragraphs (a) and (c) of this section, HUD will notify the recipient in writing of the actions it intends to take and provide the recipient an opportunity for an informal meeting to resolve the deficiency. In the event the deficiency is not resolved, HUD may take any of the actions available under paragraphs (a) and (c) of this section. However, the recipient may request, within 30 days of notice of the action, a hearing in accordance with § 1000.540. The amount in question shall not be reallocated under the provisions of § 1000.536, until 15 days after the hearing has been held and HUD has rendered a final decision.

(c) Absent circumstances beyond the recipient's control, when a recipient is not complying significantly with a major activity of its IHP, HUD shall make appropriate adjustment, reduction, or withdrawal of some or all of the recipient's subsequent year grant in accordance with this section.

§ 1000.534 What constitutes substantial noncompliance?

HUD will review the circumstances of each noncompliance with NAHASDA and the regulations on a case-by-case basis to determine if the noncompliance is substantial. This review is a two step process. First, there must be a noncompliance with NAHASDA or these regulations. Second, the noncompliance must be substantial. A noncompliance is substantial if:

(a) The noncompliance has a material effect on the recipient meeting its major goals and objectives as described in its Indian Housing Plan;

(b) The noncompliance represents a material pattern or practice of activities constituting willful noncompliance with a particular provision of NAHASDA or the regulations, even if a single instance of noncompliance would not be substantial;

(c) The noncompliance involves the obligation or expenditure of a material amount of the NAHASDA funds budgeted by the recipient for a material activity; or

(d) The noncompliance places the housing program at substantial risk of fraud, waste or abuse.

§ 1000.536 What happens to NAHASDA grant funds adjusted, reduced, withdrawn, or terminated under § 1000.532 or § 1000.538?

Such NAHASDA grant funds shall be distributed by HUD in accordance with the next NAHASDA formula allocation.

§ 1000.538 What remedies are available for substantial noncompliance?

(a) If HUD finds after reasonable notice and opportunity for hearing that a recipient has failed to comply substantially with any provisions of NAHASDA, HUD shall:

(1) Terminate payments under NAHASDA to the recipient;

(2) Reduce payments under NAHASDA to the recipient by an amount equal to the amount of such payments that were not expended in accordance with NAHASDA;

(3) Limit the availability of payments under NAHASDA to programs, projects, or activities not affected by the failure to comply; or

(4) In the case of noncompliance described in § 1000.542, provide a replacement TDHE for the recipient.

(b) HUD may, upon due notice, suspend payments at any time after the issuance of the opportunity for hearing pending such hearing and final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(c) If HUD determines that the failure to comply substantially with the provisions of NAHASDA is not a pattern or practice of activities constituting willful noncompliance, and is a result of the limited capability or capacity of the recipient, HUD may provide technical assistance for the recipient (directly or indirectly) that is designed to increase the capability or capacity of the recipient to administer assistance under NAHASDA in compliance with the requirements under NAHASDA.

(d) In lieu of, or in addition to, any action described in this section, if HUD has reason to believe that the recipient has failed to comply substantially with any provisions of NAHASDA, HUD may refer the matter to the Attorney General of the United States, with a recommendation that appropriate civil action be instituted.

§ 1000.540 What hearing procedures will be used under NAHASDA?

The hearing procedures in 24 CFR part 26 shall be used.

§ 1000.542 When may HUD require replacement of a recipient?

(a) In accordance with section 402 of NAHASDA, as a condition of HUD making a grant on behalf of an Indian tribe, the Indian tribe shall agree that, notwithstanding any other provisions of law, HUD may, only in the circumstances discussed below, require that a replacement TDHE serve as the recipient for the Indian tribe.

(b) HUD may require a replacement TDHE for an Indian tribe only upon a determination by HUD on the record after opportunity for hearing that the recipient for the Indian tribe has engaged in a pattern or practice of activities that constitute substantial or willful noncompliance with the requirements of NAHASDA.

§ 1000.544 What audits are required?

The recipient must comply with the requirements of the Single Audit Act and OMB Circular A–133 which require annual audits of recipients that expend Federal funds equal to or in excess of an amount specified by the U.S. Office of Management and Budget, which is currently set at $300,000.

§ 1000.546 Are audit costs eligible program or administrative expenses?

Yes, audit costs are an eligible program or administrative expense. If the Indian tribe is the recipient then program funds can be used to pay a prorated share of the tribal audit or financial review cost that is attributable to NAHASDA funded activities. For a recipient not covered by the Single Audit Act, but which chooses to obtain a periodic financial review, the cost of such a review would be an eligible program expense.

§ 1000.548 Must a copy of the recipient's audit pursuant to the Single Audit Act relating to NAHASDA activities be submitted to HUD?

Yes. A copy of the latest recipient audit under the Single Audit Act relating to NAHASDA activities must be submitted with the Annual Performance Report.

§ 1000.550 If the TDHE is the recipient, does it have to submit a copy of its audit to the Indian tribe?

Yes. The Indian tribe as the grant beneficiary must receive a copy of the audit report so that it can fully carry out its oversight responsibilities with NAHASDA.

§ 1000.552 How long must the recipient maintain program records?

(a) This section applies to all financial and programmatic records, supporting documents, and statistical records of the recipient which are required to be maintained by the statute, regulation, or grant agreement.

(b) Except as otherwise provided herein, records must be retained for three years from the date the recipient submits to HUD the annual performance report that covers the last expenditure of grant funds under a particular grant.

(c) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

§ 1000.554 Which agencies have right of access to the recipient's records relating to activities carried out under NAHASDA?

(a) HUD and the Comptroller General of the United States, and any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of recipients which are pertinent to NAHASDA assistance, in order to make audits, examinations, excerpts, and transcripts.

(b) The right of access in this section lasts as long as the records are maintained.

§ 1000.556 Does the Freedom of Information Act (FOIA) apply to recipient records?

FOIA does not apply to recipient records. However, there may be other applicable State and tribal access laws or recipient policies which may apply.

§ 1000.558 Does the Federal Privacy Act apply to recipient records?

The Federal Privacy Act does not apply to recipient records. However, there may be other applicable State and tribal access laws or recipient policies which may apply.

APPENDIX A TO PART 1000—INDIAN HOUSING BLOCK GRANT FORMULA MECHANICS

This appendix shows the different components of the IHBG formula. The following text explains how each component of the IHBG formula works.

1. The Indian Housing Block Grant (IHBG) formula is calculated by initially determining the amount a tribe receives for Formula Current Assisted Stock (FCAS) (See §§ 1000.310 and 1000.312. FCAS funding is comprised of two components, operating subsidy (§ 1000.316(a)) and modernization (§ 1000.316(b)). The operating subsidy component is calculated based on the national per unit subsidy provided in FY 1996 (adjusted to a 100 percent funding level) for each of the following types of programs—Low Rent, Homeownership (Mutual Help and Turnkey III), and Section 8. A tribe's total units in each of the above categories is multiplied times the relevant national per unit subsidy amount. That amount is summed and multiplied times a local area cost adjustment factor for management.

2. The local area cost adjustment factor for management is called AELFMR. AELFMR is the greater of a tribe's Allowable Expense Level (AEL) or Fair Market Rent (FMR) factor, where the AEL and FMR factors are determined by dividing each tribe's AEL and FMR by their respective national weighted average (weighted on the unadjusted allocation under FCAS operating subsidy). The adjustment made to the FCAS component of the IHBG formula is then the new AELFMR factor divided by the national weighted average of the AELFMR (See § 1000.320).

3. The modernization component of FCAS is based on the national per unit modernization funding provided in FY 1996 to Indian Housing Authorities (IHAs). The per unit

amount is determined by dividing the modernization funds by the total Low Rent, Mutual Help, and Turnkey III units operated by IHAs in 1996. A tribe's total Low Rent, Mutual Help, and Turnkey III units are multiplied times the per unit modernization amount. That amount is then multiplied times a local area cost adjustment factor for construction (e.g. the Total Development Cost) (See §1000.320).

4. The construction adjustment factor is Total Development Cost (TDC) for the area divided by the weighted national average for TDC (weighted on the unadjusted allocation for modernization) (See §1000.320).

5. After determining the total amount allocated under FCAS for each tribe, it is summed for every tribe. The national total amount for FCAS is subtracted from the Fiscal Year appropriation to determine the total amount to be allocated under the Need component of the IHBG formula.

6. The Need component of the IHBG formula is calculated using seven factors weighted as set forth in §1000.324 as follows: 22 percent of the allocated funds will be allocated by a tribe's share of the total Native American households paying more than 50 percent of their income for housing living in the Indian tribe's formula area, 25 percent of the funds allocated under Need will be allocated by a tribe's share of the total Native American households overcrowded and or without kitchen or plumbing living in their formula area, and so on. The current national totals for each of the need variables will be distributed annually by HUD with the Formula Response Form (See §1000.332). The national totals will change as tribes update information about their formula area and data for individual areas are challenged (See §§1000.334 and 1000.336). The Need component is then calculated by multiplying a tribe's share of housing need by a local area cost adjustment factor for construction (the Total Development Cost) (See §1000.338).

7. No tribe in its first year of funding will receive less than $50,000 under the Need component of the formula. In subsequent allocations to a tribe, it will receive no less than $25,000 under the Need component of the formula. This increase in funding for the tribes receiving the minimum Need allocation is funded by a reallocation from all tribes receiving more than $50,000 under their Need component. This is necessary in order to keep the total allocation within the appropriation level. Such minimum Need allocations will only continue through FY 2002 (See §1000.328).

8. A tribe's total grant is calculated by summing the FCAS and Need allocations. This preliminary grant is compared to how much a tribe received in FY 1996 for operating subsidy and modernization. If a tribe received more in FY 1996 for operating subsidy and modernization than they do under the IHBG formula, their grant is adjusted up to the FY 1996 level (See §1000.340). Indian tribes receiving more under the IHBG formula than in FY 1996 ''pay'' for the upward adjustment for the other tribes by having their grants adjusted downward. Because many more Indian tribes have grant amounts above the FY 1996 level than those with grants below the FY 1996 level, each tribe contributes very little relative to their total grant to fund the adjustment.

[63 FR 12373, Mar. 12, 1998; 63 FR 13105, Mar. 17, 1998]

APPENDIX B TO PART 1000—IHBG BLOCK GRANT FORMULA MECHANISMS

1. The Indian Housing Block Grant Formula consists of two components, the Formula Current Assisted Stock (FCAS) and Need. Therefore, the formula allocation before adjusting for the statutory requirement that a tribe's minimum grant will not be less than the tribe's FY 1996 Operating Subsidy and Modernization funding, can be represented by:

unadjGRANT = FCAS + NEED.

2. NAHASDA requires the current assisted stock be provided for before allocating funds based on need. Therefore, FCAS must be calculated first. FCAS consists to two components, Operating Subsidy (OPSUB) and Modernization (MOD) such that:

FCAS = OPSUB + MOD.

3. OPSUB consists of three main parts: Number of Low-Rent units; Number of Section 8 units; and Number of Mutual Help and Turnkey III units. Each of these main parts are adjusted by the FY 1996 national per unit subsidy, an inflation factor, and local area costs as reflected by the greater of the AEL factor or FMR factor. The AEL factor as defined in §1000.302 as the difference between a local area Allowable Expense Level (AEL) and the national weighted average for AEL. The FMR factor is also defined in §1000.302 as the difference between a local area Fair Market Rent (FMR) and the national weighted average for FMR. So, expanding OPSUB gives:

OPSUB = [LR * LRSUB + (MH+TK) * HOSUB + S8 * S8SUB] * INF * AELFMR

Where:

LR = number of Low-Rent units.

LRSUB = FY 1996 national per unit average subsidy for Low-Rent units = $2,440.

MH+TK = number of Mutual Help and Turnkey III units.

HOSUB = FY 1996 national per unit average subsidy for Homeownership units = $528.

S8 = number of Section 8 units.

S8SUB = FY 1996 national per unit average subsidy for Section 8 units = $3,625.

INF = inflation adjustment determined by the Consumer Price Index for housing.

AELFMR = greater of AEL Factor or FMR Factor weighted by national average of AEL Factor and FRM Factor.
AEL FACTOR = AEL/NAAEL.
AEL = local Allowable Expense Level.
NAAEL = national weighted average for AEL.
FMR FACTOR = FMR/NAFMR.
FMR = local Fair Market Rent.
NAFMR = national weighted average for FMR.
NAAELFMR = national weighted average for greater of AEL Factor or FMR factor.

For estimating FY 1998 allocations:

NAAEL = 240.224.
NAFMR = 459.437.
NAAELFMR = 1.144.

4. MOD considers only the number of Low-Rent, and Mutual Help and Turnkey III units. Each of these are adjusted by the FY 1996 national per unit subsidy for modernization, an inflation factor and the local Total Development Costs relative to the weighted national average for TDC. So, expanding MOD gives us:

MOD = [LR + (MH+TK)] * SUB * INF * TDC/NATDC.

Where:

LR = number of Low-Rent units.
MH+TK = number of Mutual Help and Turnkey III units.
SUB = FY 1996 national per unit average subsidy for modernization.
INF = inflation adjustment determined by the Consumer Price Index for housing.
TDC = Local Total Development Costs defined in § 1000.302.
NATDC = weighted national average for TDC.

For estimating FY 1998 allocations:

SUB = $1,974.
NATDC = $103,828.

5. Now that calculation for FCAS is complete, we can determine how many funds will be available to allocate over the NEED component of the formula by calculating:

NEED FUNDS = APPROPRIATION—NATCAS.

Where:

APPROPRIATION = dollars provided by Congress for distribution by the IHBG formula.
NATCAS = summation of CAS allocations for all tribes.

For estimating FY 1998 allocations:

APPROPRIATION = $590 million.
NATCAS = $236,147,110.

6. Two iterations are necessary to compute the final Need allocation. The first iteration consists of seven weighted criteria that allocate need funds based on a tribe's population and housing data. This allocation is then adjusted for local area cost differences based on TDC relative to the national weighted average. This can be represented by:

NEED1 = [(0.11 * PER / NPER) + (0.13 * HHLE30 / NHHLE30)
+ (0.07 * HH30T50 / NHH30T50) + (0.07 * HH50T80 / NHH50T80)
+ (0.25 * OCRPR / NOCRPR) + (0.22 * SCBTOT / NSCBTOT)
+ (0.15 * HOUSHOR / NHOUSHOR)] * NEED FUNDS * (TDC/NATDC).

Where:

PER = American Indian and Alaskan Native (AIAN) persons.
NPER = national total of PER.
HHLE30 = AIAN households less than 30% of median income.
NHHLE30 = national total of HHLE30.
HH30T50 = AIAN households 30% to 50% of median income.
NHH30T50 = national total of HH30T50.
HH50T80 = AIAN households 50% to 80% of median income.
NHH50TO80 = national total of HH50T80.
OCRPR = AIAN households crowded or without complete kitchen or plumbing.
NOCRPR = national total of OCRPR.
SCBTOT = AIAN households paying more than 50% of their income for housing.
NSCBTOT = national total SCBTOT.
HOUSHOR = AIAN households with an annual income less than or equal to 80% of formula median income reduced by the combination of current assisted stock and units developed under NAHASDA.
NHOUSHOR = national total of HOUSHOR.
TDC = Local Total Development Costs defined in § 1000.302.
NATDC = weighted national average for TDC.

For estimating FY 1998 allocations:

NPER = 953,254.
NHHLE30 = 78,496.
NHH30T50 = 52,514.
NHH50T80 = 59,793.
NOCPR = 80,581.
NSCBTOT = 34,080.
NHOUSHOR = 23,840.
NEEDFUNDS = $353,852,890.
NATDC = $104,956.

7. The second iteration in computing Need allocation consists of adjusting the Need allocation computed above to take into account the $50,000 baseline funding for the first year only and then $25,000 per year for each year thereafter through FY 2002. So, if in the first Need computation you have less than the minimum Needs funding level, your Need allocation will go up. But, if you have more than the minimum Needs funding level, your Need allocation will go down to adjust for the other Need allocations going up. We can represent this by:

If NEED1 is less than MINFUNDING, then NEED = MINFUNDING.
If NEED1 is greater than or equal to MINFUNDING, then NEED = NEED1 − {mUNDERMIN$* [(NEED1 − MINFUNDING)/OVERMIN$]}.

Where:

MINFUNDING = minimum needs funding level.

UNDERMIN$ = for all tribes with NEED1 less than MINFUNDING, sum of the differences between MINFUNDING and NEED1.

OVERMIN$ = for all tribes with NEED1 greater than or equal to

MINFUNDING, sum of the difference between NEED1 and MINFUNDING.

For estimating FY 1998 allocations:

MINFUNDING = $50,000.

UNDERMIN$ = $4,919,224.

OVERMIN$ = $335,022,114.

8. Now we have computed values for FCAS and NEED. This final step in computing the grant allocation is to adjust the sum of FCAS and NEED to reflect the statutory requirement that a tribe's minimum grant will not be less than that tribe's FY 1996 Operating Subsidy and Modernization funding. So, before adjusting for the minimum grant compute:

unadjGRANT = FCAS + NEED

where both FCAS and NEED are calculated above.

9. Now, apply test to determine if the GRANT (unadjusted for FY 1996) levels is greater than or equal to FY 1996 Operating Subsidy and Modernization funding.

Let TEST = unadjGRANT—OPMOD96 .

If TEST is less than 0, then GRANT = OPMOD96.

If TEST is greater than or equal to 0, then GRANT = unadjGRANT—[UNDER1996 * (TEST / OVER1996)].

Where:

OPMOD96 = funding received by tribe in FY 1996 for Operating Subsidy and Modernization

UNDER1996 = for all tribes with TEST less than 0, sum of the absolute value of TEST.

OVER1996 = for all tribes with TEST greater than or equal to 0, sum of TEST.

For estimating FY 1998 allocations:

UNDER1996 = $5,378,558.

OVER1996 = $326,095,837.

GRANT is the approximate grant amount in any given year for any given tribe.

[63 FR 12373, Mar. 12, 1998; 63 FR 13105, Mar. 17, 1998]

PARTS 1001–1002 [RESERVED]

PART 1003—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKA NATIVE VILLAGES

Subpart A—General Provisions

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AUTHORITY: 42 U.S.C. 3535(d) and 5301 *et seq.*

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Subpart A—General Provisions

§ 1003.1 Applicability and scope.

The policies and procedures described in this part apply to grants to eligible applicants under the Community Development Block Grant (CDBG) program for Indian tribes and Alaska native villages.

§ 1003.2 Program objective.

The primary objective of the Indian CDBG (ICDBG) Program and of the community development program of each grantee covered under the Act is the development of viable Indian and Alaska native communities, including decent housing, a suitable living environment, and economic opportunities, principally for persons of low and moderate income. The Federal assistance provided in this part is not to be used to reduce substantially the amount of tribal financial support for community development activities below the level of such support before the availability of this assistance.

§ 1003.3 Nature of program.

The selection of single purpose grantees under subpart B of this part is competitive in nature. Therefore, selection of grantees for funds will reflect consideration of the relative adequacy of applications in addressing tribally determined need. The selection of grantees of imminent threat grants under the provisions of subpart B of this part is not competitive in nature. However, applicants for funding under either subpart must have the administrative capacity to undertake the community development activities proposed, including the systems of internal control necessary to administer these activities effectively without fraud, waste, or mismanagement.

§ 1003.4 Definitions.

Act means Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*)

Area ONAPs mean the HUD Offices of Native American Programs having field office responsibility for the ICDBG Program.

Assistant Secretary means the Assistant Secretary for Public and Indian Housing.

Buildings for the general conduct of government mean office buildings and other facilities in which the legislative, judicial or general administrative affairs of the government are conducted. This term does not include such facilities as neighborhood service centers or special purpose buildings located in low and moderate income areas that house various non-legislative functions or services provided by the government at decentralized locations.

Chief executive officer means the elected official or legally designated official who has the prime responsibility for the conduct of the affairs of an Indian tribe or Alaska native village.

Eligible Indian population means the most accurate and uniform population data available from data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period of time for Indian tribes and Alaska native villages eligible under this part.

Extent of overcrowded housing means the number of housing units with 1.01 or more persons per room, based on data compiled and published by the United States Bureau of the Census available from the latest census referable to the same point or period of time.

Extent of poverty means the number of persons whose incomes are below the poverty level, based on data compiled and published by the United States Bureau of the Census referable to the same point or period in time and the latest reports from the Office of Management and Budget.

HUD means the Department of Housing and Urban Development.

ICDBG Program means the Indian Community Development Block Grant Program.

Identified service area means:

(1) A geographic location within the jurisdiction of a tribe (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other tribal documents as a service area;

(2) The Bureau of Indian Affairs (BIA) service area, including residents of areas outside the geographic jurisdiction of the tribe; or

(3) The entire area under the jurisdiction of a tribe which has a population of members of under 10,000.

Imminent threat means a problem which if unresolved or not addressed will have an immediate negative impact on public health or safety.

Low and moderate income beneficiary means a family, household, or individual whose income does not exceed 80 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger households or families. However, HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low household or family incomes. In reporting income levels to HUD, the applicant must include and identify the distributions of tribal or village income to families, households, or individuals.

Microenterprise means a business that has five or fewer employees, one or more of whom owns the enterprise.

Secretary means the Secretary of HUD.

Small business means a business that meets the criteria set forth in section 3(a) of the Small Business Act (15 U.S.C. 631, 636, and 637).

Subrecipient means a public or private nonprofit agency, authority or organization, or a for-profit entity described in § 1003.201(o), receiving ICDBG funds from the grantee or another subrecipient to undertake activities eligible for assistance under subpart C of this part. The term excludes a CBDO receiving ICDBG funds from the grantee under the authority of § 1003.204, unless the grantee explicitly designates it as a subrecipient. The term does not include contractors providing supplies, equipment, construction or services subject to the procurement requirements in 24 CFR 85.36 or in 24 CFR Part 84, as applicable.

Tribal government, Tribal governing body or *Tribal council* means the governing body of an Indian tribe or Alaska native village as recognized by the Bureau of Indian Affairs.

Tribal resolution means the formal manner in which the tribal government expresses its legislative will in accordance with its organic documents. In the absence of such organic documents, a written expression adopted pursuant to tribal practices will be acceptable.

URA means the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et. seq.*).

§ 1003.5 Eligible applicants.

(a) Eligible applicants are any Indian tribe, band, group, or nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaska native village of the United States which is considered an eligible recipient under Title I of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450) or which had been an eligible recipient under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221). Eligible recipients under the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs and eligible recipients under the State and Local Fiscal Assistance Act of 1972 are those that have been determined eligible by

the Department of Treasury, Office of Revenue Sharing.

(b) Tribal organizations which are eligible under Title I of the Indian Self-Determination and Education Assistance Act may apply on behalf of any Indian tribe, band, group, nation, or Alaska native village eligible under that act for funds under this part when one or more of these entities have authorized the tribal organization to do so through concurring resolutions. Such resolutions must accompany the application for funding. Eligible tribal organizations under Title I of the Indian Self-Determination and Education Assistance Act will be determined by the Bureau of Indian Affairs or the Indian Health Service, as appropriate.

(c) To apply for funding in a given fiscal year, an applicant must be eligible as an Indian tribe or Alaska native village, as provided in paragraph (a) of this section, or as a Tribal organization, as provided in paragraph (b) of this section, by the application submission date.

(Approved by the Office of Management and Budget under control number 2577–0191)

§ 1003.6 Waivers.

Upon determination of good cause, HUD may waive any provision of this part not required by statute. Each waiver must be in writing and must be supported by documentation of the pertinent facts and grounds.

Subpart B—Allocation of Funds

§ 1003.100 General.

(a) *Types of grants.* Two types of grants are available under the Indian CDBG Program.

(1) *Single purpose grants* provide funds for one or more single purpose projects consisting of an activity or set of activities designed to meet a specific community development need. This type of grant is awarded through competition with other single purpose projects.

(2) *Imminent threat grants* alleviate an imminent threat to public health or safety that requires immediate resolution. This type of grant is awarded only after an Area ONAP determines that such conditions exist and if funds are available for such grants.

(b) *Size of grants.*—(1) *Ceilings.* Each Area ONAP may recommend grant ceilings for single purpose grant applications. Single purpose grant ceilings for each Area ONAP shall be established in the NOFA (Notice of Funding Availability).

(2) *Individual grant amounts.* An Area ONAP may approve a grant amount less than the amount requested. In doing so, the Area ONAP may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, the amount of funds required to achieve project objectives, the reasonableness of the project costs, and the administrative capacity of the applicant to complete the activities in a timely manner.

[61 FR 40090, July 31, 1996, unless otherwise noted. Redesignated at 62 FR 12349, Mar. 12, 1998, as amended at 66 FR 4580, Jan. 17, 2001; 66 FR 8176, Jan. 30, 2001]

§ 1003.101 Area ONAP allocation of funds.

(a) Except as provided in paragraph (b) of this section, funds will be allocated to the Area ONAPs responsible for the program on the following basis:

(1) Each Area ONAP will be allocated $1,000,000 as a base amount, to which will be added a formula share of the balance of the ICDBG Program funds, as provided in paragraph (a)(2) of this section.

(2) The amount remaining after the base amount is allocated and any amount retained by the Headquarters ONAP to fund imminent threat grants pursuant to the provisions of § 1003.402 is subtracted, will be allocated to each Area ONAP based on the most recent data complied and published by the United States Bureau of the Census referable to the same point or period in time, as follows:

(i) Forty percent (40%) of the funds will be allocated based upon each Area ONAP's share of the total eligible Indian population;

(ii) Forty percent (40%) of the funds will be allocated based upon each Area ONAP's share of the total extent of

poverty among the eligible Indian population; and

(iii) Twenty percent (20%) of the funds will be allocated based upon each Area ONAP's share of the total extent of overcrowded housing among the eligible Indian population.

(b) HUD will use other criteria to determine an allocation formula for distributing funds to the Area ONAPs if funds are set aside by statute for a specific purpose in any fiscal year if it is determined that the formula in paragraph (a) of this section is inappropriate to accomplish the purpose. HUD will use other criteria if it is determined that, based on a limited appropriation of funds, the use of the formula in paragraph (a) of this section is inappropriate to obtain an equitable allocation of funds.

(c) Data used for the allocation of funds will be based upon the Indian population of those tribes and villages that are determined to be eligible ninety (90) days before the beginning of each fiscal year.

§ 1003.102 Use of recaptured and unawarded funds.

(a) The Assistant Secretary will determine on a case-by-case basis the use of grant funds which are:

(1) Recaptured by HUD under the provisions of § 1003.703 or § 1003.704;

(2) Recaptured by HUD at the time of the closeout of a program; or

(3) Unawarded after the completion by an Area ONAP of a funding competition.

(b) The recaptured or unawarded funds will remain with the Area ONAP to which they were originally allocated unless the Assistant Secretary determines that there is an overriding reason to redistribute these funds outside of the Area ONAP's jurisdiction. The recaptured funds may be used to fund the highest ranking unfunded project from the most recent funding competition, an imminent threat, or other uses. Unawarded funds may be used to fund an imminent threat or other uses.

Subpart C—Eligible Activities

§ 1003.200 General policies.

An activity may be assisted in whole or in part with ICDBG funds only if the activity meets the eligibility requirements of section 105 of the Act as further defined in this subpart and if the criteria for compliance with the primary objective of the Act set forth under § 1003.208 have been met. The requirements for compliance with the primary objective of the Act do not apply to imminent threat grants funded under subpart E of this part.

§ 1003.201 Basic eligible activities.

ICDBG funds may be used for the following activities:

(a) *Acquisition.* Acquisition in whole or in part by the grantee, or other public or private nonprofit entity, by purchase, long-term lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of § 1003.207.

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with ICDBG funds or its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in § 1003.503.

(c) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in § 1003.207(a), carried out by the grantee or other public or private nonprofit entities. In undertaking such activities, design features and improvements which promote energy efficiency may be included. [However, activities under this paragraph may be directed to the removal of material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to publicly owned and privately owned buildings, facilities, and improvements including those provided for in § 1003.207(a)(1).] Such activities may also include the execution of architectural design features, and similar treatments intended to enhance the

aesthetic quality of facilities and improvements receiving ICDBG assistance. Facilities designed for use in providing shelter for persons having special needs are considered public facilities and not subject to the prohibition of new housing construction described in §1003.207(b)(3). Such facilities include shelters for the homeless; convalescent homes; hospitals, nursing homes; battered spouse shelters; halfway houses for run-away children, drug offenders or parolees; group homes for mentally retarded persons and temporary housing for disaster victims. In certain cases, nonprofit entities and subrecipients including those specified in §1003.204 may acquire title to public facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph (c) are subject to the following policies in paragraphs (c)(1) through (c)(3) of this section:

(1) *Special policies governing facilities.* The following special policies apply to:

(i) *Facilities containing both eligible and ineligible uses.* A public facility otherwise eligible for assistance under the ICDBG program may be provided with ICDBG funds even if it is part of a multiple use building containing ineligible uses, if:

(A) The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

(B) The grantee can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility. Allowable costs are limited to those attributable to the eligible portion of the building or facility.

(ii) *Equipment purchase.* As stated in §1003.207(b)(1), the purchase of equipment with ICDBG funds is generally ineligible. However, the purchase of construction equipment for use as part of a solid waste facility is eligible. In addition, the purchase of fire protection equipment is considered to be an integral part of a public facility, and, therefore, the purchase of such equipment is also eligible.

(2) *Fees for use of facilities.* Reasonable fees may be charged for the use of the facilities assisted with ICDBG funds, but charges such as excessive membership fees, which will have the effect of precluding low and moderate income persons from using the facilities, are not permitted.

(3) *Special assessments under the ICDBG program.* The following policies relate to special assessments under the ICDBG program:

(i) *Definition of special assessment.* The term *special assessment* means the recovery of the capital costs of a public improvement, such as streets, water or sewer lines, curbs, and gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, or a one-time charge made as a condition of access to a public improvement. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes, and does not include periodic charges based on the use of a public improvement, such as water or sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

(ii) *Special assessments to recover capital costs.* Where ICDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

(A) Special assessments to recover the ICDBG funds may be made only against properties owned and occupied by persons not of low and moderate income. Such assessments constitute program income.

(B) Special assessments to recover the non-ICDBG portion may be made provided that ICDBG funds are used to pay the special assessment on behalf of all properties owned and occupied by low and moderate income persons; except that ICDBG funds need not be used to pay the special assessments on behalf of properties owned and occupied by moderate income persons if the grantee certifies that it does not have

sufficient ICDBG funds to pay the assessments in behalf of all of the low and moderate income owner-occupant persons. Funds collected through such special assessments are not program income.

(iii) *Public improvements not initially assisted with ICDBG funds.* The payment of special assessments with ICDBG funds constitutes ICDBG assistance to the public improvement. Therefore, ICDBG funds may be used to pay special assessments provided:

(A) The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this part including environmental and citizen participation requirements; and

(B) The installation of the public improvement meets a criterion for the primary objective in § 1003.208; and,

(C) The requirements of § 1003.201(c)(3)(ii))(B) are met.

(d) *Clearance activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD-assisted housing units may be undertaken only with the prior approval of HUD.

(e) *Public services.* Provision of public services (including labor, supplies, materials, and the purchase of personal property and furnishings) which are directed toward improving the community's public services and facilities, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare (but excluding the provision of income payments identified under § 1003.207(b)(4)), homebuyer downpayment assistance or recreational needs. To be eligible for ICDBG assistance, a public service must be either a new service, or a quantifiable increase in the level of an existing service above that which has been provided by or on behalf of the grantee through funds raised by the grantee, or received by the grantee from the Federal government in the twelve calendar months before the submission of the application for ICDBG assistance. (An exception to this requirement may be made if HUD determines that any decrease in the level of a service was the result of events not within the control of the grantee.) The amount of ICDBG funds used for public services shall not exceed 15 percent of the grant. Such projects must therefore be submitted with one or more other projects, which must comprise at least 85 percent of the total requested ICDBG grant amount.

(f) *Interim assistance.* (1) The following activities may be undertaken on an interim basis in areas exhibiting objectively determinable signs of physical deterioration where the grantee has determined that immediate action is necessary to arrest the deterioration and that permanent improvements will be carried out as soon as practicable:

(i) The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities, and public buildings; and

(ii) The execution of special garbage, trash, and debris removal, including neighborhood cleanup campaigns, but not the regular curbside collection of garbage or trash in an area.

(2) In order to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the grantee determines that such an emergency condition exists and requires immediate resolution, ICDBG funds may be used for:

(i) The activities specified in paragraph (f)(1) of this section, except for the repair of parks and playgrounds;

(ii) The clearance of streets, including snow removal and similar activities; and

(iii) The improvement of private properties.

(3) All activities authorized under paragraph (f)(2) of this section are limited to the extent necessary to alleviate emergency conditions.

(g) *Payment of non-Federal share.* Payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of ICDBG activities, provided, that such payment shall be limited to activities otherwise eligible and in compliance with applicable requirements under this subpart.

(h) *Relocation.* Relocation payments and other assistance for permanently and temporarily relocated individuals

families, businesses, nonprofit organizations, and farm operations where the assistance is:

(1) Required under the provisions of § 1003.602 (b) or (c); or

(2) Determined by the grantee to be appropriate under the provisions of § 1003.602(d).

(i) *Loss of rental income.* Payments to housing owners for losses of rental income incurred in holding, for temporary periods, housing units to be used for the relocation of individuals and families displaced by program activities assisted under this part.

(j) *Housing services.* Housing services, as provided in section 105(a)(21) of the Housing and Community Development Act of 1974 [42 U.S.C. 5305(a)(21)].

(k) *Privately owned utilities.* ICDBG funds may be used to acquire, construct, reconstruct, rehabilitate, or install the distribution lines and facilities of privately owned utilities, including the placing underground of new or existing distribution facilities and lines.

(l) *The provision of assistance to facilitate economic development.* (1) The provision of assistance either through the grantee directly or through public and private organizations, agencies, and other subrecipients (including nonprofit and for-profit subrecipients) to facilitate economic development by:

(i) Providing credit, including, but not limited to, grants, loans, loan guarantees, and other forms of financial support, for the establishment, stabilization, and expansion of microenterprises;

(ii) Providing technical assistance, advice, and business support services to owners of microenterprises and persons developing microenterprises; and

(iii) Providing general support, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services, to owners of microenterprises and persons developing microenterprises.

(2) Services provided under paragraph (l)(1) of this section shall not be subject to the restrictions on public services contained in § 1003.201(e).

(3) For purposes of this paragraph (l), *persons developing microenterprises* means such persons who have expressed interest and who are, or after an initial screening process are expected to be, actively working toward developing businesses, each of which is expected to be a microenterprise at the time it is formed.

(m) *Technical assistance.* Provision of technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities. Capacity building for private or public entities (including grantees) for other purposes may be eligible as a planning cost under § 1003.205.

(n) *Assistance to institutions of higher education.* Provision of assistance by the grantee to institutions of higher education where the grantee determines that such an institution has demonstrated a capacity to carry out eligible activities under this subpart.

(o) *Homeownership assistance.* ICDBG funds may be used to provide direct homeownership assistance to low- and moderate-income households to:

(1) Subsidize interest rates and mortgage principal amounts for low-and moderate-income homebuyers;

(2) Finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers;

(3) Acquire guarantees for mortgage financing obtained by low-and moderate-income homebuyers form private lenders (except that ICDBG funds may not be used to guarantee such mortgage financing directly, and grantees may not provide such guarantees directly);

(4) Provide up to 50 percent of any downpayment required from a low-and moderate-income homebuyer; or

(5) Pay reasonable closing costs (normally associated with the purchase of a home) incurred by a low-or moderate-income homebuyer.

§ 1003.202 Eligible rehabilitation and preservation activities.

(a) Types of buildings and improvements eligible for rehabilitation or reconstruction assistance. ICDBG funds may be used to finance the rehabilitation of:

(1) Privately owned buildings and improvements for residential purposes;

improvements to a single-family residential property which is also used as a place of business, which are required in order to operate the business, need not be considered to be rehabilitation of a commercial or industrial building, if the improvements also provide general benefit to the residential occupants of the building;

(2) Low-income public housing and other publicly owned residential buildings and improvements;

(3) Publicly or privately owned commercial or industrial buildings, except that the rehabilitation of such buildings owned by a private for-profit business is limited to improvements to the exterior of the building and the correction of code violations (further improvements to such buildings may be undertaken pursuant to §1003.203(b)); and

(4) Nonprofit-owned nonresidential buildings and improvements not eligible under §1003.201(c);

(5) Manufactured housing when such housing constitutes part of the community's permanent housing stock.

(b) *Types of assistance.* ICDBG funds may be used to finance the following types of rehabilitation or reconstruction activities, and related costs, either singly, or in combination, through the use of grants, loans, loan guarantees, interest supplements, or other means for buildings and improvements described in paragraph (a) of this section, except that rehabilitation of commercial or industrial buildings is limited as described in paragraph (a)(3) of this section.

(1) Assistance to private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties, for use or resale for residential purposes;

(2) Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, including smoke detectors and dead bolt locks, and renovation through alterations, additions to, or enhancement of existing structures, which may be undertaken singly, or in combination;

(3) Loans for refinancing existing indebtedness secured by a property being rehabilitated with ICDBG funds if such financing is determined by the grantee to be necessary or appropriate to achieve the grantee's community development objectives;

(4) Improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification, or replacement of heating and cooling equipment, including the use of solar energy equipment;

(5) Improvements to increase the efficient use of water through such means as water saving faucets and shower heads and repair of water leaks;

(6) Connection of residential structures to water distribution lines or local sewer collection lines;

(7) For rehabilitation carried out with ICDBG funds, costs of:

(i) Initial homeowner warranty premiums;

(ii) Hazard insurance premiums, except where assistance is provided in the form of a grant; and

(iii) Flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973, pursuant to 24 CFR 58.6(a).

(iv) Lead-based paint activities in part 35 of this title.

(8) Costs of acquiring tools to be lent to owners, tenants, and others who will use such tools to carry out rehabilitation;

(9) Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this section;

(10) Improvements designed to remove material and architectural barriers that restrict the mobility and accessibility of elderly or severely disabled persons to buildings and improvements eligible for assistance under paragraph (a) of this section.

(c) *Code enforcement.* Code enforcement in deteriorating or deteriorated areas where such enforcement together with public or private improvements,

rehabilitation, or services to be provided, may be expected to arrest the decline of the area.

(d) *Historic preservation.* ICDBG funds may be used for the rehabilitation, preservation or restoration of historic properties, whether publicly or privately owned. Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a State or local inventory of historic places, or designated as a State or local landmark or historic district by appropriate law or ordinance. Historic preservation, however, is not authorized for buildings for the general conduct of government.

(e) *Renovation of closed buildings.* ICDBG funds may be used to renovate closed buildings, such as closed school buildings, for use as an eligible public facility or to rehabilitate such buildings for housing.

[61 FR 40090, July 31, 1996, as amended at 64 FR 50230, Sept. 15, 1999]

§ 1003.203 Special economic development activities.

A grantee may use ICDBG funds for special economic development activities in addition to other activities authorized in this subpart which may be carried out as part of an economic development project. Special activities authorized under this section do not include assistance for the construction of new housing. Special economic development activities include:

(a) The acquisition, construction, reconstruction, rehabilitation or installation of commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extensions. Such activities may be carried out by the grantee or public or private nonprofit subrecipients.

(b) The provision of assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any activity where the assistance is necessary or appropriate to carry out an economic development project, excluding those described as ineligible in § 1003.207(a). In order to ensure that any such assistance does not unduly enrich the for-profit business, the grantee shall conduct an analysis to determine that the amount of any financial assistance to be provided is not excessive, taking into account the actual needs of the business in making the project financially feasible and the extent of public benefit expected to be derived from the economic development project. The grantee shall document the analysis as well as any factors it considered in making its determination that the assistance is necessary or appropriate to carry out the project. The requirement for making such a determination applies whether the business is to receive assistance from the grantee or through a subrecipient.

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§ 1003.204 Special activities by Community-Based Development Organizations (CBDOs).

(a) *Eligible activities.* The grantee may provide ICDBG funds as grants or loans to any CBDO qualified under this section to carry out a neighborhood revitalization, community economic development, or energy conservation project. The funded project activities may include those listed as eligible under this subpart, and, except as described in paragraph (b) of this section, activities not otherwise listed as eligible under this subpart. For purposes of qualifying as a project under paragraphs (a)(1), (a)(2), and (a)(3) of this section, the funded activity or activities may be considered either alone or in concert with other project activities either being carried out or for which funding has been committed. For purposes of this section:

(1) Neighborhood revitalization project includes activities of sufficient size and scope to have an impact on the decline of a geographic location within the jurisdiction of a grantee (but not the entire jurisdiction) designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation; or the entire jurisdiction of a grantee which is under 25,000 population;

(2) Community economic development project includes activities that

increase economic opportunity, principally for persons of low- and moderate-income, or that stimulate or retain businesses or permanent jobs, including projects that include one or more such activities that are clearly needed to address a lack of affordable housing accessible to existing or planned jobs;

(3) Energy conservation project includes activities that address energy conservation, principally for the benefit of the residents of the grantee's jurisdiction; and

(4) To carry out a project means that the CBDO undertakes the funded activities directly or through contract with an entity other than the grantee, or through the provision of financial assistance for activities in which it retains a direct and controlling involvement and responsibilities.

(b) *Ineligible activities.* Notwithstanding that CBDOs may carry out activities that are not otherwise eligible under this subpart, this section does not authorize:

(1) Carrying out an activity described as ineligible in § 1003.207(a);

(2) Carrying out public services that do not meet the requirements of § 1003.201(e), except services carried out under this section that are specifically designed to increase economic opportunities through job training and placement and other employment support services, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services;

(3) Carrying out an activity that would otherwise be eligible under § 1003.205 or § 1003.206, but that would result in the grantee's exceeding the spending limitation in § 1003.206.

(c) *Eligible CBDOs.* (1) A CBDO qualifying under this section is an organization which has the following characteristics:

(i) Is an association or corporation organized under State or local law to engage in community development activities (which may include housing and economic development activities) primarily within an identified geographic area of operation within the jurisdiction of the grantee; and

(ii) Has as its primary purpose the improvement of the physical, economic or social environment of its geographic area of operation by addressing one or more critical problems of the area, with particular attention to the needs of persons of low and moderate income; and

(iii) May be either non-profit or for-profit, provided any monetary profits to its shareholders or members must be only incidental to its operations; and

(iv) Maintains at least 51 percent of its governing body's membership for low- and moderate-income residents of its geographic area of operation, owners or senior officers of private establishments and other institutions located in and serving its geographic area of operation, or representatives of low- and moderate-income neighborhood organizations located in its geographic area of operation; and

(v) Is not an agency or instrumentality of the grantee and does not permit more than one-third of the membership of its governing body to be appointed by, or to consist of, elected or other public officials or employees or officials of an ineligible entity (even though such persons may be otherwise qualified under paragraph (c)(1)(iv) of this section); and

(vi) Except as otherwise authorized in paragraph (c)(1)(v) of this section, requires the members of its governing body to be nominated and approved by the general membership of the organization, or by its permanent governing body; and

(vii) Is not subject to requirements under which its assets revert to the grantee upon dissolution; and

(viii) Is free to contract for goods and services from vendors of its own choosing.

(2) A CBDO that does not meet the criteria in paragraph (c)(1) of this section may also qualify as an eligible entity under this section if it meets one of the following requirements:

(i) Is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making; or

(ii) Is an SBA-approved Section 501 State Development Company or Section 502 Local Development Company,

or an SBA Certified Section 503 Company under the Small Business Investment Act of 1958, as amended; or

(iii) Is a Community Housing Development Organization (CHDO) under 24 CFR 92.2, designated as a CHDO by the HOME Investment Partnerships program participating jurisdiction, with a geographic area of operation of no more than one neighborhood, and has received HOME funds under 24 CFR 92.300 or is expected to receive HOME funds as described in and documented in accordance with 24 CFR 92.300(e); or

(iv) Is a tribal-based nonprofit organization. Such organizations are associations or corporations duly organized to promote and undertake community development activities on a not-for-profit basis within an identified service area.

(3) A CBDO that does not qualify under paragraphs (c)(1) or (2) of this section may also be determined to qualify as an eligible entity under this section if the grantee demonstrates to the satisfaction of HUD, through the provision of information regarding the organization's charter and by-laws, that the organization is sufficiently similar in purpose, function, and scope to those entities qualifying under paragraphs (c)(1) or (2) of this section.

§ 1003.205 Eligible planning, urban environmental design and policy-planning-management-capacity building activities.

(a) Planning activities which consist of all costs of data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans, including, but not limited to comprehensive plans, community development plans and functional plans in areas such as housing and economic development. In addition, other plans and studies such as capital improvements programs, individual project plans, general environmental studies, and strategies and action programs to implement plans, including the development of codes and ordinances are also eligible activities. With respect to the costs of individual project plans, engineering and design costs related to a specific activity are eligible as part of the cost of such activity under §§ 1003.201 through 1003.204 and are not considered planning costs. Also, costs necessary to comply with the requirements of 24 CFR part 58, including project specific environmental assessments and clearances for activities eligible under this part are eligible as part of the cost of such activities under §§ 1003.201 through 1003.204.

(b) Policy—planning—management—capacity building activities including those which will enable the grantee to determine its needs, set long term goals and short term objectives, devise programs to meet these goals and objectives, evaluate the progress being made in accomplishing the goals and objectives. In addition, actions necessary to carry out management, coordination and monitoring of activities necessary for effective planning implementation are eligible planning activities, however the costs necessary to implement the plans are not.

§ 1003.206 Program administration costs.

ICDBG funds may be used for the payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under this part. No more than 20 percent of the sum of any grant plus program income received shall be expended for activities described in this section and in § 1003.205—Eligible planning, urban environmental design and policy-planning-management capacity building activities. This does not include staff and overhead costs directly related to carrying out activities eligible under §§ 1003.201 through 1003.204, since those costs are eligible as part of such activities. In addition, technical assistance costs associated with developing the capacity to undertake a specific funded activity are also not considered program administration costs. These costs must not, however, exceed 10% of the total grant award.

(a) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not necessarily limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the grantee's staff, the staff of local public agencies, or other staff engaged in program administration. In charging costs to this category the grantee may either include the entire salary, wages, and related costs allocable to the program of each person whose primary responsibilities with regard to the program involve program administration assignments, or the pro rata share of the salary, wages, and related costs of each person whose job includes any program administration assignments. The grantee may use only one of these methods during the grant period. Program administration includes the following types of assignments:

(i) Providing tribal officials and citizens with information about the program;

(ii) Preparing program budgets and schedules, and amendments thereto;

(iii) Developing systems for assuring compliance with program requirements;

(iv) Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;

(v) Monitoring program activities for progress and compliance with program requirements;

(vi) Preparing reports and other documents related to the program for submission to HUD;

(vii) Coordinating the resolution of audit and monitoring findings;

(viii) Evaluating program results against stated objectives; and

(ix) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (a)(1) (i) through (viii) of this section.

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services; and

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, furnishings, or other personal property (or the payment of depreciation or use allowances for such items in accordance with OMB Circulars A–21, A–87 or A–122, as applicable), insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space. (OMB Circulars are available from the Executive Office of the President, Publication Service, 725 17th Street, N.W., Suite G–2200, Washington, DC 20503, Telephone, 202–395–7332.)

(b) *Public information.* The provisions of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of activities being assisted with ICDBG funds.

(c) *Indirect costs.* Indirect costs may be charged to the ICDBG program under a cost allocation plan prepared in accordance with OMB Circular A–21, A–87, or A–122 as applicable.

(d) *Submission of applications for Federal programs.* Preparation of documents required for submission to HUD to receive funds under the ICDBG program. In addition, ICDBG funds may be used to prepare applications for other Federal programs where the grantee determines that such activities are necessary or appropriate to achieve its community development objectives.

§ 1003.207 Ineligible activities.

The general rule is that any activity that is not authorized under the provisions of §§ 1003.201 through 1003.206 is ineligible to be assisted with ICDBG funds. This section identifies specific activities that are ineligible and provides guidance in determining the eligibility of other activities frequently associated with housing and community development.

(a) The following activities may not be assisted with ICDBG funds:

(1) Buildings or portions thereof used for the general conduct of government as defined at § 1003.4 cannot be assisted with ICDBG funds. This does not include, however, the removal of architectural barriers under § 1003.201(c) involving any such building. Also, where acquisition of real property includes an existing improvement which is to be used in the provision of a building for the general conduct of government, the portion of the acquisition cost attributable to the land is eligible, provided

such acquisition meets the primary objective described in § 1003.208.

(2) *General government expenses.* Except as otherwise specifically authorized in this subpart or under OMB Circular A–87, expenses required to carry out the regular responsibilities of the grantee are not eligible for assistance under this part.

(3) *Political activities.* ICDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration. However, a facility originally assisted with ICDBG funds may be used on an incidental basis to hold political meetings, candidate forums, or voter registration campaigns, provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

(b) The following activities may not be assisted with ICDBG funds unless authorized under provisions of § 1003.203 or as otherwise specifically noted herein, or when carried out by a CBDO under the provisions of § 1003.204.

(1) *Purchase of equipment.* The purchase of equipment with ICDBG funds is generally ineligible.

(i) *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to OMB Circular A–21, A–87 or A–122 as applicable for an otherwise eligible activity is an eligible use of ICDBG funds.

(ii) *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. Exceptions to this general prohibition are set forth in § 1003.201(o).

(2) *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the ICDBG program. For example, the use of ICDBG funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible under § 1003.201(e), even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:

(i) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with a disability, parking and similar public facilities; and

(ii) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.

(3) *New housing construction.* ICDBG funds may not be used for the construction of new permanent residential structures or for any program to subsidize or assist such new construction, except:

(i) As provided under the last resort housing provisions set forth in 24 CFR part 42; or

(ii) When carried out by a CBDO pursuant to § 1003.204(a);

(4) *Income payments.* The general rule is that ICDBG funds may not be used for income payments. For purposes of the ICDBG program, income payments means a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage) or utilities, but excludes emergency payments made over a period of up to three months to the provider of such items or services on behalf of an individual or family.

§ 1003.208 Criteria for compliance with the primary objective.

The Act establishes as its primary objective the development of viable communities by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this objective, not less than 70 percent of the expenditures of each single purpose grant shall be for activities which meet the criteria set forth in paragraphs (a),

(b), (c) and (d) of this section. Activities meeting these criteria as applicable will be considered to benefit low and moderate income persons unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. (The grantee shall appropriately ensure that activities that meet these criteria do not benefit moderate income persons to the exclusion of low income persons.)

(a) *Area benefit activities.* (1) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

(2) For purposes of determining qualification under this criterion, activities of the same type that serve different areas will be considered separately on the basis of their individual service area.

(3) In determining whether there is a sufficiently large percentage of low and moderate income persons residing in the area served by an activity to qualify under paragraph (a) (1) or (2) of this section, the most recently available decennial census information shall be used to the fullest extent feasible, together with the Section 8 income limits that would have applied at the time the income information was collected by the Census Bureau. Grantees that believe that the census data does not reflect current relative income levels in an area, or where census boundaries do not coincide sufficiently well with the service area of an activity, may conduct (or have conducted) a current survey of the residents of the area to determine the percent of such persons that are low and moderate income. HUD will accept information obtained through such surveys, to be used in lieu of the decennial census data, where it determines that the survey was conducted in such a manner that the results meet standards of statistical reliability that are comparable to that of the decennial census data for areas of similar size. Where there is substantial evidence that provides a clear basis to believe that the use of the decennial census data would substantially overstate the proportion of persons residing there that are low and moderate income, HUD may require that the grantee rebut such evidence in order to demonstrate compliance with section 105(c)(2) of the Act.

(b) *Limited clientele activities.* (1) An activity which benefits a limited clientele, at least 51 percent of whom are low or moderate income persons. (The following kinds of activities may not qualify under paragraph (b) of this section: Activities, the benefits of which are available to all the residents of an area; activities involving the acquisition, construction or rehabilitation of property for housing; or activities where the benefit to low and moderate income persons to be considered is the creation or retention of jobs except as provided in paragraph (b)(4) of this section.) To qualify under paragraph (b) of this section, the activity must meet one of the following tests:

(i) Benefit a clientele who are generally presumed to be principally low and moderate income persons. Activities that exclusively serve a group of persons in any one of the following categories may be presumed to benefit persons, 51 percent of whom are low- and moderate-income: abused children, battered spouses, elderly persons, adults meeting the Bureau of the Census' current Population Reports definition of ''severely disabled'', homeless persons, illiterate adults, persons living with AIDS, and migrant workers; or

(ii) Require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the low and moderate income limit; or

(iii) Have income eligibility requirements which limit the activity exclusively to low and moderate income persons; or

(iv) Be of such nature and be in such location that it may be concluded that the activity's clientele will primarily be low and moderate income persons.

(2) An activity that serves to remove material or architectural barriers to the mobility or accessibility of elderly persons or adults meeting the Bureau of the Census' Current Population Reports definition of ''severely disabled'' will be presumed to qualify under this criterion if it is restricted, to the extent practicable, to the removal of such barriers by assisting:

(i) The reconstruction of a public facility or improvement, or portion thereof, that does not qualify under § 1003.208(a); or

(ii) The rehabilitation of a privately-owned nonresidential building or improvement that does not qualify under § 1003.208 (a) or (d); or

(iii) The rehabilitation of the common areas of a residential structure that contains more than one dwelling unit.

(3) A microenterprise assistance activity carried out in accordance with the provisions of § 1003.201(l) with respect to those owners of microenterprises and persons developing microenterprises assisted under the activity during the grant period who are low and moderate income persons. For purposes of this paragraph, persons determined to be low and moderate income may be presumed to continue to qualify for up to a three year period.

(4) An activity designed to provide job training and placement and/or other employment support services, including but not limited to, peer support programs, counseling, child care, transportation, and other similar services, in which the percentage of low and moderate income persons assisted is less than 51 percent may qualify under this paragraph in the following limited circumstance:

(i) In such cases where such training or provision of supportive services assists business(es), the only use of ICDBG assistance for the project is to provide the job training and/or supportive services; and

(ii) The proportion of the total cost of the project borne by ICDBG funds is no greater than the proportion of the total number of persons assisted who are low or moderate income.

(c) *Housing activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low and moderate income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property, conversion of non-residential structures, and new housing construction. Funds expended for activities which qualify under the provisions of this paragraph shall be counted as benefiting low and moderate income persons but shall be limited to an amount determined by multiplying the total cost (including ICDBG and non-ICDBG costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low and moderate income persons. If the structure assisted contains two dwelling units, at least one must be occupied by low and moderate income households, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The grantee shall adopt and make public its standards for determining ''affordable rents'' for this purpose. The following shall also qualify under this criterion:

(1) When less than 51 percent of the units in a structure will be occupied by low and moderate income households, ICDBG assistance may be provided in the following limited circumstances:

(i) The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project;

(ii) Not less than 20 percent of the units will be occupied by low and moderate income households at affordable rents; and

(iii) The proportion of the total cost of developing the project to be borne by ICDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households.

(2) When ICDBG funds are used for housing services eligible under §1003.201(j), such funds shall be considered to benefit low-and moderate-income persons if the housing for which the services are provided is to be occupied by low-and moderate-income households.

(d) *Job creation or retention activities.* An activity designed to create or retain permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involve the employment of low and moderate persons. For purposes of determining whether a job is held by or made available to a low or moderate income person, the person may be presumed to be a low or moderate income person if: he/she resides within a census tract (or block numbering area) where not less than 70 percent of the residents have incomes at or below 80 percent of the area median; or, if he/she resides in a census tract (or block numbering area) which meets the Federal Empowerment Zone or Enterprise Community eligibility criteria; or, if the assisted business is located in and the job under consideration is to be located in such a tract or area. As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph. However, in certain cases such as where ICDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses which locate on the property, provided such businesses are not otherwise assisted by ICDBG funds. Where ICDBG funds are used to pay for the staff and overhead costs of a CBDO under the provisions of §1003.204 making loans to businesses from non-ICDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one year period. For an activity that creates jobs, the grantee must document that at least 51 percent of the jobs will be held by, or will be available to, low and moderate income persons. For an activity that retains jobs, the grantee must document that the jobs would actually be lost without the ICDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the ICDBG assistance is provided: The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by, or made available to, a low or moderate income person upon turnover. Jobs will be considered to be available to low and moderate income persons for these purposes only if:

(1) Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and

(2) The grantee and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

(e) *Additional criteria.* (1) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses the primary objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term, temporary use.

(2) Where the assisted activity is relocation assistance that the grantee is required to provide, such relocation assistance shall be considered to address the primary objective as addressed by the displacing activity.

(3) In any case where the activity undertaken for the purpose of creating or retaining jobs is a public improvement and the area served is primarily residential, the activity must meet the requirements of paragraph (a) of this section as well as those of paragraph (d) of this section in order to qualify as benefiting low and moderate income persons.

(4) Expenditures for activities meeting the criteria for benefiting low and moderate income persons shall be used in determining the extent to which the grantee's overall program benefits such persons. In determining the percentage of funds expended for such activities:

(i) Costs of administration and planning, eligible under § 1003.205 and § 1003.206 respectively, will be assumed to benefit low and moderate income persons in the same proportion as the remainder of the ICDBG funds and, accordingly, shall be excluded from the calculation.

(ii) Funds expended for the acquisition, new construction or rehabilitation of property for housing those qualified under § 1003.208(c) shall be counted for this purpose, but shall be limited to an amount determined by multiplying the total cost (including ICDBG and non-ICDBG costs) of the acquisition, construction, or rehabilitation by the percent of units in such housing occupied by low and moderate income persons.

(iii) Funds expended for any other activity which qualifies under § 1003.208 shall be counted for this purpose in their entirety.

Subpart D—Single Purpose Grant Application and Selection Process

§ 1003.300 Application requirements.

(a) *Application information.* A Notice of Funding Availability (NOFA) shall be published in the FEDERAL REGISTER not less than 30 days before the deadline for application submission. The NOFA will provide information relating to the date and time for application submission, the form and content requirements of the application, specific information regarding the rating and ranking criteria to be used, and any other information pertinent to the application process.

(b) *Costs incurred by applicant.* Costs incurred by an applicant prior to the submission of the single purpose grant application to HUD will not be recognized by HUD as eligible ICDBG expenses.

(c) HUD will not normally reimburse or recognize costs incurred before HUD approval of the application for funding. However, under unusual circumstances, the Area ONAP may consider and approve written requests to recognize and reimburse costs incurred after submission of the application where failure to do so would impose undue hardship on the applicant. Such written authorization will be made only before the costs are incurred and where the requirements for reimbursement have been met in accordance with 24 CFR 58.22 and with the understanding that HUD has no obligation whatsoever to approve the application or to reimburse the applicant should the application be disapproved.

(Approved by the Office of Management and Budget under control number 2577–0191)

§ 1003.301 Selection process.

(a) *Threshold requirement.* An applicant that has an outstanding ICDBG obligation to HUD that is in arrears, or one that has not agreed to a repayment schedule, will be disqualified from the competition.

(b) *Application rating.* NOFAs will define and establish weights for the selection criteria, will specify the maximum points available, and will describe how point awards will be made.

[66 FR 4581, Jan. 17, 2001; 66 FR 8176, Jan. 30, 2001]

§ 1003.302 Project specific threshold requirements.

(a) *Housing rehabilitation projects.* All applicants for housing rehabilitation projects shall adopt rehabilitation standards and rehabilitation policies before submitting an application. The applicant shall assure that it will use project funds to rehabilitate units only when the homeowner's payments are current or the homeowner is current in a repayment agreement that is subject to approval by the Area ONAP. The Area ONAP administrator may grant exceptions to this requirement on a case-by-case basis.

(b) *New housing construction projects.* New housing construction can only be implemented through a nonprofit organization that is eligible under § 1003.204 or is otherwise eligible under § 1003.207(b)(3). All applicants for new housing construction projects shall adopt, by current tribal resolution, construction standards before submitting an application. All applications which include new housing construction projects must document that:

(1) No other housing is available in the immediate reservation area that is suitable for the household(s) to be assisted; and

(2) No other sources can meet the needs of the household(s) to be assisted; and

(3) Rehabilitation of the unit occupied by the household(s) to be assisted is not economically feasible; or

(4) The household(s) to be housed currently is in an overcrowded housing unit (sharing with another household); or

(5) The household(s) to be assisted has no current residence.

(c) *Economic development projects.* All applicants for economic development projects must provide an analysis which shows public benefit commensurate with the ICDBG assistance requested will result from the assisted project. This analysis should also establish that to the extent practicable: reasonable financial support will be committed from non-Federal sources prior to disbursement of Federal funds; any grant amount provided will not substantially reduce the amount of non-Federal financial support for the activity; not more than a reasonable rate of return on investment is provided to the owner; and, that grant funds used for the project will be disbursed on a pro rata basis with amounts from other sources. In addition, it must be established that the project is financially feasible and that it has a reasonable chance of success.

§ 1003.303 Project rating.

Each project included in an application that meets the threshold requirements shall be competitively rated within each Area ONAP's jurisdiction under the five following rating factors. Additional details regarding the rating factors will be provided in the periodic NOFAs.

(a) *Capacity*. This factor will address the applicant's organizational resources necessary to successfully implement the proposed activities in a timely manner.

(b) *Need/Extent of the problem*. This factor will address the extent to which there is a need for the proposed project to address a documented problem among the intended beneficiaries.

(c) *Soundness of Approach*. This factor will address the quality and cost effectiveness of the proposed project, the commitment to sustain the proposed activities, and the degree to which the proposed project provides other benefits to community members.

(d) *Leveraging of resources.* This factor will address the level of tribal resources and resources from other entities that are used in conjunction with ICDBG funds to support the proposed project. HUD will evaluate the level of non-ICDBG resources based on the percentage of non-ICDBG resources provided relative to project costs.

(e) *Comprehensiveness and coordination*. This factor will address the extent to which the applicant's proposed activities are consistent with the strategic plans or policy goals of the community and further on-going priorities and activities of the community.

[66 FR 4581, Jan. 17, 2001, as amended at 66 FR 8176, Jan. 30, 2001]

§ 1003.304 Funding process.

(a) *Notification*. Area ONAPs will notify applicants of the approval or disapproval of their applications. Grant amounts offered may reflect adjustments made by the Area ONAPs in accordance with § 1003.100(b)(2).

(b) *Grant award.* (1) As soon as the Area ONAP determines that the applicant has complied with any pre-award requirements and absent information which would alter the threshold determinations under § 1003.302, the grant will be awarded. The regulations become part of the grant agreement.

(2) All grants shall be conditioned upon the completion of all environmental obligations and approval of release of funds by HUD in accordance with the requirements of part 58 of this title and, in particular, subpart J of part 58 of this title, except as otherwise provided in part 58 of this title.

(3) HUD may impose other grant conditions where additional actions or approvals are required before the use of funds.

(Approved by the Office of Management and Budget under OMB Control No. 2577–0191)

§ 1003.305 Program amendments.

(a) Grantees shall request prior HUD approval for program amendments which will significantly change the scope, location, objective, or class of beneficiaries of the approved activities,

as originally described in the application.

(b) Amendment requests of $100,000 or more shall include all application components required by the NOFA published for the last application cycle; those requests of less than $100,000 do not have to include the components which address the selection criteria.

(c) Approval of an amendment request is subject to the following:

(1) A rating equal to or greater than the lowest rating received by a funded project during the most recent funding competition must be attained by the amended project if the request is for $100,000 or more;

(2) Demonstration by the grantee of the capacity to promptly complete the modified or new activities;

(3) Demonstration by the grantee of compliance with the requirements of § 1003.604 for citizen participation; and

(4) The preparation of an amended or new environmental review in accordance with part 58 of this title, if there is a significant change in the scope or location of approved activities.

(d) Amendments which address imminent threats to health and safety shall be reviewed and approved in accordance with the requirements of subpart E of this part.

(e) If a program amendment fails to be approved and the original project is no longer feasible, the grant funds proposed for amendment shall be recaptured by HUD.

Subpart E—Imminent Threat Grants

§ 1003.400 Criteria for funding.

The following criteria apply to requests for assistance under this subpart:

(a) In response to requests for assistance, HUD may make funds available under this subpart to applicants to alleviate or remove imminent threats to health or safety. The urgency and immediacy of the threat shall be independently verified before the approval of an application. Funds may only be used to deal with imminent threats that are not of a recurring nature and which represent a unique and unusual circumstance, and which impact on an entire service area.

(b) Funds to alleviate imminent threats may be granted only if the applicant can demonstrate to the satisfaction of HUD that other tribal or Federal funding sources cannot be made available to alleviate the threat.

(c) HUD will establish grant ceilings for imminent threat applications.

§ 1003.401 Application process.

(a) *Letter to proceed.* The Area ONAP may issue the applicant a letter to proceed to incur costs to alleviate imminent threats to health and safety only if the assisted activities do not alter environmental conditions and are for temporary or permanent improvements limited to protection, repair, or restoration actions necessary only to control or arrest the effects of imminent threats or physical deterioration. Reimbursement of such costs is dependent upon HUD approval of the application.

(b) *Applications.* Applications shall include the information specified in the Notice of Funding Availability (NOFA).

(c) *Application approval.* Applications which meet the requirement of this section may be approved by the Area ONAP without competition in accordance with the applicable requirements of § 1003.304.

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§ 1003.402 Availability of funds.

Of the funds made available by the NOFA for the ICDBG program, an amount to be determined by the Assistant Secretary may be reserved by HUD for grants under this subpart. The amount of funds reserved for imminent threat funding during each funding cycle will be stated in the NOFA. If any of the reserved funds are not used to fund imminent threat grants during a fiscal year, they will be added to the allocation of ICDBG funds for the subsequent fiscal year and will be used as if they were a part of the new allocation.

Subpart F—Grant Administration

§ 1003.500 Responsibility for grant administration.

(a) One or more tribal departments or authorities, including existing tribal

public agencies, may be designated by the chief executive officer of the grantee to undertake activities assisted by this part. A public agency so designated shall be subject to the same requirements as are applicable to subrecipients.

(b) The grantee is responsible for ensuring that ICDBG funds are used in accordance with all program requirements. The use of designated public agencies, subrecipients, or contractors does not relieve the grantee of this responsibility. The grantee is also responsible for determining the adequacy of performance under subrecipient agreements and procurement contracts, and for taking appropriate action when performance problems arise, such as the actions described in § 1003.701.

§ 1003.501 Applicability of uniform administrative requirements and cost principles.

(a) Grantees and subrecipients which are governmental entities (including public agencies) shall comply with the requirements and standards of OMB Circular No. A–87, ''Principles for Determining Costs Applicable to Grants and Contracts with State, Local and Federally recognized Indian Tribal Governments'', OMB Circular A–128, ''Audits of State and Local Governments'' (implemented at 24 CFR part 44) and with the following sections of 24 CFR part 85 ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments''.

(1) Section 85.3, ''Definitions''.

(2) Section 85.6, ''Exceptions''.

(3) Section 85.12, ''Special grant or subgrant conditions for 'high-risk' grantees''.

(4) Section 85.20, ''Standards for financial management systems,'' except paragraph (a).

(5) Section 85.21, ''Payment''.

(6) Section 85.22, ''Allowable costs''.

(7) Section 85.25, ''Program income,'' except as modified by § 1003.503.

(8) Section 85.26, ''Non-federal audits''.

(9) Section 85.32, ''Equipment,'' except in all cases in which the equipment is sold, the proceeds shall be program income.

(10) Section 85.33, ''Supplies''.

(11) Section 85.34, ''Copyrights''.

(12) Section 85.35, ''Subawards to debarred and suspended parties''.

(13) Section 85.36, ''Procurement,'' except paragraphs (a) States, (i)(5) Compliance with the Davis Bacon Act (40 U.S.C. 276a to a–7) and (i)(6) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330). There may be circumstances under which the bonding requirements of § 85.36(h) are inconsistent with other responsibilities and obligations of the grantee. In such circumstances, acceptable methods to provide performance and payment assurance may include:

(i) Deposit with the grantee of a cash escrow of not less than 20 percent of the total contract price, subject to reduction during the warranty period, commensurate with potential risk; or

(ii) Letter of credit for 25 percent of the total contract price, unconditionally payable upon demand of the grantee, subject to reduction during the warranty period commensurate with potential risk.

(14) Section 85.37, ''Subgrants''.

(15) Section 85.40, ''Monitoring and reporting program performance,'' except paragraphs (b) through (d) and paragraph (f).

(16) Section 85.41, ''Financial reporting,'' except paragraphs (a), (b), and (e).

(17) Section 85.42, ''Retention and access requirements for records''. The retention period referenced in § 85.42(b) pertaining to individual ICDBG activities starts from the date of the submission of the final status and evaluation report as prescribed in § 1003.506(a) in which the specific activity is reported.

(18) Section 85.43, ''Enforcement''.

(19) Section 85.44, ''Termination for convenience''.

(20) Section 85.51 ''Later disallowances and adjustments''.

(21) Section 85.52, ''Collection of amounts due''.

(b) Subrecipients, except subrecipients that are governmental entities, shall comply with the requirements and standards of OMB Circular No. A–122, ''Cost Principles for Nonprofit Organizations,'' or OMB Circular No. A–21, ''Cost Principles for Educational Institutions,'' as applicable, and OMB

Circular A–133, ''Audits of Institutions of Higher Education and Other Nonprofit Institutions'' (implemented at 24 CFR part 45). Audits shall be conducted annually. Such subrecipients shall also comply with the following provisions of 24 CFR part 84 ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations'').

(1) Subpart A—''General''.

(2) Subpart B—''Pre-Award Requirements,'' except for §84.12, ''Forms for Applying for Federal Assistance''.

(3) Subpart C—''Post-Award Requirements,'' except for §84.22, ''Payment Requirements,'' grantees shall follow the standards of §§85.20(7) and 85.21 in making payments to subrecipients.

(4) Section 84.23, ''Cost Sharing and Matching''.

(5) Section 84.24, ''Program Income'', as modified by §1003.503.

(6) Section 84.25, ''Revision of Budget and Program Plans''.

(7) Section 84.32, ''Real Property.'' In lieu of §84.32, ICDBG subrecipients shall follow §1003.504 of the ICDBG regulations.

(8) Section 84.34(g) ''Equipment,'' except that in lieu of the disposition provisions of this paragraph:

(i) In all cases in which equipment is sold during the grant period as defined in 24 CFR 85.25, the proceeds shall be program income; and

(ii) Equipment not needed by the subrecipient for ICDBG activities shall be transferred to the grantee for the ICDBG program or shall be retained after compensating the grantee.

(9) Section 84.51, ''Monitoring and Reporting Program Performance.'' Only §84.51(a) applies to ICDBG subrecipients.

(10) Section 84.52, ''Financial Reporting''.

(11) Section 84.53(b), ''Retention and access requirements for records.'' The retention period referenced in §84.53(b) pertaining to individual ICDBG activities starts from the date of the submission of the final status and evaluation report as prescribed in §1003.506(a), in which the specific activity is reported.

(12) Section 84.61, ''Termination.'' In lieu of the provisions of this section, ICDBG subrecipients shall comply with §1003.502 (b)(7) of the ICDBG regulations.

(13) Subpart D—''After-the-Award Requirements,'' except for §84.71, ''Closeout Procedures''.

(c) Cost principles. (1) All items of cost listed in Attachment B of OMB Circulars A–21, A–87, or A–123, as applicable, which require prior Federal agency approval are allowable without the prior approval of HUD to the extent that they comply with the general policies and principles stated in Attachment A of such circulars and are otherwise eligible under subpart C of this part, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without specific approval of HUD or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties are unallowable costs to the ICDBG program.

(2) No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with ICDBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule.

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§1003.502 Agreements with subrecipients.

(a) Before disbursing any ICDBG funds to a subrecipient, the grantee shall sign a written agreement with the subrecipient. The agreement shall remain in effect during any period that the subrecipient has control over ICDBG funds, including program income.

(b) At a minimum, the written agreement with the subrecipient shall include provisions concerning the following items:

(1) *Statement of work.* The agreement shall include a description of the work to be performed, a schedule for completing the work, and a budget. These items shall be in sufficient detail to provide a sound basis for the grantee effectively to monitor performance under the agreement.

(2) *Records and reports.* The grantee shall specify in the agreement the particular records the subrecipient must maintain and the particular reports the subrecipient must submit in order to assist the grantee in meeting its recordkeeping and reporting requirements.

(3) *Program income.* The agreement shall include the program income requirements set forth in §85.25 as modified by §1003.503.

(4) *Uniform administrative requirements.* The agreement shall require the subrecipient to comply with applicable administrative requirements, as described in §1003.501.

(5) *Other program requirements.* The agreement shall require the subrecipient to carry out each activity in compliance with all Federal laws and regulations described in subpart G of this part, except that the subrecipient does not assume the grantee's environmental responsibilities described at §1003.605.

(6) *Conditions for religious organizations.* Where applicable, the conditions prescribed by HUD for the use of ICDBG funds by religious organizations shall be included in the agreement.

(7) *Suspension and termination.* The agreement shall specify that, in accordance with 24 CFR 85.43, suspension or termination may occur if the subrecipient materially fails to comply with any term of the award, and that the award may be terminated for convenience in accordance with 24 CFR 85.44.

(8) *Reversion of assets.* The agreement shall specify that upon its expiration the subrecipient shall transfer to the grantee any ICDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of ICDBG funds. It shall also include provisions designed to ensure that any real property under the subrecipient's control that was acquired or improved in whole or in part with ICDBG funds (including ICDBG funds provided to the subrecipient in the form of a loan) in excess of $25,000 is either:

(i) Used to meet the primary objective as stated in §1003.208 until five years after expiration of the agreement, or for such longer period of time as determined to be appropriate by the grantee; or

(ii) Not used in accordance with paragraph (b)(8)(i) of this section, in which event the subrecipient shall pay to the grantee an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-ICDBG funds for the acquisition of, or improvement to, the property. The payment is program income to the grantee if it is received during the grant period. (No payment is required after the period of time specified in paragraph (b)(8)(i) of this section.)

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§1003.503 Program income.

(a) Program income requirements for ICDBG grantees are set forth in 24 CFR 85.25, as modified by this section.

(b) *Program income* means gross income received by the grantee or a subrecipient directly generated from the use of ICDBG funds during the grant period, except as provided in paragraph (b)(4) of this section. When program income is generated by an activity that is only partially assisted with ICDBG funds, the income shall be prorated to reflect the percentage of ICDBG funds used.

(1) Program income includes, but is not limited to, the following:

(i) Proceeds from the disposition by sale or long-term lease of real property purchased or improved with ICDBG funds;

(ii) Proceeds from the disposition of equipment purchased with ICDBG funds;

(iii) Gross income from the use or rental of real or personal property acquired by the grantee or by a subrecipient with ICDBG funds, less costs incidental to generation of the income;

(iv) Gross income from the use or rental of real property, owned by the grantee or by a subrecipient, that was constructed or improved with ICDBG funds, less costs incidental to generation of the income;

(v) Payments of principal and interest on loans made using ICDBG funds, except as provided in paragraph (b)(3) of this section;

(vi) Proceeds from the sale of loans made with ICDBG funds except as provided in paragraph (b)(4) of this section;

(vii) Proceeds from sale of obligations secured by loans made with ICDBG funds;

(viii) Interest earned on funds held in a revolving fund account;

(ix) Interest earned on program income pending its disposition; and

(x) Funds collected through special assessments made against properties owned and occupied by households not of low and moderate income, where the assessments are used to recover all or part of the ICDBG portion of a public improvement.

(2) Program income does not include income earned on grant advances from the U.S. Treasury. The following items of income earned on grant advances must be remitted to HUD for transmittal to the U.S. Treasury and will not be reallocated:

(i) Interest earned from the investment of the initial proceeds of a grant advance by the U.S. Treasury;

(ii) Income (e.g., interest) earned on loans or other forms of assistance provided with ICDBG funds that are used for activities determined by HUD either to be ineligible or that fail substantially to meet any other requirement of this part.

(3) The calculation of the amount of program income for the grantee's ICDBG program as a whole (i.e., comprising activities carried out by a grantee and its subrecipients) shall exclude payments made by subrecipients of principal and/or interest on loans received from grantees where such payments are made from program income received by the subrecipient. (By making such payments, the subrecipient shall be deemed to have transferred program income to the grantee.) The amount of program income derived from this calculation shall be used for reporting purposes and in determining limitations on planning and administration and public services activities to be paid for with ICDBG funds.

(4) Program income does not include any income received in a single year by the grantee and all its subrecipients if the total amount of such income does not exceed $25,000.

(5) Examples of other receipts that are not considered program income are proceeds from fundraising activities carried out by subrecipients receiving ICDBG assistance; funds collected through special assessments used to recover the non-ICDBG portion of a public improvement; and proceeds from the disposition of real property acquired or improved with ICDBG funds when the disposition occurs after the applicable time period specified in § 1003.502(b)(8) for subrecipient-controlled property, or in § 1003.504 for grantee-controlled property.

(6) For purposes of determining the applicability of the program income requirements included in this part and in 24 CFR 85.25, the grant period is the time between the effective date of the grant agreement and the close-out of the grant pursuant to the requirements of § 1003.508.

(7) As provided for in 24 CFR 85.25(g)(2), program income received will be added to the funds committed to the grant agreement and shall be used for purposes and under the conditions of the grant agreement.

(8) Recording program income. The receipt and expenditure of program income as defined in § 1003.503(b) shall be recorded as part of the financial transactions of the grant program.

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§ 1003.504 Use of real property.

The standards described in this section apply to real property within the grantee's control which was acquired or improved in whole or in part using ICDBG funds in excess of $25,000. These standards shall apply from the date ICDBG funds are first spent for the property until five years after the closeout of the grant from which the assistance to the property was provided.

(a) A grantee may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the grantee provides affected citizens with reasonable notice of, and opportunity to comment on, any proposed change, and either:

(1) The new use of such property qualifies as meeting the primary objective set forth in § 1003.208 and is not a building for the general conduct of government; or

(2) The requirements in paragraph (b) of this section are met.

(b) If the grantee determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the grantee's ICDBG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-ICDBG funds for acquisition of, and improvements to, the property.

(c) If the change of use occurs after program closeout, the proceeds from the disposition of the real property shall be used for activities which meet the eligibility requirements set forth in subpart C of this part and the primary objective set forth in § 1003.208.

(d) Following the reimbursement of the ICDBG program in accordance with paragraph (b) of this section, the property no longer will be subject to any ICDBG requirements.

§ 1003.505 Records to be maintained.

Each grantee shall establish and maintain sufficient records to enable the Secretary to determine whether the grantee has met the requirements of this part.

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§ 1003.506 Reports.

(a) *Status and evaluation report.* Grantees shall submit a status and evaluation report on previously funded open grants 45 days after the end of the Federal fiscal year and at the time of grant close-out. The report shall be in a narrative form addressing these areas.

(1) *Progress.* The progress made in completing approved activities should be described. This description should include a listing of work remaining together with a revised implementation schedule, if necessary.

(2) *Expenditure of funds.* A breakdown of funds spent on each major project activity or category should be provided.

(3) *Grantee assessment.* If the project has been completed, an evaluation of the effectiveness of the project in meeting the community development needs of the grantee should be provided.

(b) Minority business enterprise reports. Grantees shall submit to HUD, by April 10, a report on contract and subcontract activity during the first half of the fiscal year and by October 10 a report on such activity during the second half of the year.

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§ 1003.507 Public access to program records.

Notwithstanding the provisions of 24 CFR 85.42(f), grantees shall provide citizens with reasonable access to records regarding the past use of ICDBG funds, consistent with applicable State and tribal laws regarding privacy and obligations of confidentiality.

§ 1003.508 Grant closeout procedures.

(a) *Criteria for closeout.* A grant will be closed out when the Area ONAP determines, in consultation with the grantee, that the following criteria have been met:

(1) All costs to be paid with ICDBG funds have been incurred, with the exception of closeout costs (e.g., audit costs) and costs resulting from contingent liabilities described in the closeout agreement pursuant to paragraph (c) of this section. Contingent liabilities include, but are not limited to, third-party claims against the grantee, as well as related administrative costs.

(2) With respect to activities which are financed by means of escrow accounts, loan guarantees, or similar mechanisms, the work to be assisted with ICDBG funds has actually been completed.

(3) Other responsibilities of the grantee under the grant agreement and applicable laws and regulations appear to have been carried out satisfactorily or there is no further Federal interest in keeping the grant agreement open

for the purpose of securing performance.

(b) *Closeout actions.* (1) Within 90 days of the date it is determined that the criteria for closeout have been met, the grantee shall submit to the Area ONAP a copy of the final status and evaluation report described in § 1003.506(a) and a completed Financial Status Report (SF–269). If acceptable reports are not submitted, an audit of the grantee's program activities may be conducted by HUD.

(2) Based on the information provided in the status report and other relevant information, the grantee, in consultation with the Area ONAP, will prepare a closeout agreement in accordance with paragraph (c) of this section.

(3) The Area ONAP will cancel any unused portion of the awarded grant, as shown in the signed grant closeout agreement. Any unused grant funds disbursed from the U.S. Treasury which are in the possession of the grantee shall be refunded to HUD.

(4) Any costs paid with ICDBG funds which were not audited previously shall be subject to coverage in the grantee's next single audit performed in accordance with 24 CFR part 44. The grantee may be required to repay HUD any disallowed costs based on the results of the audit, or on additional HUD reviews provided for in the closeout agreement.

(c) *Closeout agreement.* Any obligations remaining as of the date of the closeout shall be covered by the terms of a closeout agreement. The agreement shall be prepared by the grantee in consultation with the Area ONAP. The agreement shall identify the grant being closed out, and include provisions with respect to the following:

(1) Identification of any closeout costs or contingent liabilities subject to payment with ICDBG funds after the closeout agreement is signed;

(2) Identification of any unused grant funds to be canceled by HUD;

(3) Identification of any program income on deposit in financial institutions at the time the closeout agreement is signed;

(4) Description of the grantee's responsibility after closeout for:

(i) Compliance with all program requirements, certifications and assurances in using program income on deposit at the time the closeout agreement is signed and in using any other remaining ICDBG funds available for closeout costs and contingent liabilities;

(ii) Use of real property assisted with ICDBG funds in accordance with the principles described in § 1003.504; and

(iii) Ensuring that flood insurance coverage for affected property owners is maintained for the mandatory period;

(5) Other provisions appropriate to any special circumstances of the grant closeout, in modification of or in addition to the obligations in paragraphs (c) (1) through (4) of this section. The agreement shall authorize monitoring by HUD, and shall provide that findings of noncompliance may be taken into account by HUD as unsatisfactory performance of the grantee in the consideration of any future grant award under this part.

(d) *Termination of grant for convenience.* Grant assistance provided under this part may be terminated for convenience in whole or in part before the completion of the assisted activities, in accordance with the provisions of 24 CFR 85.44. The grantee shall not incur new obligations for the terminated portions after the effective date, and shall cancel as many outstanding obligations as possible. HUD shall allow full credit to the grantee for those portions of obligations which could not be canceled and which had been properly incurred by the grantee in carrying out the activities before the termination. The closeout policies contained in this section shall apply in such cases, except where the approved grant is terminated in its entirety. Responsibility for the environmental review to be performed under 24 CFR part 50 or 24 CFR part 58, as applicable, shall be determined as part of the closeout process.

(e) *Termination for cause.* In cases in which HUD terminates the grantee's grant under the authority of subpart H of this part, or under the terms of the grant agreement, the closeout policies contained in this section shall apply, except where the approved grant is canceled in its entirety. The provisions in 24 CFR 85.43(c) on the effects of termination shall also apply. HUD shall

determine whether an environmental review is required, and if so, HUD shall perform it in accordance with 24 CFR part 50.

§ 1003.509 Force account construction.

(a) The use of tribal work forces for construction or renovation activities performed as part of the activities funded under this part shall be approved by the Area ONAP before the start of project implementation. In reviewing requests for an approval of force account construction or renovation, the area ONAP may require that the grantee provide the following:

(1) Documentation to indicate that it has carried out or can carry out successfully a project of the size and scope of the proposal;

(2) Documentation to indicate that it has obtained or can obtain adequate supervision for the workers to be used;

(3) Information showing that the workers to be used are, or will be, listed on the tribal payroll and are employed directly by a unit, department or other governmental instrumentality of the tribe or village.

(b) Any and all excess funds derived from the force account construction or renovation activities shall accrue to the grantee and shall be reprogrammed for other activities eligible under this part in accordance with § 1003.305 or returned to HUD promptly.

(c) Insurance coverage for force account workers and activities shall, where applicable, include worker's compensation, public liability, property damage, builder's risk, and vehicular liability.

(d) The grantee shall specify and apply reasonable labor performance, construction, or renovation standards to work performed under the force account.

(e) The contracting and procurement standards set forth in 24 CFR 85.36 apply to material, equipment, and supply procurement from outside vendors under this section.

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§ 1003.510 Indian preference requirements.

(a) Applicability. HUD has determined that grants under this part are subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b). Section 7(b) provides that any contract, subcontract, grant or subgrant pursuant to an act authorizing grants to Indian organizations or for the benefit of Indians shall require that, to the greatest extent feasible:

(1) Preference and opportunities for training and employment shall be given to Indians; and

(2) Preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452).

(b) *Definitions.* (1) The Indian Self-Determination and Education Assistance Act [25 U.S.C. 450b] defines ''Indian'' to mean a person who is a member of an Indian tribe and defines ''Indian tribe'' to mean any Indian tribe, band, nation, or other organized group or community including any Alaska native village or regional or village corporation as defined or established pursuant to the Alaska Native Claims Settlement Act, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(2) In section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452) *economic enterprise* is defined as any Indian—owned commercial, industrial, or business activity established or organized for the purpose of profit, except that Indian ownership must constitute not less than 51 percent of the enterprise. This act defines *Indian organization* to mean the governing body of any Indian tribe or entity established or recognized by such governing body.

(c) *Preference in administration of grant.* To the greatest extent feasible, preference and opportunities for training and employment in connection with the administration of grants awarded under this part shall be given to Indians.

(d) *Preference in contracting.* To the greatest extent feasible, grantees shall give preference in the award of contracts for projects funded under this part to Indian organizations and Indian-owned economic enterprises.

(1) Each grantee shall:

(i) Advertise for bids or proposals limited to qualified Indian organizations and Indian-owned enterprises; or

(ii) Use a two-stage preference procedure, as follows:

(A) *Stage 1.* Invite or otherwise solicit Indian-owned economic enterprises to submit a statement of intent to respond to a bid announcement or request for proposals limited to Indian-owned firms.

(B) *Stage 2.* If responses are received from more than one Indian enterprise found to be qualified, advertise for bids or proposals limited to Indian organizations and Indian-owned economic enterprises; or

(iii) Develop, subject to Area ONAP one-time approval, the grantee's own method of providing preference.

(2) If the grantee selects a method of providing preference that results in fewer than two responsible qualified organizations or enterprises submitting a statement of intent, a bid or a proposal to perform the contract at a reasonable cost, then the grantee shall:

(i) Re-advertise the contract, using any of the methods described in paragraph (d)(1) of this section; or

(ii) Re-advertise the contract without limiting the advertisement for bids or proposals to Indian organizations and Indian-owned economic enterprises; or

(iii) If one approvable bid or proposal is received, request Area ONAP review and approval of the proposed contract and related procurement documents, in accordance with 24 CFR 85.36, in order to award the contract to the single bidder or offeror.

(3) Procurements that are within the dollar limitations established for small purchases under 24 CFR 85.36 need not follow the formal bid or proposal procedures of paragraph (d) of this section, since these procurements are governed by the small purchase procedures of 24 CFR 85.36. However, a grantee's small purchase procurement shall, to the greatest extent feasible, provide Indian preference in the award of contracts.

(4) All preferences shall be publicly announced in the advertisement and bidding or proposal solicitation documents and the bidding and proposal documents.

(5) A grantee, at its discretion, may require information of prospective contractors seeking to qualify as Indian organizations or Indian-owned economic enterprises. Grantees may require prospective contractors to include the following information prior to submitting a bid or proposal, or at the time of submission:

(i) Evidence showing fully the extent of Indian ownership and interest;

(ii) Evidence of structure, management and financing affecting the Indian character of the enterprise, including major subcontracts and purchase agreements; materials or equipment supply arrangements; and management salary or profit-sharing arrangements; and evidence showing the effect of these on the extent of Indian ownership and interest; and

(iii) Evidence sufficient to demonstrate to the satisfaction of the grantee that the prospective contractor has the technical, administrative, and financial capability to perform contract work of the size and type involved.

(6) The grantee shall incorporate the following clause (referred to as the Section 7(b) clause) in each contract awarded in connection with a project funded under this part:

(i) The work to be performed under this contract is on a project subject to Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b) (Indian Act). Section 7(b) requires that to the greatest extent feasible:

(A) Preferences and opportunities for training and employment shall be given to Indians; and

(B) Preferences in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned economic enterprises.

(ii) The parties to this contract shall comply with the provisions of Section 7(b) of the Indian Act.

(iii) In connection with this contract, the contractor shall, to the greatest extent feasible, give preference in the award of any subcontracts to Indian organizations and Indian-owned economic enterprises, and preferences and opportunities for training and employment to Indians.

(iv) The contractor shall include this Section 7(b) clause in every subcontract in connection with the

project, and shall, at the direction of the grantee, take appropriate action pursuant to the subcontract upon a finding by the grantee or HUD that the subcontractor has violated the Section 7(b) clause of the Indian Act.

(e) *Complaint procedures.* The following complaint procedures are applicable to complaints arising out of any of the methods of providing for Indian preference contained in this part, including alternate methods enacted and approved in a manner described in this section:

(1) Each complaint shall be in writing, signed, and filed with the grantee.

(2) A complaint must be filed with the grantee no later than 20 calendar days from the date of the action (or omission) upon which the complaint is based.

(3) Upon receipt of a complaint, the grantee shall promptly stamp the date and time of receipt upon the complaint, and immediately acknowledge its receipt.

(4) Within 20 calendar days of receipt of a complaint, the grantee shall either meet, or communicate by mail or telephone, with the complainant in an effort to resolve the matter. The grantee shall make a determination on a complaint and notify the complainant, in writing, within 30 calendar days of the submittal of the complaint to the grantee. The decision of the grantee shall constitute final administrative action on the complaint.

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§ 1003.511 Use of escrow accounts for rehabilitation of privately owned residential property.

(a) *Limitations.* A grantee may withdraw funds from its line of credit for immediate deposit into an escrow account for use in funding loans and grants for the rehabilitation of privately owned residential property under § 1003.202(a)(1). The following additional limitations apply to the use of escrow accounts for residential rehabilitation loans and grants closed after September 7, 1990:

(1) The use of escrow accounts under this section is limited to loans and grants for the rehabilitation of primarily residential properties containing no more than four dwelling units (and accessory neighborhood-scale non-residential space within the same structure, if any, e.g., a store front below a dwelling unit).

(2) An escrow account shall not be used unless the contract between the property owner and the contractor selected to do the rehabilitation work specifically provides that payment to the contractor shall be made through an escrow account maintained by the grantee, by a subrecipient as defined in § 1003.4, by a public agency designated under § 1003.500(a), or by an agent under a procurement contact governed by the requirements of 24 CFR 85.36. No deposit to the escrow account shall be made until after the contract has been executed between the property owner and the rehabilitation contractor.

(3) All funds withdrawn under this section shall be deposited into one interest earning account with a financial institution. Separate bank accounts shall not be established for individual loans and grants.

(4) The amount of funds deposited into an escrow account shall be limited to the amount expected to be disbursed within 10 working days from the date of deposit. If the escrow account, for whatever reason, at any time contains funds exceeding 10 days cash needs, the grantee immediately shall transfer the excess funds to its program account. In the program account, the excess funds shall be treated as funds erroneously drawn in accordance with the requirements of U.S. Treasury Financial Manual, paragraph 6–2075.30.

(5) Funds deposited into an escrow account shall be used only to pay the actual costs of rehabilitation incurred by the owner under the contract with a private contractor. Other eligible costs related to the rehabilitation loan or grant, e.g., the grantee's administrative costs under § 1003.206 or rehabilitation services costs under § 1003.202(b)(9), are not permissible uses of escrowed funds. Such other eligible rehabilitation costs shall be paid under normal ICDBG payment procedures (e.g., from withdrawals of grant funds under the grantee's line of credit with the Treasury).

(b) *Interest.* Interest earned on escrow accounts established in accordance

with this section, less any service charges for the account, shall be remitted to HUD at least quarterly but not more frequently than monthly. Interest earned on escrow accounts is not required to be remitted to HUD to the extent the interest is attributable to the investment of program income.

(c) *Remedies for noncompliance.* If HUD determines that a grantee has failed to use an escrow account in accordance with this section, HUD may, in addition to imposing any other sanctions provided for under this part, require the grantee to discontinue the use of escrow accounts, in whole or in part.

Subpart G—Other Program Requirements

§ 1003.600 Faith-based activities.

(a) Religious organizations are eligible, on the same basis as any other eligible organization, to participate in the ICDBG program. Neither the federal government nor a tribal government nor any other entity that administers any program or activity under this part shall discriminate against an organization on the basis of the organization's religious character or affiliation.

(b) Organizations that receive direct HUD funds under the ICDBG program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under this part. If an organization conducts such inherently religious activities, the inherently religious activities must be offered separately, in time or location, from the programs, activities or services supported by direct HUD funds under this part, and participation must be voluntary for the beneficiaries of the programs, activities, or services provided.

(c) A religious organization that participates in the ICDBG program will retain its independence from federal, state, local, and tribal governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not engage in any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded under a program or activity pursuant to this part. Among other things, religious organizations may use space in their facilities to provide ICDBG-funded services, without removing religious art, icons, scriptures, or other religious symbols. In addition, a religious organization participating in the ICDBG program retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

(d) A religious organization's exemption from the federal prohibition on employment discrimination on the basis of religion, set forth in section 702(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000e–1), is not forfeited when the organization participates in a HUD program. Some HUD programs, however, contain independent statutory provisions that impose certain nondiscrimination requirements on all grantees. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

(e) An organization that receives direct funds under the ICDBG program shall not, in providing program assistance, discriminate against a program beneficiary or prospective program beneficiary on the basis of religion or religious belief.

(f) ICDBG funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. ICDBG funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under this part. Where a structure is used for both eligible and inherently religious activities, ICDBG funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to ICDBG funds in this part. Sanctuaries, chapels, or other rooms that an ICDBG-funded religious congregation

uses as its principal place of worship, however, are ineligible for ICDBG-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to governmentwide regulations governing real property disposition (*see* 24 CFR parts 84 and 85).

(g) If a tribal government voluntarily contributes its own funds to supplement federally funded activities, the tribal government has the option to segregate the federal funds or commingle them. However, if the funds are commingled, this section applies to all of the commingled funds. Further, if a state or local government is required to contribute matching funds to supplement a federally funded activity, the matching funds are considered commingled with the federal assistance and therefore subject to the requirements of this section. Some HUD programs requirements govern any project or activity assisted under those programs. Accordingly, grantees should consult with the appropriate HUD program office to determine the scope of applicable requirements.

[69 FR 62169, Oct. 22, 2004]

§ 1003.601 Nondiscrimination.

(a) Under the authority of section 107(e)(2) of the Act, the Secretary waives the requirement that grantees comply with section 109 of the Act except with respect to the prohibition of discrimination based on age, sex, religion, or against an otherwise qualified disabled individual.

(b) A grantee shall comply with the provisions of title II of Pub. L. 90–284 (24 U.S.C. 1301—the Indian Civil Rights Act) in the administration of a program or activity funded in whole or in part with funds made available under this part. For purposes of this section, ''program or activity'' is defined as any function conducted by an identifiable administrative unit of the grantee; and ''funded in whole or in part with funds made available under this part'' means that ICDBG funds in any amount have been transferred by the grantee to an identifiable administrative unit and disbursed in a program or activity.

§ 1003.602 Relocation and real property acquisition.

(a) *Minimize displacement.* Consistent with the other goals and objectives of this part, grantees shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing and any increase in monthly housing costs (e.g., rent/utility costs).

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA)(42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(d) *Optional relocation assistance.* Under section 105(a)(11) of the Act, the grantee may provide relocation payments and other relocation assistance to persons displaced by a project that is not subject to paragraph (c) of this section. The grantee may also provide relocation assistance to persons receiving assistance under paragraph (c) of

this section at levels in excess of those required. For assistance that is not required by State or tribal law, the grantee shall adopt a written policy available to the public that describes the relocation assistance that it has elected to furnish and provides for equal relocation assistance within each class of displaced persons.

(e) *Real Property acquisition requirements.* The acquisition of real property for an assisted activity is subject to 49 CFR part 24, subpart B. Whenever the grantee does not have the authority to acquire the real property through condemnation, it shall:

(1) Before discussing the purchase price, inform the owner:

(i) Of the amount it believes to be the fair market value of the property. Such amount shall be based upon one or more appraisals prepared by a qualified appraiser. However, this provision does not prevent the grantee from accepting a donation or purchasing the real property at less than its fair market value.

(ii) That it will be unable to acquire the property if negotiations fail to result in an amicable agreement.

(2) Request HUD approval of the proposed acquisition price before executing a firm commitment to purchase the property. The grantee shall include with its request a copy of the appraisal(s) and, when applicable, a justification for any proposed acquisition payment that exceeds the fair market value of the property. HUD will promptly review the proposal and inform the grantee of its approval or disapproval.

(f) *Appeals.* A person who disagrees with the grantee's determination concerning whether the person qualifies as a ''displaced person,'' or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the grantee. A person who is dissatisfied with the grantee's determination on his or her appeal may submit a written request for review of that determination to the HUD Area ONAP.

(g) *Responsibility of grantee.* (1) The grantee shall certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, *i.e.,* provide assurance of compliance as required by 49 CFR part 24. The grantee shall ensure such compliance notwithstanding any third party's contractual obligation to the grantee to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the grantee from any other source.

(3) The grantee shall maintain records in sufficient detail to demonstrate compliance with this section.

(h) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or acquisition for a project assisted under this part. The term ''displaced person'' includes, but is not limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the submission to HUD of an application for financial assistance that is later approved.

(ii) Any person, including a person who moves before the date described in paragraph (h)(1)(i) of this section, that either HUD or the grantee determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project.

(iii) A tenant-occupant of a dwelling who moves from the building/complex permanently, after the execution of the agreement between the grantee and HUD, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent and estimated average monthly utility costs before the agreement; or

(B) 30 percent of gross household income.

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable.

(v) A tenant-occupant of a dwelling who moves from the building/complex after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (h)(1) of this section, a person does not qualify as a ''displaced person'' (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person moved into the property after the submission of the application for financial assistance to HUD, but, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a ''displaced person'' or for any assistance provided under this section as a result of the project;

(ii) The person is ineligible under 49 CFR 24.2(g)(2).

(iii) The grantee determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination.

(3) A grantee may at any time ask HUD to determine whether a specific displacement is or would be covered under this section.

(i) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation or demolition of the real property, the term ''initiation of negotiations'' means the execution of the agreement covering the rehabilitation or demolition.

(Approved by the Office of Management and Budget under control number 2577–0191)

§ 1003.603 Labor standards.

In accordance with the authority under section 107(e)(2) of the Act, the Secretary waives the provisions of section 110 of the Act (Labor Standards) with respect to this part, including the requirement that laborers and mechanics employed by the contractor or subcontractor in the performance of construction work financed in whole or in part with assistance received under this part be paid wages at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276 a to a–7).

§ 1003.604 Citizen participation.

(a) In order to permit residents of Indian tribes and Alaska native villages to examine and appraise the applicant's application for funds under this part, the applicant shall follow traditional means of resident involvement which, at the least, include the following:

(1) Furnishing residents with information concerning the amounts of funds available for proposed community development and housing activities and the range of activities that may be undertaken.

(2) Holding one or more meetings to obtain the views of residents on community development and housing needs. Meetings shall be scheduled in ways and at times that will allow participation by residents.

(3) Developing and publishing or posting a community development statement in such a manner as to afford affected residents an opportunity to examine its contents and to submit comments.

(4) Affording residents an opportunity to review and comment on the

applicant's performance under any active community development block grant.

(b) Prior to submission of the application to HUD, the applicant shall certify by an official Tribal resolution that it has met the requirements of paragraph (a) of this section; and

(1) Considered any comments and views expressed by residents and, if it deems it appropriate, modified the application accordingly; and

(2) Made the modified application available to residents.

(c) No part of the requirement under paragraph (a) of this section shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of the grant. Accordingly, the citizen participation requirements of this section do not include concurrence by any person or group in making final determinations on the contents of the application.

(Approved by the Office of Management and Budget under control number 2577–0191)

§ 1003.605 Environment.

(a) In order to assure that the policies of the National Environmental Policy Act of 1969 and other provisions of Federal law which further the purposes of that act (as specified in 24 CFR 58.5) are most effectively implemented in connection with the expenditure of ICDBG funds, the grantee shall comply with the Environment Review Procedures for Entities Assuming HUD Environmental Responsibilities (24 CFR part 58). Upon completion of an environmental review, the grantee shall submit a certification and request for release of funds for particular projects in accordance with 24 CFR part 58. The grantee shall also be responsible for compliance with flood insurance, coastal barrier resource and airport clear zone requirements under 24 CFR 58.6.

(b) In accordance with 24 CFR 58.34(a)(8), grants for imminent threats to health or safety approved under the provisions of subpart E of this part are exempt from some or all of the environmental review requirements of 24 CFR part 58, to the extent provided in that section.

§ 1003.606 Conflict of interest.

(a) *Applicability.* (1) In the procurement of supplies, equipment, construction, and services by grantees and subgrantees, the conflict of interest provisions in 24 CFR 85.36 and 24 CFR 84.42 shall apply.

(2) In all cases not governed by 24 CFR 85.36 and 24 CFR 84.42, the provisions of this section shall apply. Such cases include the provision of assistance by the grantee or by its subrecipients to businesses, individuals, and other private entities under eligible activities that authorize such assistance (e.g., rehabilitation, preservation, and other improvements of private properties or facilities under § 1003.202; or grants, loans, and other assistance to businesses, individuals, and other private entities under § 1003.203 or § 1003.204.).

(b) *Conflicts prohibited.* Except for the use of ICDBG funds to pay salaries and other related administrative or personnel costs, the general rule is that no persons described in paragraph (c) of this section who exercise or have exercised any functions or responsibilities with respect to ICDBG activities assisted under this part or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from an ICDBG assisted activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(c) *Persons covered.* The conflict of interest provisions of paragraph (b) of this section apply to any person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee, or of any designated public agencies, or CBDOs under § 1003.204, receiving funds under this part.

(d) *Exceptions requiring HUD approval.*—(1) *Threshold requirements.* Upon the written request of a grantee, HUD may grant an exception to the provisions of paragraph (b) of this section on a case-by-case basis, when it determines that such an exception will serve to further the purposes of the Act

and the effective and efficient administration of the grantee's program or project. An exception may be considered only after the grantee has provided the following:

(i) A disclosure of the nature of the possible conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the grantee's attorney that the interest for which the exception is sought would not violate Tribal laws on conflict of interest, or applicable State laws.

(2) *Factors to be considered for exceptions:* In determining whether to grant a requested exception after the grantee has satisfactorily met the requirements of paragraph (d)(1) of this section, HUD shall consider the cumulative effect of the following factors, where applicable:

(i) Whether the exception would provide a significant cost benefit or essential expert knowledge to the program or project which would otherwise not be available;

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the affected person has withdrawn from his or her functions or responsibilities, or from the decision-making process, with reference to the specific assisted activity in question;

(iv) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section;

(v) Whether undue hardship will result, either to the grantee or to the person affected, when weighed against the public interest served by avoiding the prohibited conflict;

(vi) Any other relevant considerations.

(e) *Circumstances under which the conflict prohibition does not apply.* (1) In instances where a person who might otherwise be deemed to be included under the conflict prohibition is a member of a group or class of beneficiaries of the assisted activity and receives generally the same interest or benefits as are being made available or provided to the group or class, the prohibition does not apply, except that if, by not applying the prohibition against conflict of interest, a violation of Tribal or State laws on conflict of interest would result, the prohibition does apply. However, if the assistance to be provided is housing rehabilitation (or repair) or new housing, a public disclosure of the nature of the assistance to be provided and the specific basis for the selection of the proposed beneficiaries must be made prior to the submission of an application to HUD. Evidence of this disclosure must be provided as a component of the application.

(f) *Record retention.* All records pertaining to the grantee's decision under this section shall be maintained for HUD review upon request.

(Approved by the Office of Management and Budget under control number 2577–0191)

§ 1003.607 Lead-based paint.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations part 35, subparts A, B, J, K, and R of this title apply to activities conducted under this program.

[64 FR 50230, Sept. 15, 1999]

§ 1003.608 Debarment and suspension.

As required by 24 CFR part 24, each grantee must require participants in lower tier covered transactions (e.g., contractors and sub-contractors) to include a certification that neither it nor its principals are currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in the covered transaction, in any proposal submitted in connection with the lower tier covered transactions. A participant may rely on the certification, unless it knows the certification is erroneous.

[67 FR 15112, Mar. 29, 2002]

Subpart H—Program Performance

§ 1003.700 Review of grantee's performance.

(a) *Objective.* HUD will review each grantee's performance to determine whether the grantee has:

(1) Complied with the requirements of the Act, this part, the grant agreement and other applicable laws and regulations;

(2) Carried out its activities substantially as described in its application;

(3) Made substantial progress in carrying out its approved program;

(4) A continuing capacity to carry out the approved activities in a timely manner; and

(5) The capacity to undertake additional activities funded under this part.

(b) *Basis for review*. In reviewing each grantee's performance, HUD will consider all available evidence which may include, but not be limited to, the following:

(1) The approved application and any amendments thereto;

(2) Reports prepared by the grantee;

(3) Records maintained by the grantee;

(4) Results of HUD's monitoring of the grantee's performance, including field evaluation of the quality of the work performed;

(5) Audit reports;

(6) Records of drawdowns on the line of credit;

(7) Records of comments and complaints by citizens and organizations; and

(8) Litigation.

§ 1003.701 Corrective and remedial action.

(a) *General*. One or more corrective or remedial actions will be taken by HUD when, on the basis of the performance review, HUD determines that the grantee has not:

(1) Complied with the requirements of the Act, this part, and other applicable laws and regulations, including the environmental responsibilities assumed under section 104(g) of title I of the Act;

(2) Carried out its activities substantially as described in its applications;

(3) Made substantial progress in carrying out its approved program; or

(4) Shown the continuing capacity to carry out its approved activities in a timely manner.

(b) *Action*. The action taken by HUD will be designed, first, to prevent the continuance of the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent a recurrence of the same or similar deficiencies. The following actions may be taken singly or in combination, as appropriate for the circumstances:

(1) Request the grantee to submit progress schedules for completing approved activities or for complying with the requirements of this part;

(2) Issue a letter of warning advising the grantee of the deficiency (including environmental review deficiencies and housing assistance deficiencies), describing the corrective actions to be taken, establishing a date for corrective actions, and putting the grantee on notice that more serious actions will be taken if the deficiency is not corrected or is repeated;

(3) Advise the grantee to suspend, discontinue, or not incur costs for the affected activity;

(4) Advise the grantee to reprogram funds from affected activities to other eligible activities, provided that such action shall not be taken in connection with any substantial violation of part 58 and provided that such reprogramming is subjected to the environmental review procedures of part 58 of this title;

(5) Advise the grantee to reimburse the grantee's program account or line of credit in any amount improperly expended;

(6) Change the method of payment from a line of credit basis to a reimbursement basis; and/or

(7) Suspend the line of credit until corrective actions are taken.

§ 1003.702 Reduction or withdrawal of grant.

(a) *General*. A reduction or withdrawal of a grant under paragraph (b) of this section will not be made until at least one of the corrective or remedial actions specified in § 1003.701(b) has been taken and only then if the grantee has not made an appropriate and timely response. Before making such a grant reduction or withdrawal, the grantee also shall be notified and given an opportunity within a prescribed time for an informal consultation regarding the proposed action.

(b) *Reduction or withdrawal.* When the Area ONAP determines, on the basis of a review of the grantee's performance, that the objectives set forth in §1003.700(a)(2) or (3) have not been met, the Area ONAP may reduce or withdraw the grant, except that funds already expended on eligible approved activities shall not be recaptured.

§1003.703 Other remedies for noncompliance.

(a) *Secretarial actions.* If the Secretary finds a grantee has failed to comply with any provision of this part even after corrective actions authorized under §1003.701 have been applied, the following actions may be taken provided that reasonable notice and opportunity for hearing is made to the grantee. (The Administrative Procedure Act (5 U.S.C. 551 et seq.), where applicable, shall be a guide in any situation involving adjudications where the Secretary desires to take actions requiring reasonable notice and opportunity for a hearing):

(1) Terminate the grant to the grantee;

(2) Reduce the grant to the grantee by an amount equal to the amount which was not expended in accordance with this part; or

(3) Limit the availability of funds to projects or activities not affected by such failure to comply; provided, however, that the Secretary may on due notice revoke the grantee's line of credit in whole or in part at any time if the Secretary determines that such action is necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(b) *Secretarial referral to the Attorney General.* If there is reason to believe that a grantee has failed to comply substantially with any provision of the Act, the Secretary may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under this part which was not expended in accordance with this part or for mandatory or injunctive relief.

PART 1004 [RESERVED]

PART 1005—LOAN GUARANTEES FOR INDIAN HOUSING

Sec.

1005.101 What is the applicability and scope of these regulations?
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AUTHORITY: 12 U.S.C. 1715z–13a; 42 U.S.C. 3535(d).

SOURCE: 61 FR 9054, Mar. 6, 1996, unless otherwise noted. Redesignated at 63 FR 12349, Mar. 12, 1998.

§1005.101 What is the applicability and scope of these regulations?

Under the provisions of section 184 of the Housing and Community Development Act of 1992, as amended by the Native American Housing Assistance and Self-Determination Act of 1996 (12 U.S.C. 1715z–13a), the Department of Housing and Urban Development (the Department or HUD) has the authority to guarantee loans for the construction, acquisition, or rehabilitation of 1- to 4-family homes that are standard housing located on trust or restricted land or land located in an Indian or Alaska Native area. This part provides requirements that are in addition to those in section 184.

[67 FR 19493, Apr. 19, 2002]

§1005.103 What definitions are applicable to this program?

In addition to the definitions that appear in Section 184 of the Housing and Community Development Act of 1992, the following definitions are applicable to loan guarantees under Section 184—

Default means the failure by a borrower to make any payment or to perform any other obligation under the terms of a loan, and such failure continues for a period of more than 30 days.

Holder means the holder of the guarantee certificate and in this program is variously referred to as the lender holder, the holder of the certificate, the holder of the guarantee, and the mortgagee.

Indian means any person recognized as being Indian or Alaska Native by an Indian tribe, the Federal Government, or any State, and includes the term ''Native American''.

Mortgage means:

(1)(i) A first lien as is commonly given to secure advances on, or the unpaid purchase price of, real estate under the laws of the jurisdiction where the property is located and may refer to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed, or another term used in a particular jurisdiction; or

(ii) A loan secured by collateral as required by 24 CFR 1005.107; and

(2) The credit instrument, or note, secured thereby.

Mortgagee means the same as ''Holder.''

Principal residence means the dwelling where the mortgagor maintains (or will maintain) his or her permanent place of abode, and typically spends (or will spend) the majority of the calendar year. A person may have only one principal residence at any one time.

Property means the property constructed, acquired, or rehabilitated with the guaranteed loan, except when the context indicates that the term means other collateral for the loan.

Section 184 means section 184 (entitled, ''Loan Guarantees for Indian Housing'') of the Housing and Community Development Act of 1992 (12 U.S.C. 1515z-13a).

Trust or restricted land has the meaning given to ''trust land'' in section 184(k)(9) of the Housing and Community Development Act of 1992.

[61 FR 9054, Mar. 6, 1996. Redesignated and amended at 63 FR 12349, 12372, Mar. 12, 1998; 63 FR 48990, Sept. 11, 1998]

§ 1005.104 What lenders are eligible for participation?

Eligible lenders are those approved under and meeting the qualifications established in this subpart, except that loans otherwise insured or guaranteed by an agency of the United States, or made by an organization of Indians from amounts borrowed from the United States, shall not be eligible for guarantee under this part. The following lenders are deemed to be eligible under this part:

(a) Any mortgagee approved by HUD for participation in the single family mortgage insurance program under title II of the National Housing Act;

(b) Any lender whose housing loans under chapter 37 of title 38, United States Code are automatically guaranteed pursuant to section 1802(d) of such title;

(c) Any lender approved by the Department of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949;

(d) Any other lender that is supervised, approved, regulated, or insured by any other agency of the United States; or

(e) Any other lender approved by the Secretary under this part.

[63 FR 12372, Mar. 12, 1998, as amended at 63 FR 48990, Sept. 11, 1998]

§ 1005.105 What are eligible loans?

(a) *In general.* Only fixed rate, fixed term loans with even monthly payments are eligible under the Section 184 program.

(b) *Eligible borrowers.* A loan guarantee under section 184 may be made to:

(1) An Indian family who will occupy the home as a principal residence and who is otherwise qualified under section 184;

(2) An Indian Housing Authority or Tribally Designated Housing Entity; or

(3) An Indian tribe.

(c) *Appraisal of labor value.* The value of any improvements to the property made through the skilled or unskilled labor of the borrower, which may be used to make a payment on account of the balance of the purchase price, must be appraised in accordance with generally acceptable practices and procedures.

(d) *Construction advances.* The Department may guarantee loans from which advances will be made during construction. The Department will provide guarantees for advances made by the mortgagee during construction if all of the following conditions are satisfied:

(1) The mortgagor and the mortgagee execute a building loan agreement, approved by HUD, setting forth the terms and conditions under which advances will be made;

(2) The advances may be made only as provided in the building loan agreement;

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or the mortgagor's creditors as provided in the loan agreement; and

(4) The mortgage shall bear interest on the amount advanced to the mortgagor or the mortgagor's creditors and on the amount held in an account or trust for the benefit of the mortgagor.

(e) *Environmental compliance.* (1) Section 1000.20 of this chapter applies to an environmental review in connection with a loan guarantee under this part. That section permits an Indian tribe to choose to assume environmental review responsibility.

(2) Before HUD issues a commitment to guarantee any loan, or before HUD guarantees a loan if there is no commitment, HUD must:

(i) Comply with environmental review procedures to the extent applicable under part 50 of this title, in accordance with § 1000.20(a) and (c); or

(ii) Approve a Request for Release of Funds and certification from an Indian tribe, in accordance with part 58 of this title, if the Indian tribe has assumed environmental review responsibility.

(3) If the loan involves proposed or new construction, HUD will require compliance with procedures comparable to those required by § 203.12(b)(2) of this title for FHA mortgage insurance.

(f) *Lack of access to private financial markets.* In order to be eligible for a loan guarantee if the property is not on trust or restricted land, the borrower must certify that the borrower lacks access to private financial markets. Borrower certification is the only certification required by HUD.

[61 FR 9054, Mar. 6, 1996. Redesignated and amended at 63 FR 12349, 12372, Mar. 12, 1998; 63 FR 48990, Sept. 11, 1998; 67 FR 19493, Apr. 19, 2002]

§ 1005.106 What is the Direct Guarantee procedure?

(a) *General.* A loan may be processed under a Direct Guarantee procedure approved by the Department, under which the Department does not issue commitments to guarantee or review applications for loan guarantees before mortgages are executed by lenders approved for Direct Guarantee processing. The Department will approve a loan before the loan is guaranteed.

(b) *Mortgagee sanctions.* Depending on the nature and extent of the noncompliance with the requirements applicable to the Direct Guarantee procedure, as determined by the Department, the Department may take such actions as are deemed appropriate and in accordance with published guidelines.

[63 FR 48990, Sept. 11, 1998]

§ 1005.107 What is eligible collateral?

(a) *In general.* A loan guaranteed under section 184 may be secured by any collateral authorized under and not prohibited by Federal, state, or tribal law and determined by the lender and approved by the Department to be sufficient to cover the amount of the loan, and may include, but is not limited to, the following:

(1) The property and/or improvements to be acquired, constructed, or rehabilitated, to the extent that an interest in such property is not subject to the restrictions against alienation applicable to trust or restricted land;

(2) A first and/or second mortgage on property other than trust land;

(3) Personal property; or

(4) Cash, notes, an interest in securities, royalties, annuities, or any other property that is transferable and whose present value may be determined.

(b) *Leasehold of trust or restricted land as collateral.* If a leasehold interest in trust or restricted land is used as collateral or security for the loan, the following additional provisions apply:

(1) *Approved Lease.* Any land lease for a unit financed under Section 184 must be on a form approved by both HUD and the Bureau of Indian Affairs, U.S. Department of Interior.

(2) *Assumption or sale of leasehold.* The lease form must contain a provision requiring tribal consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by the Department through foreclosure of the guaranteed mortgage or a deed in lieu of foreclosure. A mortgagee other than the Department must obtain tribal consent before obtaining title through a foreclosure sale. Tribal consent must be obtained on any subsequent transfer from the purchaser, including the Department, at foreclosure sale. The lease may not be terminated by the lessor without HUD's approval while the mortgage is guaranteed or held by the Department.

(3) The mortgagee or HUD shall only pursue liquidation after offering to transfer the account to an eligible tribal member, the Indian tribe, or the Indian housing authority servicing the Indian tribe or the TDHE servicing the Indian tribe. The mortgagee or HUD shall not sell, transfer, or otherwise dispose of or alienate the property except to one of these three entities.

(4) *Priority of loan obligation.* Any tribal government whose courts have jurisdiction to hear foreclosures must enact a law providing for the satisfaction of a loan guaranteed or held by the Department before other obligations (other than tribal leasehold taxes against the property assessed after the property is mortgaged) are satisfied.

(5) *Eviction procedures.* Before HUD will guarantee a loan secured by trust land, the tribe having jurisdiction over such property must notify the Department that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the guaranteed loan has been foreclosed.

(i) *Enforcement.* If the Department determines that the tribe has failed to enforce adequately its eviction procedures, HUD will cease issuing guarantees for loans for tribal members except pursuant to existing commitments. Adequate enforcement is demonstrated where prior evictions have been completed within 60 days after the date of the notice by HUD that foreclosure was completed.

(ii) *Review.* If the Department ceases issuing guarantees in accordance with paragraph (b)(5)(i) of this section, HUD will notify the tribe of the reasons for such action and that the tribe may, within 30 days after notification of HUD's action, file a written appeal with the Director, Office of Loan Guarantee (OLG), Office of Native American Programs (ONAP). Within 30 days after notification of an adverse decision by the OLG Director, the tribe may file a written request for review with the Deputy Assistant Secretary for ONAP. Upon notification of an adverse decision by the Deputy Assistant Secretary, the tribe has 30 additional days to file an appeal with the Assistant Secretary for Public and Indian Housing. The determination of the Assistant Secretary shall be final, but the tribe may resubmit the issue to the Assistant Secretary for review at any subsequent time if new evidence or changed circumstances warrant reconsideration. (Any other administrative actions determined to be necessary to debar a tribe from participating in this program will be subject to the formal debarment procedures contained in 24 CFR part 24.)

[61 FR 9054, Mar. 6, 1996. Redesignated and amended, respectively, at 63 FR 12349, 12373, Mar. 12, 1998; 63 FR 48991, Sept. 11, 1998; 67 19493, Apr. 19, 2002]

§ 1005.109 What is a guarantee fee?

The lender shall pay to the Department, at the time of issuance of the guarantee, a fee for the guarantee of loans under Section 184, in an amount equal to 1 percent of the principal obligation of the loan. This amount is payable by the borrower at closing.

§ 1005.111 What safety and quality standards apply?

(a) Loans guaranteed under section 184 must be for dwelling units which meet the safety and quality standards set forth in section 184(j).

(b) The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part

35, subparts A, B, H, J, K, M, and R of this title apply to this part.

[63 FR 48991, Sept. 11, 1998, as amended at 64 FR 50230, Sept. 15, 1999]

§ 1005.112 How do eligible lenders and eligible borrowers demonstrate compliance with applicable tribal laws?

The lender and the borrower will each certify that they acknowledge and agree to comply with all applicable tribal laws. An Indian tribe with jurisdiction over the dwelling unit does not have to be notified of individual section 184 loans unless required by applicable tribal law.

[63 FR 12373 Mar. 12, 1998, as amended at 63 FR 48991, Sept. 11, 1998]

§ 1005.113 How does HUD enforce lender compliance with applicable tribal laws?

Failure of the lender to comply with applicable tribal law is considered to be a practice detrimental to the interest of the borrower and may be subject to enforcement action(s) under section 184(g) of the statute.

[63 FR 12373 Mar. 12, 1998]

PART 1006—NATIVE HAWAIIAN HOUSING BLOCK GRANT PROGRAM

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AUTHORITY: 25 U.S.C. 4221 *et seq.*; 42 U.S.C. 3535(d).

SOURCE: 67 FR 40776, June 13, 2002, unless otherwise noted.

Subpart A—General

§ 1006.1 Applicability.

The requirements and procedure of this part apply to grants under the Native Hawaiian Housing Block Grant (NHHBG) Program, authorized by the Hawaiian Homelands Homeownership Act of 2000 (HHH Act), which adds Title VIII—Housing Assistance For Native Hawaiians (25 U.S.C. 4221 *et seq.*), to the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*).

§ 1006.10 Definitions.

The following definitions apply in this part:

Act means title VIII of NAHASDA, as amended.

Adjusted income means the annual income that remains after excluding the following amounts:

(1) *Youths, students, and persons with disabilities.* $480 for each member of the

family residing in the household (other than the head of the household or the spouse of the head of the household):

(i) Who is under 18 years of age; or

(ii) Who is:

(A) 18 years of age or older; and

(B) A person with disabilities or a full-time student.

(2) *Elderly and disabled families.* $400 for an elderly or disabled family.

(3) *Medical and attendant expenses.* The amount by which 3 percent of the annual income of the family is exceeded by the aggregate of:

(i) Medical expenses, in the case of an elderly or disabled family; and

(ii) Reasonable attendant care and auxiliary apparatus expenses for each family member who is a person with disabilities, to the extent necessary to enable any member of the family (including a member who is a person with disabilities) to be employed.

(4) *Child care expenses.* Child care expenses, to the extent necessary to enable another member of the family to be employed or to further his or her education.

(5) *Earned income of minors.* The amount of any earned income of any member of the family who is less than 18 years of age.

(6) *Travel expenses.* Excessive travel expenses, not to exceed $25 per family per week, for employment—or education-related travel.

(7) *Other amounts.* Such other amounts as may be provided in the housing plan for Native Hawaiians.

Affordable Housing means housing that complies with the requirements of the Act and this part. The term includes permanent housing for homeless persons who are persons with disabilities, transitional housing, and single room occupancy housing.

Assistant Secretary means HUD's Assistant Secretary for Public and Indian Housing.

Department of Hawaiian Home Lands (DHHL) means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (HHCA 1920) (42 Stat. 108 *et seq.*).

Director means the Director of the Department of Hawaiian Home Lands.

Drug-Related Criminal Activity means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use a controlled substance (as such term is defined in section 102 of the Controlled Substances Act).

Elderly families; near-elderly families means:

(1) *In general.* The term ''elderly family'' or ''near-elderly family'' means a family whose head (or his or her spouse), or whose sole member, is:

(i) For an elderly family, an elderly person; or

(ii) For a near-elderly family, a near-elderly person.

(2) *Certain families included.* The term ''elderly family'' or ''near-elderly family'' includes:

(i) Two or more elderly persons or near-elderly persons, as the case may be, living together; and

(ii) One or more persons described in paragraph (2)(i) of this definition living with one or more persons determined under the housing plan to be essential to their care or well-being.

Elderly person means an individual who is at least 62 years of age.

Family includes, but is not limited to, a family with or without children, an elderly family, a near-elderly family, a disabled family, a single person, as determined by the DHHL.

Hawaiian Home Lands means lands that:

(1) Have the status as Hawaiian home lands under section 204 of the HHCA 1920 (42 Stat. 110); or

(2) Are acquired pursuant to the HHCA 1920.

Homebuyer payment means the payment of a family purchasing a home pursuant to a long-term lease purchase agreement.

Housing area means an area of Hawaiian Home Lands with respect to which the DHHL is authorized to provide assistance for affordable housing under the Act and this part.

Housing plan means a plan developed by the DHHL pursuant to the Act and this part, particularly § 1006.101.

HUD means the Department of Housing and Urban Development.

Low-income family means a family whose income does not exceed 80 percent of the median income for the area,

as determined by HUD with adjustments for smaller and larger families, except that HUD may, for purposes of this paragraph, establish income ceilings higher or lower than 80 percent of the median for the area on the basis of the findings of HUD or the agency that such variations are necessary because of prevailing levels of construction costs or unusually high or low family incomes.

Median income means, with respect to an area that is a housing area, the greater of:

(1) The median income for the housing area, which shall be determined by HUD; or

(2) The median income for the State of Hawaii.

Native Hawaiian means any individual who is:

(1) A citizen of the United States; and

(2) A descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by:

(i) Genealogical records;

(ii) Verification by kupuna (elders) or kama'aina (long-term community residents); or

(iii) Birth records of the State of Hawaii.

Native Hawaiian Housing Block Grant (NHHBG) Funds means funds made available under the Act, plus program income.

Near-elderly person means an individual who is at least 55 years of age and less than 62 years of age.

Nonprofit means, with respect to an organization, association, corporation, or other entity, that no part of the net earnings of the entity inures to the benefit of any member, founder, contributor, or individual.

Secretary means the Secretary of Housing and Urban Development.

Tenant-based rental assistance means a form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. Tenant-based rental assistance under this part also includes security deposits for rental of dwelling units.

Transitional housing means housing that:

(1) Is designed to provide housing and appropriate supportive services to persons, including (but not limited to) deinstitutionalized individuals with disabilities, homeless individuals with disabilities, and homeless families with children; and

(2) Has as its purpose facilitating the movement of individuals and families to independent living within a time period that is set by the DHHL or project owner before occupancy.

§ 1006.20 Grants for affordable housing activities.

(a) *Annual grant.* Each fiscal year, HUD will make a grant (to the extent that amounts are made available) under the Act to the DHHL to carry out affordable housing activities for Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands, if:

(1) The Director has submitted to HUD a housing plan for that fiscal year; and

(2) HUD has determined that the housing plan complies with the requirements of § 1006.101.

(b) *Waiver.* HUD may waive housing plan requirements if HUD finds that the DHHL has not complied or cannot comply with those requirements due to circumstances beyond the control of the DHHL.

§ 1006.30 Waivers.

Upon determination of good cause, the Secretary may, subject to statutory limitations, waive any provision of this part and delegate this authority in accordance with section 106 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3535(q)).

Subpart B—Housing Plan

§ 1006.101 Housing plan requirements.

The DHHL must submit a housing plan for each Federal Fiscal Year grant. The housing plan has two components, a five-year plan and a one-year plan, as follows:

(a) *Five-year plan.* Each housing plan must contain, for the 5-year period beginning with the fiscal year for which the plan is first submitted, the following information:

(1) *Mission statement.* A general statement of the mission of the DHHL to serve the needs of the low-income Native Hawaiian families eligible to live on the Hawaiian Home Lands to be served by the DHHL;

(2) *Goals and objectives.* A statement of the goals and objectives of the DHHL to enable the DHHL to serve the needs identified in paragraph (a)(1), of this section during the 5-year period; and

(3) *Activities plans.* An overview of the activities planned during the 5-year period including an analysis of the manner in which the activities will enable the DHHL to meet its mission, goals, and objectives.

(b) *One-year plan.* The housing plan must contain the following information for the fiscal year for which the assistance under the Act is to be made available:

(1) *Goals and objectives.* A statement of the goals and objectives to be accomplished by the DHHL with its annual grant allocation that are measurable in a quantitative way.

(2) *Statement of needs.* A statement of the housing needs of the low-income families served by the DHHL and the means by which those needs will be addressed during the period covered by the plan, including:

(i) A description of the estimated housing needs and the need for assistance for the low-income families to be served by the DHHL, including a description of the manner in which the geographical distribution of assistance is consistent with:

(A) The geographical needs of those families; and

(B) Needs for various categories of housing assistance; and

(ii) A description of the estimated housing needs for all families to be served by the DHHL.

(3) *Financial resources.* An operating budget for the DHHL that includes an identification and a description of:

(i) The NHHBG funds and other financial resources reasonably available to the DHHL to carry out eligible activities, including an explanation of the manner in which NHHBG funds will be used to leverage additional resources; and

(ii) Eligible activities to be undertaken and their projected cost, including administrative expenses.

(4) *Affordable housing resources.* A statement of the affordable housing resources currently available at the time of the submittal of the plan and to be made available during the period covered by the plan, including:

(i) A description of the significant characteristics of the housing market in the State of Hawaii, including the availability of housing from other public sources and private market housing;

(ii) The effect of the characteristics identified under paragraph (b)(4)(i) of this section, on the DHHL's decision to use the NHHBG for:

(A) Rental assistance;

(B) The production of new units;

(C) The acquisition of existing units; or

(D) The rehabilitation of units;

(iii) A description of the structure, coordination, and means of cooperation between the DHHL and any other governmental entities in the development, submission, or implementation of the housing plan, including a description of:

(A) The involvement of private, public, and nonprofit organizations and institutions;

(B) The use of loan guarantees under section 184A of the Housing and Community Development Act of 1992; and

(C) Other housing assistance provided by the United States, including loans, grants, and mortgage insurance;

(iv) A description of the manner in which the plan will address the needs identified pursuant to paragraph (b)(2) of this section;

(v) A description of:

(A) Any existing or anticipated homeownership programs and rental programs to be carried out during the period covered by the plan; and

(B) The requirements and assistance available under the programs referred to in paragraph (b)(4)(v)(A) of this section;

(vi) A description of:

(A) Any existing or anticipated housing rehabilitation programs necessary to ensure the long-term viability of housing to be carried out during the period covered by the plan; and

(B) The requirements and assistance available under the programs referred to in paragraph (b)(4)(vi)(A) of this section;

(vii) A description of:

(A) All other existing or anticipated housing assistance provided by the DHHL during the period covered by the plan, including transitional housing; homeless housing; college housing; and supportive services housing; and

(B) The requirements and assistance available under such programs; (viii) A description of:

(A) Any housing to be demolished or disposed of;

(B) A timetable for that demolition or disposition;

(C) A financial analysis of the proposed demolition/disposition; and

(D) Any additional information HUD may request with respect to that demolition or disposition.

(ix) A description of the manner in which the DHHL will coordinate with welfare agencies in the State of Hawaii to ensure that residents of the affordable housing will be provided with access to resources to assist in obtaining employment and achieving self-sufficiency;

(x) A description of the requirements established by the DHHL to:

(A) Promote the safety of residents of the affordable housing;

(B) Facilitate the undertaking of crime prevention measures;

(C) Allow resident input and involvement, including the establishment of resident organizations; and

(D) Allow for the coordination of crime prevention activities between the DHHL and local law enforcement officials; and

(xi) A description of the entities that will carry out the activities under the plan, including the organizational capacity and key personnel of the entities.

(5) *Certifications of compliance.* The DHHL must certify that it:

(i) Will comply with:

(A) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and with the Fair Housing Act (42 U.S.C. 3601 *et seq.*), to the extent applicable as described in § 1006.355, in carrying out the Native Hawaiian Housing Block Grant Program; and

(B) Other applicable Federal statutes;

(ii) Will require adequate insurance coverage for housing units that are owned and operated or assisted with NHHBG funds, in compliance with the requirements of § 1006.330;

(iii) Has policies in effect and available for review by HUD and the public governing the eligibility, admission, and occupancy of families for housing assisted with NHHBG funds and governing the selection of families receiving other assistance under the Act and this part;

(iv) Has policies in effect and available for review by HUD and the public governing rents charged, including the methods by which such rents or homebuyer payments are determined, for housing assisted with NHHBG funds; and

(v) Has policies in effect and available for review by HUD and the public governing the management and maintenance of rental and lease-purchase housing assisted with NHHBG funds.

(c) *Updates to plan.* (1) *In general.* Subject to paragraph (c)(2) of this section, after the housing plan has been submitted for a fiscal year, the DHHL may comply with the provisions of this section for any succeeding fiscal year with respect to information included for the 5-year period under paragraph (a) of this section by submitting only such information regarding such changes as may be necessary to update the plan previously submitted and by submitting information for the 1-year period under paragraph (b) of this section.

(2) *Complete plans.* The DHHL shall submit a complete plan under this section not later than 4 years after submitting an initial plan, and not less frequently than every 4 years thereafter.

(d) *Amendments to plan.* The DHHL must submit any amendment to the one-year housing plan for HUD review before undertaking any new activities that are not addressed in the current plan. The amendment must include a description of the new activity and a revised budget reflecting the changes. HUD will review the revised plan and will notify DHHL within 30 days whether the amendment complies with applicable requirements.

§ 1006.110 Review of plans.

(a) *Review.* (1) *In general.* Within 60 days of receipt of the housing plan, HUD will conduct a limited review to ensure that the contents of the plan comply with the requirements of § 1006.101, are consistent with information and data available to HUD, and are not prohibited by or inconsistent with any provision of the Act and this part or any other applicable law.

(2) *Limitation.* HUD will review the housing plan only to the extent that HUD considers that the review is necessary.

(3) *Incomplete plans.* If HUD determines that any of the required certifications are not included in the housing plan, the plan shall be considered to be incomplete. HUD may also consider a housing plan to be incomplete if it does not address all of the requirements of § 1006.101, and the DHHL has not requested a waiver of the missing requirement.

(b) *Notice.* (1) *In general.* Not later than 60 days after receiving the housing plan, HUD will notify the DHHL whether or not the plan complies with applicable requirements.

(2) *Notice of reasons for determination of noncompliance.* If HUD determines that the contents of the housing plan do not comply with the requirements of § 1006.101, or are not consistent with information and data available to HUD, or are prohibited by or inconsistent with any provision of the Act and this part or any other applicable law, HUD will specify in the notice under paragraph (b)(1) of this section:

(i) The reasons for noncompliance; and

(ii) Any modifications necessary for the plan to be in compliance.

(3) *Effect of HUD's failure to take action.* If HUD does not notify the DHHL, upon the expiration of the 60-day period described in paragraph (a)(1) of this section, the plan shall be considered to have been determined to comply with the requirements under § 1006.101 and the DHHL shall be considered to have been notified of compliance.

Subpart C—Eligible Activities

§ 1006.201 Eligible affordable housing activities.

Eligible affordable housing activities are development, housing services, housing management services, crime prevention and safety activities and model activities. NHHBG funds may only be used for eligible activities that are consistent with the DHHL's housing plan.

§ 1006.205 Development.

(a) NHHBG funds may be used for the acquisition, new construction, reconstruction, or moderate or substantial rehabilitation of affordable housing for homeownership or rental, which may include:

(1) Real property acquisition;

(2) Acquisition of affordable housing;

(3) Financing acquisition of affordable housing by homebuyers through:

(i) Down payment assistance;

(ii) Closing costs assistance;

(iii) Direct lending; and

(iv) Interest subsidies or other financial assistance

(4) New construction of affordable housing;

(5) Reconstruction of affordable housing;

(6) Moderate rehabilitation of affordable housing, including but not limited to:

(i) Lead-based paint hazards elimination or reduction;

(ii) Improvements to provide physical accessibility for disabled persons; and

(iii) Energy-related improvements;

(7) Substantial rehabilitation of affordable housing, including but not limited to:

(i) Lead-based paint hazards elimination or reduction;

(ii) Improvements to provide physical accessibility for disabled persons; and

(iii) Energy-related improvements;

(8) Site improvement, including recreational areas and playgrounds for use by residents of affordable housing and on-site streets and sidewalks;

(9) The development of utilities and utility services;

(10) Conversion;

(11) Demolition;

(12) Administration and planning; and

(13) Other related activities, such as environmental review and architectural and engineering plans for the affordable housing project.

(b) *Multi-unit projects.* NHHBG funds may be used to assist one or more housing units in a multi-unit project. Only the actual NHHBG eligible development costs of the assisted units may be charged to the NHHBG Program. If the assisted and unassisted units are not comparable, the actual costs may be determined based upon a method of cost allocation. If the assisted and unassisted units are comparable in terms of size, features, and number of bedrooms, the actual cost of the NHHBG-assisted units can be determined by pro-rating the total NHHBG eligible development costs of the project so that the proportion of the total development costs charged to the NHHBG Program does not exceed the proportion of the NHHBG-assisted units in the project.

§ 1006.210 Housing services.

NHHBG funds may be used for the provision of housing-related services for affordable housing, including:

(a) Housing counseling in connection with rental or homeownership assistance;

(b) The establishment and support of resident organizations and resident management corporations;

(c) Energy auditing;

(d) Activities related to the provisions of self-sufficiency and other services;

(e) Homelessness prevention activities, which may include short term subsidies to defray rent and utility bills of an eligible family;

(f) Payments to prevent foreclosure on a home;

(g) Tenant-based rental assistance, which may include security deposits and/or first month's rent; and

(h) Other services related to assisting owners, tenants, contractors, and other entities participating or seeking to participate in other housing activities assisted pursuant to the Act and this part.

§ 1006.215 Housing management services.

NHHBG funds may be used for the provision of management services for affordable housing, including:

(a) The preparation of work specifications;

(b) Loan processing;

(c) Inspections;

(d) Tenant selection;

(e) Management of tenant-based rental assistance; and

(f) Management of affordable housing projects.

§ 1006.220 Crime prevention and safety activities.

NHHBG funds may be used for the provision of safety, security, and law enforcement measures and activities appropriate to protect residents of affordable housing from crime, including the costs of:

(a) Physical improvements for affordable housing to enhance security, such as, fences, monitors, locks, and additional lighting;

(b) Security personnel for affordable housing; and

(c) Equipment for patrols.

§ 1006.225 Model activities.

NHHBG funds may be used for housing activities under model programs that are:

(a) Designed to carry out the purposes of the Act and this part; and

(b) Specifically approved by HUD as appropriate for those purposes.

§ 1006.230 Administrative and planning costs.

Up to such amount as HUD may authorize, or such other limit as may be specified by statute, of each grant received under the Act may be used for any reasonable administrative and planning expenses of the DHHL relating to carrying out the Act and this part and activities assisted with NHHBG funds, including:

(a) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not limited to, necessary expenditures for the following:

(1) Salaries, wages, and related costs of the DHHL's staff. In charging costs to this category the DHHL may either include the entire salary, wages, and related costs allocable to the NHHBG Program of each person whose *primary* responsibilities with regard to the program involves program administration assignments, or the prorated share of the salary, wages, and related costs of each person whose job includes *any* program administration assignments. The DHHL may use only one of these methods. Program administration includes the following types of assignments:

(i) Developing systems and schedules for ensuring compliance with program requirements;

(ii) Developing interagency agreements and agreements with entities receiving NHHBG funds;

(iii) Monitoring NHHBG-assisted housing for progress and compliance with program requirements;

(iv) Preparing reports and other documents related to the program for submission to HUD;

(v) Coordinating the resolution of audit and monitoring findings;

(vi) Evaluating program results against stated objectives; and

(vii) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraphs (a)(1)(i) through (vi) of this section;

(2) Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services; and

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(b) *Staff and overhead.* Staff and overhead costs directly related to carrying out a project or service, such as work specifications preparation, loan processing, inspections, and other services related to assisting potential owners, tenants, and homebuyers (*e.g.,* housing counseling); and staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the a project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship. These costs may be charged as administrative costs or as project costs under § 1006.205 or service costs under §§ 1006.210 or 1006.215, at the discretion of the DHHL.

(c) *Public information.* The provision of information and other resources to residents and citizen organizations participating in the planning, implementation, or assessment of projects being assisted with NHHBG funds.

(d) *Indirect costs.* Indirect costs may be charged to the NHHBG Program under a cost allocation plan prepared in accordance with OMB Circulars A–87 or A–122 as applicable.

(e) *Preparation of the housing plan and reports.* Preparation of the housing plan under § 1006.101 and performance reports under § 1006.410. Preparation includes the costs of public hearings, consultations, and publication.

(f) *Other Federal requirements.* Costs of complying with the Federal requirements in §§ 1006.370 and 1006.375 of this part. Project-specific environmental review costs may be charged as administrative costs or as project costs, at the discretion of the DHHL.

§ 1006.235 Types of investments.

Subject to the requirements of this part and to the DHHL's housing plan, the DHHL has the discretion to use NHHBG funds for affordable housing activities in the form of equity investments, interest-bearing loans or advances, noninterest-bearing loans or advances, interest subsidies, the leveraging of private investments, and other forms of assistance that HUD determines to be consistent with the purposes of the Act. The DHHL has the right to establish the terms of assistance provided with NHHBG funds.

Subpart D—Program Requirements

§ 1006.301 Eligible families.

(a) Assistance for eligible housing activities under the Act and this part is limited to low-income Native Hawaiian families who are eligible to reside on the Hawaiian Home Lands, except as provided under paragraphs (b) and (c), of this section.

(b) *Exception to low-income requirement.* (1) *Other Native Hawaiian families.* The DHHL may provide assistance for homeownership activities and through loan guarantee activities to Native Hawaiian families who are not low-income families, as approved by HUD, to address a need for housing for those families that cannot be reasonably met without that assistance.

(2) *Limitations.* HUD approval is required if the DHHL plans to use its annual grant amount for assistance in accordance with paragraph (b)(1), of this section.

(c) *Other families.* The DHHL may provide housing or NHHBG assistance to a family that is not low-income and is not composed of Native Hawaiians if the DHHL documents that:

(1) The presence of the family in the housing involved is essential to the well-being of Native Hawaiian families; and

(2) The need for housing for the family cannot be reasonably met without the assistance.

(d) *Written policies.* The DHHL must develop, follow, and have available for review by HUD written policies governing the eligibility, admission, and occupancy of families for housing assisted with NHHBG funds and governing the selection of families receiving other assistance under the Act and this part.

§ 1006.305 Low-income requirement and income targeting.

(a) *In general.* Housing qualifies as affordable housing for purposes of the Act and this part only if each dwelling unit in the housing:

(1) In the case of rental housing, is made available for occupancy only by a family that is a low-income family at the time of the initial occupancy of that family of that unit; and

(2) In the case of housing for homeownership, is made available for purchase only by a family that is a low-income family at the time of purchase, or is an owner-occupied unit in which the family is low-income at the time it receives NHHBG assistance.

(b) NHHBG-assisted rental units must meet the affordability requirements for the remaining useful life of the property, as determined by HUD, or such other period as HUD determines in accordance with section 813(a)(2)(B) of the Act.

(c) *Enforceable agreements.* (1) The DHHL, through binding contractual agreements with owners or other authorized entities, shall ensure long-term compliance with the provisions of this part.

(2) The agreements referred to in paragraph (c)(1) of this section shall provide for:

(i) To the extent allowable by Federal and State law, the enforcement of the provisions of the Act and this part by the DHHL and HUD; and

(ii) Remedies for breach of the provisions of the Act and this part.

(d) *Exception.* Notwithstanding the requirements of this section, housing assisted with NHHBG funds pursuant to § 1006.301(b) shall be considered affordable housing for purposes of the Act and this part.

§ 1006.310 Rent and lease-purchase limitations.

(a) *Rents.* The DHHL must develop and follow written policies governing rents for rental housing units assisted with NHHBG funds, including methods by which rents are determined. The maximum monthly rent for a low-income family may not exceed 30 percent of the family's monthly adjusted income.

(b) *Lease-purchase.* If DHHL assists low-income families to become homeowners of rental housing through a long-term lease (i.e. 10 or more years) with an option to purchase the housing, DHHL must develop and follow written policies governing lease-purchase payments for rental housing units assisted with NHHBG funds, including methods by which payments are determined. The maximum monthly payment for a low-income family

may not exceed 30 percent of the family's monthly adjusted income.

(c) *Exception for certain homeownership payments.* Homeownership payments for families who are not low-income, as permitted under § 1006.301(b), are not subject to the requirement that homebuyer payments may not exceed 30 percent of the monthly adjusted income of that family.

(d) Low-income families who receive homeownership assistance other than lease-purchase assistance are not subject to the limitations in paragraphs (a) and (b) of this section.

§ 1006.315 Lease requirements.

Except to the extent otherwise provided by or inconsistent with the laws of the State of Hawaii, in renting dwelling units in affordable housing assisted with NHHBG funds, the DHHL, owner, or manager must use leases that:

(a) Do not contain unreasonable terms and conditions;

(b) Require the DHHL, owner, or manager to maintain the housing in compliance with applicable local housing codes and quality standards;

(c) Require the DHHL, owner, or manager to give adequate written notice of termination of the lease, which shall be the period of time required under applicable State or local law;

(d) Specify that, with respect to any notice of eviction or termination, notwithstanding any State or local law, a resident shall be informed of the opportunity, before any hearing or trial, to examine any relevant documents, record, or regulations directly related to the eviction or termination;

(e) Require that the DHHL, owner, or manager may not terminate the tenancy, during the term of the lease, except for serious or repeated violation of the terms and conditions of the lease, violation of applicable Federal, State, or local law, or for other good cause; and

(f) Provide that the DHHL, owner, or manager may terminate the tenancy of a resident for any activity, engaged in by the resident, any member of the household of the resident, or any guest or other person under the control of the resident, that:

(1) Threatens the health or safety of, or right to peaceful enjoyment of the premises by, other residents or employees of the DHHL, owner, or manager;

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

(3) Involves criminal activity (including drug-related criminal activity) on or off the premises.

§ 1006.320 Tenant or homebuyer selection.

As a condition to receiving grant amounts under the Act, the DHHL must adopt and use written tenant and homebuyer selection policies and criteria that:

(a) Are consistent with the purpose of providing housing for low-income families;

(b) Are reasonably related to program eligibility and the ability of the tenant or homebuyer assistance applicant to perform the obligations of the lease; and

(c) Provide for:

(1) The selection of tenants and homebuyers from a written waiting list in accordance with the policies and goals set forth in the housing plan; and

(2) The prompt notification in writing of any rejected applicant of the grounds for that rejection.

§ 1006.325 Maintenance, management and efficient operation.

(a) *Written policies.* The DHHL must develop and enforce policies governing the management and maintenance of rental housing assisted with NHHBG funds.

(b) *Disposal of housing.* This section may not be construed to prevent the DHHL, or any entity funded by the DHHL, from demolishing or disposing of housing, pursuant to regulations established by HUD.

§ 1006.330 Insurance coverage.

(a) *In general.* As a condition to receiving NHHBG funds, the DHHL must require adequate insurance coverage for housing units that are owned or operated or assisted with more than $5,000 of NHHBG funds, including a loan of more than $5,000 that includes payback provisions.

(b) *Adequate insurance.* Insurance is adequate if it is a purchased insurance policy from an insurance provider or a plan of self-insurance in an amount to cover replacement cost.

(c) *Loss covered.* The DHHL must provide for or require insurance in adequate amounts to indemnify against loss from fire, weather, and liability claims for all housing units owned, operated or assisted by the DHHL. NHHBG funds may only be used to purchase insurance for low-income homeowners and only in amounts sufficient to protect against the loss of the NHHBG funds at risk in the property. The cost of such insurance may not include coverage for a resident's personal property.

(d) *Exception.* The DHHL shall not require insurance if the assistance is in an amount less than $5000.

(e) *Contractor's coverage.* The DHHL shall require contractors and subcontractors to either provide insurance covering their activities or negotiate adequate indemnification coverage to be provided by the DHHL in the contract.

§ 1006.335 Use of nonprofit organizations and public-private partnerships.

(a) *Nonprofit organizations.* The DHHL must, to the extent practicable, provide for private nonprofit organizations experienced in the planning and development of affordable housing for Native Hawaiians to carry out affordable housing activities with NHHBG funds.

(b) *Public-private partnerships.* The DHHL must make all reasonable efforts to maximize participation by the private sector, including nonprofit organizations and for-profit entities, in implementing its housing plan.

§ 1006.340 Treatment of program income.

(a) *Defined.* Program income is income realized from the use of NHHBG funds. If gross income is used to pay costs incurred that are essential or incidental to generating the income, these costs may be deducted from gross income to determine program income. Program income includes income from fees for services performed; from the use or rental of real or personal property acquired or assisted with NHHBG funds; from the sale of property acquired or assisted with NHHBG funds; from payments of principal and interest on loans made with NHHBG funds; and from payments of interest earned on investment of NHHBG funds pursuant to § 1006.235.

(b) *Authority to retain.* The DHHL may retain any program income that is realized from any NHHBG funds if:

(1) That income was realized after the initial disbursement of the NHHBG funds received by the DHHL; and

(2) The DHHL agrees to use the program income for affordable housing activities in accordance with the provisions of the Act and this part; and

(3) The DHHL disburses program income before disbursing additional NHHBG funds in accordance with 24 CFR part 85.

(c) *Exclusion of amounts.* If the amount of income received in a single fiscal year by the DHHL, which would otherwise be considered program income, does not exceed $25,000, such funds may be retained but will not be considered program income.

§ 1006.345 Labor standards.

(a) *Davis-Bacon wage rates.* (1) As described in section 805(b) of the Act, contracts and agreements for assistance, sale or lease under this part must require prevailing wage rates determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a–276a–5) to be paid to laborers and mechanics employed in the development of affordable housing.

(2) When NHHBG assistance is only used to assist homebuyers to acquire single family housing, the Davis-Bacon wage rates apply to the construction of the housing if there is a written agreement with the owner or developer of the housing that NHHBG assistance will be used to assist homebuyers to buy the housing.

(3) Prime contracts not in excess of $2000 are exempt from Davis-Bacon wage rates.

(b) *HUD-determined wage rates.* Section 805(b) of the Act also mandates that contracts and agreements for assistance, sale or lease under the Act require that prevailing wages determined

or adopted (subsequent to a determination under applicable State or local law) by HUD shall be paid to maintenance laborers and mechanics employed in the operation, and to architects, technical engineers, draftsmen and technicians employed in the development, of affordable housing.

(c) *Contract Work Hours and Safety Standards Act.* Contracts in excess of $100,000 to which Davis-Bacon or HUD-determined wage rates apply are subject by law to the overtime provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327).

(d) *Volunteers.* The requirements in 24 CFR part 70 concerning exemptions for the use of volunteers on projects subject to Davis-Bacon and HUD-determined wage rates are applicable.

(e) *Other laws and issuances.* The DHHL, contractors, subcontractors, and other participants must comply with regulations issued under the labor standards provisions cited in this section, and other applicable Federal laws and regulations pertaining to labor standards.

§ 1006.350 Environmental review.

(a) In order to ensure that the policies of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA) and other provisions of Federal law which further the purposes of that act (as specified in 24 CFR 58.5) are most effectively implemented in connection with the expenditure of NHHBG funds, HUD will provide for the release of funds for specific projects to the DHHL if the Director of the DHHL assumes all of the responsibilities for environmental review, decisionmaking, and action under NEPA and other provisions of Federal law which further the purposes of that act (as specified in 24 CFR 58.5) that would apply to HUD were HUD to undertake those projects as Federal projects.

(b) An environmental review does not have to be completed before a HUD finding of compliance for the housing plan or amendments to the housing plan submitted by the DHHL.

(c) No funds may be committed to a grant activity or project before the completion of the environmental review and approval of the request for release of funds and related certification required by sections 806(b) and 806(c) of the Act, except as authorized by 24 CFR part 58.

(d) As set forth in section 806(a)(2)(B) of the Act and 24 CFR 58.77, HUD will:

(1) Provide for the monitoring of environmental reviews performed by the DHHL under this section;

(2) At its discretion, facilitate training for the performance of such reviews by the DHHL; and,

(3) At its discretion, provide for the suspension or termination of the assumption of responsibilities under this section based upon a finding of substantial failure of the DHHL to execute responsibilities under this section.

§ 1006.355 Nondiscrimination requirements.

Program eligibility under the Act and this part may be restricted to Native Hawaiians. Subject to the preceding sentence, no person may be discriminated against on the basis of race, color, national origin, religion, sex, familial status, or disability. The following nondiscrimination requirements are applicable to the use of NHHBG funds:

(a) The requirements of the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and HUD's implementing regulations in 24 CFR part 146;

(b) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's regulations at 24 CFR part 8; and

(c) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and the Fair Housing Act (42 U.S.C. 3601 *et seq.*), to the extent that nothing in their requirements concerning discrimination on the basis of race shall be construed to prevent the provision of NHHBG assistance:

(1) To the DHHL on the basis that the DHHL served Native Hawaiians; or

(2) To an eligible family on the basis that the family is a Native Hawaiian family.

§ 1006.360 Conflict of interest.

In the procurement of property and services by the DHHL and contractors, the conflict of interest provisions in 24 CFR 85.36 or 24 CFR 84.42 apply.

§ 1006.365 Program administration responsibilities.

(a) *Responsibilities.* The DHHL is responsible for managing the day-to-day operations of the NHHBG Program, ensuring that NHHBG funds are used in accordance with all program requirements and written agreements, and taking appropriate action when performance problems arise. The use of contractors does not relieve the DHHL of this responsibility.

(b) *Agreements with contractors.* The DHHL may enter into agreements with private contractors selected under the provisions of 24 CFR 85.36 for purposes of administering all or part of the NHHBG program for the DHHL.

§ 1006.370 Federal administrative requirements.

(a) *Governmental entities.* The DHHL and any governmental contractor receiving NHHBG funds shall comply with the requirements and standards of OMB Circular No. A–87, ''Cost Principles for State, Local and Indian Tribal Governments,'' and with 24 CFR part 85 ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments.''

(b) *Non-profit organizations.* The requirements of OMB Circular No. A–122, ''Cost Principles for Non-profit Organizations,'' and the requirements of 24 CFR part 84, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations,'' apply to contractors receiving NHHBG funds that are non-profit organizations that are not governmental contractors.

(c)(1) With respect to the applicability of cost principles, all items of cost listed in Attachment B of OMB Circular A–87 which require prior Federal agency approval are allowable without the prior approval of HUD to the extent that they comply with the general policies and principles stated in Attachment A of this circular and are otherwise eligible under this part, except for the following:

(i) Depreciation methods for fixed assets shall not be changed without specific approval of HUD or, if charged through a cost allocation plan, the Federal cognizant agency.

(ii) Fines and penalties are unallowable costs to the NHHBG program.

(2) In addition, no person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with NHHBG funds. In no event, however, shall such compensation exceed the equivalent of the daily rate paid for Level IV of the Executive Schedule.

(d) OMB Circulars referenced in this part may be obtained from *www.whitehouse.gov/omb/circulars/index.html;* telephone; (202) 395–3080.

§ 1006.375 Other Federal requirements.

(a) *Lead-based paint.* The following subparts of HUD's lead-based paint regulations at part 35, which implement the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822–4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), apply to the use of assistance under this part:

(1) Subpart A, ''Disclosure of Known Lead-Based Paint Hazards Upon Sale or Lease of Residential Property'';

(2) Subpart B, ''General Lead-Based Paint Requirements and Definitions for All Programs'';

(3) Subpart H, ''Project-Based Rental Assistance'';

(4) Subpart J, ''Rehabilitation'';

(5) Subpart K, ''Acquisition, Leasing, Support Services, or Operation'';

(6) Subpart M, ''Tenant-Based Rental Assistance''; and

(7) Subpart R, ''Methods and Standards for Lead-Based Paint Hazard Evaluation and Hazard Reduction Activities''.

(b) *Drug-free workplace.* The Drug-Free Workplace Act of 1988 (41 U.S.C. 701 *et seq.*) and HUD's implementing regulations in 24 CFR part 24 apply to the use of assistance under this part.

(c) *Displacement and relocation.* The following relocation and real property acquisition policies are applicable to programs developed or operated under the Act and this part:

(1) *Real property acquisition requirements.* The acquisition of real property

for an assisted activity is subject to 49 CFR part 24, subpart B.

(2) *Minimize displacement.* Consistent with the other goals and objectives of the Act and this part, the DHHL shall assure that it has taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under the Act and this part.

(3) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (d)(7) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24.

(4) *Appeals to the DHHL.* A person who disagrees with the DHHL's determination concerning whether the person qualifies as a ''displaced person,'' or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the DHHL.

(5) *Responsibility of DHHL.* (i) The DHHL shall certify that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The DHHL shall ensure such compliance notwithstanding any third party's contractual obligation to the DHHL to comply with the provisions in this section.

(ii) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance may also be paid for with funds available to the DHHL from any other source.

(iii) The DHHL shall maintain records in sufficient detail to demonstrate compliance with this section.

(6) *Definition of displaced person.* (i) For purposes of this section, the term ''displaced person'' means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves his or her personal property from real property, permanently, as a direct result of rehabilitation, demolition, or acquisition for a project assisted under the Act. The term ''displaced person'' includes, but is not limited to:

(A) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the submission to HUD of a housing plan that is later approved;

(B) Any person, including a person who moves before the date described in paragraph (d)(7)(i)(A) of this section, that the DHHL determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project;

(C) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after execution of the agreement between the DHHL and HUD, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(*1*) The tenant-occupant's monthly rent and estimated average monthly utility costs before the agreement; or

(*2*) 30 percent of gross household income.

(D) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(*1*) The tenant-occupant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(*2*) Other conditions of the temporary relocation are not reasonable.

(E) A tenant-occupant of a dwelling who moves from the building/complex after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(*1*) The tenant-occupant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(*2*) Other conditions of the move are not reasonable.

(ii) Notwithstanding the provisions of paragraph (c)(6)(i) of this section, a person does not qualify as a ''displaced person'' (and is not eligible for relocation assistance under the URA or this section), if:

(A) The person moved into the property after the submission of the housing plan to HUD, but before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a ''displaced person'' or for any assistance provided under this section as a result of the project;

(B) The person is ineligible under 49 CFR 24.2(g)(2); or

(C) The DHHL determines the person is not displaced as a direct result of acquisition, rehabilitation, or demolition for an assisted project. To exclude a person on this basis, HUD must concur in that determination.

(iii) The DHHL may at any time ask HUD to determine whether a specific displacement is or would be covered under this section.

(7) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a person displaced as a direct result of rehabilitation or demolition of the real property, the term ''initiation of negotiations'' means the execution of the agreement covering the rehabilitation or demolition (*See* 49 CFR part 24).

(d) *Audits.* The DHHL must comply with the requirements of the Single Audit Act and OMB Circular A–133, with the audit report providing a schedule of expenditures for each grant. A copy of each audit must be submitted to HUD concurrent with submittal to the Audit Clearinghouse.

Subpart E—Monitoring and Accountability

§ 1006.401 Monitoring of compliance.

(a) *Periodic reviews and monitoring.* At least annually, the DHHL must review the activities conducted and housing assisted with NHHBG funds to assess compliance with the requirements of the Act and this part. This review must encompass and incorporate the results of the monitoring by the DHHL of all contractors involved in the administration of NHHBG activities.

(b) *Review.* Each review under paragraph (a) of this section must include on-site inspection of housing to determine compliance with applicable requirements.

(c) *Results.* The results of each review under paragraph (a) of this section must be:

(1) Included in a performance report of the DHHL submitted to HUD under § 1006.410; and

(2) Made available to the public.

§ 1006.410 Performance reports.

(a) *Requirement.* For each fiscal year, the DHHL must:

(1) Review the progress the DHHL has made during that fiscal year in achieving goals stated in its housing plan; and

(2) Submit a report in a form acceptable to HUD, within 60 days of the end of the DHHL's fiscal year, to HUD describing the conclusions of the review.

(b) *Content.* Each report submitted under this section for a fiscal year shall:

(1) Describe the use of grant amounts provided to the DHHL for that fiscal year;

(2) Assess the relationship of the use referred to in paragraph (b)(1), of this section, to the goals identified in its housing plan;

(3) Indicate the programmatic accomplishments of the DHHL; and

(4) Describe the manner in which the DHHL would change its housing plan as a result of its experiences administering the grant under the Act.

(c) *Public availability.* (1) *Comments by Native Hawaiians.* In preparing a report under this section, the DHHL shall make the report publicly available to Native Hawaiians who are eligible to reside on the Hawaiian Home Lands and give a sufficient amount of time to permit them to comment on that report, in such manner and at such time as the DHHL may determine, before it is submitted to HUD .

(2) *Summary of comments.* The report under this section must include a summary of any comments received by the DHHL from beneficiaries under paragraph (c)(1) of this section, regarding the program to carry out the housing plan.

(d) *HUD review.* HUD will:

(1) Review each report submitted under the Act and this part; and

(2) With respect to each such report, make recommendations as HUD considers appropriate to carry out the purposes of the Act.

§ 1006.420 Review of DHHL's performance.

(a) *Objective.* HUD will, at least annually, review DHHL's performance to determine whether the DHHL has:

(1) Carried out eligible activities in a timely manner;

(2) Carried out and made certifications in accordance with the requirements and the primary objectives of the Act and this part and with other applicable laws;

(3) A continuing capacity to carry out the eligible activities in a timely manner;

(4) Complied with its housing plan; and

(5) Submitted accurate performance reports.

(b) *Basis for review.* In reviewing DHHL's performance, HUD will consider all available evidence, which may include, but not be limited to, the following:

(1) The DHHL's housing plan and any amendments thereto;

(2) Reports prepared by the DHHL;

(3) Records maintained by the DHHL;

(4) Results of HUD's monitoring of the DHHL's performance, including field evaluation of the quality of the work performed;

(5) Audit reports;

(6) Records of drawdowns on the line of credit;

(7) Records of comments and complaints by citizens and organizations; and

(8) Litigation.

(c) The DHHL's failure to maintain records may result in a finding that the DHHL failed to meet the applicable requirement to which the record pertains.

§ 1006.430 Corrective and remedial action.

(a) *General.* One or more corrective or remedial actions will be taken by HUD when, on the basis of a performance review, HUD determines that the DHHL has not:

(1) Complied with the requirements of the Act and this part and other applicable laws and regulations, including the environmental responsibilities assumed under § 1006.350;

(2) Carried out its activities substantially as described in its housing plan;

(3) Made substantial progress in carrying out its program and achieving its quantifiable goals as described in its housing plan; or

(4) Shown the continuing capacity to carry out its approved activities in a timely manner.

(b) *Action.* The action taken by HUD will be designed, first, to prevent the continuance of the deficiency; second, to mitigate any adverse effects or consequences of the deficiency; and third, to prevent a recurrence of the same or similar deficiencies. The following actions may be taken singly or in combination, as appropriate for the circumstances:

(1) Issue a letter of warning advising the DHHL of the performance problem(s), describing the corrective actions that HUD believes should be taken, establishing a completion date for corrective actions, and notifying the DHHL that more serious actions may be taken if the performance problem(s) is not corrected or is repeated;

(2) Request the DHHL to submit progress schedules for completing activities or complying with the requirements of the Act and this part;

(3) Recommend that the DHHL suspend, discontinue, or not incur costs for the affected activity;

(4) Recommend that the DHHL redirect funds from affected activities to other eligible activities;

(5) Recommend that the DHHL reimburse its program account or line of credit under the Act in the amount improperly expended and reprogram the use of the funds; and

(6) Recommend that the DHHL obtain appropriate technical assistance using existing grant funds or other

available resources to overcome the performance problem(s).

§ 1006.440 Remedies for noncompliance.

(a) *Remedies.* If HUD finds that the DHHL has failed to comply substantially with any provision of the Act or this part, the following actions may be taken by HUD:

(1) Terminate payments to the DHHL;

(2) Reduce payments to the DHHL by an amount equal to the amount not expended in accordance with the Act or this part;

(3) Limit the availability of payments to programs, projects, or activities not affected by such failure to comply; or

(4) Adjust, reduce or withdraw grant amounts or take other action as appropriate in accordance with reviews and audits.

(b) *Exception.* Grant amounts already expended on affordable housing activities may not be recaptured or deducted from future assistance provided to the DHHL.

(c) HUD may, upon due notice, suspend payments at any time after the issuance of the opportunity for hearing pending such hearing and final decision, to the extent HUD determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply.

(d) *Hearing requirement.* Before imposing remedies under this section, HUD will:

(1) Take at least one of the corrective or remedial actions specified under § 1006.430 and permit the DHHL to make an appropriate and timely response;

(2) Provide the DHHL with the opportunity for an informal consultation with HUD regarding the proposed action; and

(3) Provide DHHL with reasonable notice and opportunity for a hearing.

(e) *Continuance of actions.* If HUD takes an action under paragraph (a) of this section, the action will continue until HUD determines that the failure of the DHHL to comply with the provision has been remedied and the DHHL is in compliance with the provision.

(f) *Referral to the Attorney General.* In lieu of, or in addition to, any action HUD may take under paragraph (a) of this section, if HUD has reason to believe that the DHHL has failed to comply substantially with any provision of the Act or this part, HUD may refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted. Upon receiving a referral, the Attorney General may bring a civil action in any United States district court of appropriate jurisdiction for such relief as may be appropriate, including an action to recover the amount of the assistance furnished under the Act that was not expended in accordance with the Act or this part or for mandatory or injunctive relief.

PART 1007—SECTION 184A LOAN GUARANTEES FOR NATIVE HAWAIIAN HOUSING

Sec.

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AUTHORITY: 12 U.S.C. 1715z–13b; 42 U.S.C. 3535(d).

SOURCE: 67 FR 40776, June 13, 2002, unless otherwise noted.

§ 1007.1 Purpose.

This part provides the requirements and procedures that apply to loan guarantees for Native Hawaiian Housing under section 184A of the Housing and Community Development Act of 1992. Section 184A permits HUD to guarantee an amount not to exceed 100 percent of the unpaid principal and interest that is due on an eligible loan. The purpose of section 184A and this part is to provide access to sources of private financing to Native Hawaiian families

who otherwise could not acquire housing financing because of the unique legal status of the Hawaiian Home Lands or as a result of a lack of access to private financial markets.

§ 1007.5 Definitions.

The following definitions apply in this part:

Department of Hawaiian Home Lands (DHHL) means the agency or department of the government of the State of Hawaii that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 *et seq.*).

Eligible entity means a Native Hawaiian family, the Department of Hawaiian Home Lands, the Office of Hawaiian Affairs, and private nonprofit or private for-profit organizations experienced in the planning and development of affordable housing for Native Hawaiians.

Family means one or more persons maintaining a household, and includes, but is not limited to, a family with or without children, an elderly family, a near-elderly family, a disabled family, or a single person.

Guarantee Fund means the Native Hawaiian Housing Loan Guarantee Fund under this part.

Hawaiian Home Lands means lands that:

(1) Have the status of Hawaiian Home Lands under section 204 of the Hawaiian Homes Commission Act (42 Stat. 110); or

(2) Are acquired pursuant to that Act.

HUD means the Department of Housing and Urban Development.

Native Hawaiian means any individual who is:

(1) A citizen of the United States; and

(2) A descendant of the aboriginal people, who, prior to 1778, occupied and exercised sovereignty in the area that currently constitutes the State of Hawaii, as evidenced by:

(i) Genealogical records;

(ii) Verification by kupuna (elders) or kama'aina (long-term community residents); or

(iii) Birth records of the State of Hawaii.

Native Hawaiian family means a family with at least one member who is a Native Hawaiian.

Office of Hawaiian Affairs means the entity of that name established under the constitution of the State of Hawaii.

§ 1007.10 Eligible borrowers.

A loan guaranteed under this part may only be made to the following borrowers:

(a) A Native Hawaiian family;

(b) The Department of Hawaiian Home Lands;

(c) The Office of Hawaiian Affairs; or

(d) A private, nonprofit organization experienced in the planning and development of affordable housing for Native Hawaiians.

§ 1007.15 Eligible uses.

(a) *In general.* A loan guaranteed under this part may only be used to construct, acquire, or rehabilitate eligible housing.

(b) *Construction advances.* Advances made by the lender during construction are eligible if:

(1) The mortgagor and the mortgagee execute a building loan agreement, approved by HUD, setting forth the terms and conditions under which advances will be made;

(2) The advances are made only as provided in the building loan agreement;

(3) The principal amount of the mortgage is held by the mortgagee in an interest bearing account, trust, or escrow for the benefit of the mortgagor, pending advancement to the mortgagor or to his or her creditors as provided in the loan agreement; and

(4) The mortgage bears interest on the amount advanced to the mortgagor or to his or her creditors and on the amount held in an account or trust for the benefit of the mortgagor.

§ 1007.20 Eligible housing.

(a) A loan guaranteed under this part may only be made for one to four-family dwellings that are standard housing, in accordance with paragraph (b), of this section. The housing must be located on Hawaiian Home Lands for which a housing plan that provides for the use of loan guarantees under this

part has been submitted and approved under part 1006 of this chapter.

(b) Standard housing must meet housing safety and quality standards that:

(1) Provide sufficient flexibility to permit the use of various designs and materials; and

(2) Require each dwelling unit to:

(i) Be decent, safe, sanitary, and modest in size and design;

(ii) Conform with applicable general construction standards for the region in which the housing is located;

(iii) Contain a plumbing system that:

(A) Uses a properly installed system of piping;

(B) Includes a kitchen sink and a partitional bathroom with lavatory, toilet, and bath or shower; and

(C) Uses water supply, plumbing, and sewage disposal systems that conform to any minimum standards established by the applicable county or State;

(iv) Contain an electrical system using wiring and equipment properly installed to safely supply electrical energy for adequate lighting and for operation of appliances that conforms to any appropriate county, State, or national code;

(v) Be not less than the size provided under the applicable locally adopted standards for size of dwelling units, except that HUD, upon request of the DHHL may waive the size requirements under this paragraph; and

(vi) Conform with the energy performance requirements for new construction established by HUD under section 526(a) of the National Housing Act (12 U.S.C.A. 1735f–4), unless HUD determines that the requirements are not applicable.

(c) The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, and R of this title and §§ 200.805 and 200.810 of this title apply to housing eligible for a loan guaranteed under this part.

(d) Housing that meets the minimum property standards for Section 247 mortgage insurance (12 U.S.C. 1715z-12) is deemed to meet the required housing safety and quality standards.

[67 FR 40776, June 13, 2002, as amended at 68 FR 66985, Nov. 28, 2003]

§ 1007.25 Eligible lenders.

(a) *In general.* To qualify for a guarantee under this part, a loan shall be made only by a lender meeting qualifications established in this part and approved by HUD, including any lender described in paragraph (b), of this section, except that a loan otherwise insured or guaranteed by an agency of the Federal Government or made by the DHHL from amounts borrowed from the United States shall not be eligible for a guarantee under this part.

(b) *Approval.* The following lenders shall be considered to be lenders that have been approved by HUD:

(1) Any mortgagee approved by HUD for participation in the single family mortgage insurance program under title II of the National Housing Act (12 U.S.C.A. 1707 *et seq.*);

(2) Any lender that makes housing loans under chapter 37 of title 38, United States Code, that are automatically guaranteed under section 3702(d) of title 38, United States Code;

(3) Any lender approved by the Secretary of Agriculture to make guaranteed loans for single family housing under the Housing Act of 1949 (42 U.S.C.A. 1441 *et seq.*);

(4) Any other lender that is supervised, approved, regulated, or insured by any agency of the Federal Government; and

(5) Any other lender approved by HUD under this part.

§ 1007.30 Security for loan.

(a) *In general.* A loan guaranteed under section 184A of the Housing and Community Development Act of 1992 and this part may be secured by any collateral authorized under and not prohibited by Federal or State law and determined by the lender and approved by HUD to be sufficient to cover the amount of the loan. Eligible collateral may include, but is not limited to, the following:

(1) The property and/or improvements to be acquired, constructed, or rehabilitated, to the extent that an interest in such property is not subject

to any restrictions against alienation applicable to Hawaiian Home Lands;

(2) A security interest in non-Hawaiian Home Lands property;

(3) Personal property; or

(4) Cash, notes, an interest in securities, royalties, annuities, or any other property that is transferable and whose present value may be determined.

(b) *Hawaiian Home Lands property interest as collateral.* If a property interest in Hawaiian Home Lands is used as collateral or security for the loan, the following additional provisions apply:

(1) *Approved Lease.* Any land lease for a unit financed under section 184A of the Housing and Community Development Act of 1992 must be on a form approved by both the DHHL and HUD.

(2) *Assumption or sale of leasehold.* The lease form must contain a provision requiring the DHHL's consent before any assumption of an existing lease, except where title to the leasehold interest is obtained by HUD through foreclosure of the guaranteed mortgage or a deed in lieu of foreclosure. A mortgagee other than HUD must obtain the DHHL's consent before obtaining title through a foreclosure sale. The DHHL's consent must be obtained on any subsequent transfer from the purchaser, including HUD, at foreclosure sale. The lease may not be terminated by the lessor without HUD's approval while the mortgage is guaranteed or held by HUD.

(3) *Liquidation.* The lender or HUD shall only pursue liquidation after offering to transfer the account to another eligible Native Hawaiian family or the DHHL. The lender or HUD shall not sell, transfer, or otherwise dispose of or alienate the property except to another eligible Native Hawaiian family or the DHHL.

(4) *Eviction procedures.* Before HUD will guarantee a loan secured by a Hawaiian Home Lands property, the DHHL must notify HUD that it has adopted and will enforce procedures for eviction of defaulted mortgagors where the guaranteed loan has been foreclosed.

(i) *Enforcement.* If HUD determines that the DHHL has failed to enforce adequately its eviction procedures, HUD will cease issuing guarantees for loans under this part except pursuant to existing commitments.

(ii) *Review.* If HUD ceases issuing guarantees for the DHHL's failure to enforce its eviction procedures, HUD shall notify the DHHL of such action and that the DHHL may, within 30 days after notification of HUD's action, file a written appeal with the Deputy Assistant Secretary, Office of Native American Programs (ONAP). Upon notification of an adverse decision by the Deputy Assistant Secretary, the DHHL has 30 additional days to file an appeal with the Assistant Secretary for Public and Indian Housing. The determination of the Assistant Secretary shall be final, but the DHHL may resubmit the issue to the Assistant Secretary for review at any subsequent time if new evidence or changed circumstances warrant reconsideration.

[67 FR 40776, June 13, 2002, as amended at 68 FR 66985, Nov. 28, 2003]

§ 1007.35 Loan terms.

To be eligible for guarantee under this part, the loan shall:

(a) Be made for a term not exceeding 30 years;

(b) Bear interest (exclusive of the guarantee fee under § 1007.55 and service charges, if any) at a rate agreed upon by the borrower and the lender and determined by HUD to be reasonable, but not to exceed the rate generally charged in the area (as determined by HUD) for home mortgage loans not guaranteed or insured by any agency or instrumentality of the Federal Government;

(c) Involve a principal obligation not exceeding:

(1) 97.75 percent of the appraised value of the property as of the date the loan is accepted for guarantee (or 98.75 percent if the value of the property is $50,000 or less); or

(2) The amount approved by HUD under this section; and

(d) Involve a payment on account of the property:

(1) In cash or its equivalent; or

(2) Through the value of any improvements, appraised in accordance with generally accepted practices and procedures.

§ 1007.40 Environmental requirements.

Before HUD issues a commitment to guarantee any loan or (if no commitment is issued) before guarantee of any loan, there must be compliance with environmental review procedures to the extent applicable under part 50 of this title. If the loan involves proposed or new construction, HUD will require compliance with procedures similar to those required by § 203.12(b)(2) of this title for FHA mortgage insurance.

§ 1007.45 Applicability of civil rights statutes.

To the extent that the requirements of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) or of the Fair Housing Act (42 U.S.C.A. 3601 *et seq.*) apply to a guarantee provided under this part, nothing in the requirements concerning discrimination on the basis of race shall be construed to prevent the provision of the guarantee to an eligible entity on the basis that the entity serves Native Hawaiian families or is a Native Hawaiian family.

§ 1007.50 Certificate of guarantee.

(a) *Approval process.* (1) *In general.* Before HUD approves any loan for guarantee under this section, the lender shall submit the application for the loan to HUD for examination.

(2) *Approval.* If HUD approves the application submitted under paragraph (a)(1) of this section, HUD will issue a certificate as evidence of the loan guarantee approved.

(b) *Standard for approval.* HUD may approve a loan for guarantee under this part and issue a certificate under this section only if HUD determines that there is a reasonable prospect of repayment of the loan.

(c) *Effect.* (1) *As evidence.* A certificate of guarantee issued under this part by HUD shall be conclusive and incontestable evidence in the hands of the bearer of the eligibility of the loan for guarantee under this part and the amount of that guarantee.

(2) *Full faith and credit.* The full faith and credit of the United States is pledged to the payment of all amounts agreed to be paid by HUD as security for the obligations made by HUD under this section.

(d) *Fraud and misrepresentation.* This section may not be construed:

(1) To preclude HUD from establishing defenses against the original lender based on fraud or material misrepresentation; or

(2) To bar HUD from establishing regulations that are (on the date of issuance or disbursement, whichever is earlier) partial defenses to the amount payable on the guarantee.

§ 1007.55 Guarantee fee.

The lender shall pay to HUD, at the time of issuance of the guarantee, a fee for the guarantee of loans under this part, in an amount equal to 1 percent of the principal obligation of the loan. This amount is payable by the borrower at closing.

§ 1007.60 Liability under guarantee.

The liability under a guarantee provided under this section shall decrease or increase on a pro rata basis according to any decrease or increase in the amount of the unpaid obligation under the provisions of the loan agreement involved.

§ 1007.65 Transfer and assumption.

Notwithstanding any other provision of law, any loan guaranteed under this section, including the security given for the loan, may be sold or assigned by the lender to any financial institution subject to examination and supervision by an agency of the Federal Government or of any State or the District of Columbia.

§ 1007.70 Disqualification of lenders and civil money penalties.

(a) *In general.* (1) *Grounds for action.* HUD may take action under paragraph (a)(2) of this section if HUD determines that any lender or holder of a guarantee certificate:

(i) Has failed:

(A) To maintain adequate accounting records;

(B) To service adequately loans guaranteed under this section; or

(C) To exercise proper credit or underwriting judgment; or

(ii) Has engaged in practices otherwise detrimental to the interest of a borrower or the United States.

(2) *Actions.* Upon a determination by HUD that any of the grounds for action in paragraph (a)(1)(i), of this section apply to the holder of a guarantee certificate, HUD may:

(i) Refuse, either temporarily or permanently, to guarantee any further loans made by such lender or holder;

(ii) Bar such lender or holder from acquiring additional loans guaranteed under this part; and

(iii) Require that such lender or holder assume not less than 10 percent of any loss on further loans made or held by the lender or holder that are guaranteed under this part.

(b) *Civil money penalties for intentional violations.* (1) *In general.* HUD may impose a civil monetary penalty on a lender or holder of a guarantee certificate if HUD determines that the holder or lender has intentionally failed:

(i) To maintain adequate accounting records;

(ii) To adequately service loans guaranteed under this section; or

(iii) To exercise proper credit or underwriting judgment.

(2) *Penalties.* A civil monetary penalty imposed under this section shall be imposed in the manner and be in an amount provided under section 536 of the National Housing Act (12 U.S.C.A. 1735f-1) with respect to mortgagees and lenders under that Act.

(c) *Payment on loans made in good faith.* Notwithstanding paragraphs (a) and (b) of this section, if a loan was made in good faith, HUD may not refuse to pay a lender or holder of a valid guarantee on that loan, without regard to whether the lender or holder is barred under this section.

§ 1007.75 Payment under guarantee.

(a) *Lender options.* (1) *Notification.* If a borrower on a loan guaranteed under this part defaults on the loan, the holder of the guarantee certificate shall provide written notice of the default to HUD.

(2) *Payment.* Upon providing the notice required under paragraph (a)(1), of this section, the holder of the guarantee certificate shall be entitled to payment under the guarantee (subject to the provisions of this section) and may proceed to obtain payment in one of the following manners:

(i) *Foreclosure.* The holder of the certificate may initiate foreclosure proceedings (after providing written notice of that action to HUD). Upon a final order by the court authorizing foreclosure and submission to HUD of a claim for payment under the guarantee, HUD will pay to the holder of the certificate the pro rata portion of the amount guaranteed (as determined under § 1007.60) plus reasonable fees and expenses as approved by HUD. HUD's rights will be subrogated to the rights of the holder of the guarantee, who shall assign the obligation and security to HUD.

(ii) *No foreclosure.* Without seeking foreclosure (or in any case in which a foreclosure proceeding initiated under paragraph (a)(2)(i) of this section continues for a period in excess of 1 year), the holder of the guarantee may submit to HUD a request to assign the obligation and security interest to HUD in return for payment of the claim under the guarantee. HUD may accept assignment of the loan if HUD determines that the assignment is in the best interest of the United States. Upon assignment, HUD will pay to the holder of the guarantee the pro rata portion of the amount guaranteed (as determined under § 1007.60). HUD's rights will be subrogated to the rights of the holder of the guarantee, who shall assign the obligation and security to HUD.

(b) *Requirements.* Before any payment under a guarantee is made under paragraph (a) of this section, the holder of the guarantee shall exhaust all reasonable possibilities of collection. Upon payment, in whole or in part, to the holder, the note or judgment evidencing the debt shall be assigned to the United States and the holder shall have no further claim against the borrower or the United States. HUD will then take such action to collect as HUD determines to be appropriate.

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