

housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

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

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