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The Housing and Economic Recovery Act of 2008 (HERA): Changes to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs; Proposed Rule

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Parts 5, 982, and 983

[Docket No. FR-5242-P-01]

**The Housing and Economic Recovery
Act of 2008 (HERA): Changes to the
Section 8 Tenant-Based Voucher and
Section 8 Project-Based Voucher
Programs**

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

ACTION: Proposed rule.

SUMMARY: HERA, enacted into law on July 30, 2008, made comprehensive and significant reforms to several HUD programs, including HUD's Public Housing, Section 8 Tenant-Based Voucher, and Project-Based Voucher programs. On November 24, 2008, HUD published a notice that provided information about the applicability of certain HERA provisions to these programs. The notice identified: (1) Those statutory provisions that are self-executing and required no action on the part of HUD for the program changes made by HERA to be implemented; and (2) those statutory provisions that require new regulations or regulatory changes by HUD for the HERA provisions to be implemented. The notice also offered the opportunity for public comment on the guidance provided.

This proposed rule follows the November 24, 2008, notice for the purpose of establishing, in regulation, the reforms made to HERA as discussed in that notice, and to make other related regulatory changes. This proposed rule would make conforming changes to the regulations of the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher programs to reflect the self-executing provisions of HERA, and would also amend the regulations required to implement those statutory provisions of HERA that are not self-implementing. Additionally, this rule would make such other changes for the purposes of updating certain regulations to reflect current practices, and clarifying other regulations which, based on experience, HUD determined would benefit from clarification. While the conforming and clarifying changes are not implementing new policy, HUD nevertheless welcomes comment on the clarity and comprehensibility of the language proposed to be codified. This rule also takes into consideration the two public comments received in response to issuance of the November

2008 notice, and solicits additional public comment.

HERA changes affecting the public housing program are being addressed by separate rulemaking.

DATES: *Comment Due Date:* July 16, 2012.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, 451 7th Street SW., Room 10276, Department of Housing and Urban Development, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at www.regulations.gov. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the www.regulations.gov Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal

Relay Service at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: For information about HUD's Public Housing and Voucher programs, contact Danielle Bastarache, Director, Office of Voucher Programs, Office of Public and Indian Housing, Room 4226, telephone number 202-401-3882. The address is the Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410. The listed telephone number is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

HERA (Pub. L. 110-289, 122 Stat. 2654, approved July 30, 2008) made several changes to the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) that affect programs administered by HUD's Office of Public and Indian Housing (PIH), including, but not limited to, changes to the definition of income, which also affect the Office of Housing's project-based assistance programs; the public housing agency (PHA) plan; the voucher program; and the capital and operating funds with respect to emergency funds.

HUD published a notice in the **Federal Register** on November 24, 2008, at 72 FR 71037, that provided information about the applicability of the 1937 Act provisions amended by HERA to HUD's Public Housing, Section 8 Tenant-Based Voucher, and Section 8 Project-Based Voucher programs. To assist PHAs and assisted housing providers, the notice identified those provisions that are self-executing and required no action on the part of HUD for the program changes to be implemented, and those provisions that require new regulations or regulatory changes by HUD to be implemented. The notice also solicited public comment. This proposed rule follows the November 24, 2008, notice for the purpose of: (1) Establishing, in regulation, the reforms made by HERA to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher programs as discussed in the notice, taking into consideration public comment received on the notice, and (2) making other related regulatory changes, as discussed below.

Whether the HERA program changes are self-executing or not self-executing, a rule is necessary to ensure that the

codified regulations for the programs affected reflect the HERA changes. In some cases, the regulatory change is simply a conforming change; that is, the regulatory revisions conform the language of the regulation to the language of the 1937 Act, as amended by HERA. In other cases, however, HUD was required to exercise some discretionary authority to determine how the statutory change should be implemented.

With respect to the conforming regulatory changes, a conforming change does not necessarily mean that HUD is adopting in regulation the statutory language verbatim. For purposes of clarity or to give precision to the statutory language or statutory intent, the conforming regulatory change may be worded differently than the statutory language. However, any regulatory change to the statutory language should not be interpreted as any reversal in HUD's position that the statutory language is self-executing. Nevertheless, once promulgated in final, the regulatory language, with any precision given to the statutory language, will govern implementation of these statutory provisions by PHAs.

In discussing the regulatory changes proposed to be made by this rule, the preamble to this rule follows the HERA overview provided in the November 24, 2008, notice, which, as noted earlier, identified the HERA provisions that would require conforming rule changes and those that would require implementing regulations.

II. This Proposed Rule

Income Regulations in 24 CFR Part 5

Annual Income (24 CFR 5.609(c)(14))—Conforming Change. Section 2608 of Title VI of Division B of HERA amends the definition of "annual income" in section 3(b)(4) of the 1937 Act to exclude, from the definition of income, any deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump-sum amount or in prospective monthly amounts. The November 24, 2008, notice advised that this provision was self-executing; that is, as of the effective date of HERA, July 30, 2008, such benefits are not to be included for purposes of determining the annual income of an applicant for or recipient of benefits under the 1937 Act.

This income exclusion made by HERA is similar to the existing exclusion for deferred periodic amounts from Supplemental Security Income and Social Security benefits under 24 CFR 5.609(c)(14). Although the full amount of periodic Social Security payments is

included in the amounts that constitute annual income in 24 CFR 5.609(b)(4), the deferred amount resulting from the delayed start of the periodic payment is not included in annual income. Accordingly, the full amount of periodic VA disability benefit payments continues to be included in amounts that constitute annual income in 24 CFR 5.609(b)(4), but the deferred amount resulting from the delayed start of the disability payments will not be included in annual income.

The November 24, 2008, notice advised that a payment qualifies as a VA disability benefit if it is identified as a disability benefit in the VA benefit award letter, regardless of whether or not the family member who is the beneficiary of the award would qualify as a person with disabilities under HUD's regulations. The November 24, 2008, notice also advised that for existing residents or tenants, including those residing in project-based assisted housing administered by HUD's Office of Housing, the new exclusion for deferred payments will be made applicable at the time of annual reexamination of income, or at the time of interim reexamination of income.

This rule makes a conforming change to 24 CFR 5.609 to include the VA disability benefits with the exclusion from income for deferred Social Security benefits in § 5.609(c)(14).

Section 8 Tenant-Based Assistance: Housing Choice Voucher Program Regulations

Rent to Owner: Reasonable Rent (24 CFR 982.507)—Conforming and Correcting Change. Subtitle B of Title VIII of HERA (sections 2831 through 2835) makes several changes to coordinate tax incentives for private housing and federal housing programs, including the Section 8 voucher program. As one of these changes, the procedure for determining the rent reasonableness standard applicable to dwelling units receiving low-income housing tax credits (LIHTC) or assistance under the HOME Investments Partnerships (HOME) program is streamlined by section 2835(a)(2) of HERA, which adds section 8(o)(10)(F) to the 1937 Act.

Under this new section of the 1937 Act, a rent comparison with unassisted local market units is not required for such dwelling units, if the rent does not exceed the rent for other LIHTC or HOME-assisted units in the project, that are not occupied by families with tenant-based assistance. The rent is to be considered reasonable if it does not exceed the greater of: (1) The rent for other LIHTC- or HOME-assisted units in

the project not occupied by families with tenant-based assistance, and (2) the payment standard established by a PHA for a unit of the size involved.

Because HUD is undertaking separate rulemaking for the HOME program, § 982.507 makes only a conforming change to the regulations with respect to LIHTC-assisted units. Following the addressing of this issue through a HOME program rulemaking, namely, HOME rents for nonvoucher families in the HOME program regulations, § 982.507(c) will be amended accordingly. With this rule, § 982.507(c) provides that if the rent requested by the owner exceeds the LIHTC rents for nonvoucher families, the PHA must perform a rent comparability study in accordance with program regulations, and the rent shall not exceed the lesser of the: (1) Reasonable rent as determined pursuant to a rent comparability study, and (2) the payment standard established by the PHA for the unit size involved.

Section 8 Project-Based Voucher Program Regulations

Section 2835(a)(1) of HERA makes several changes to the section 8 project-based voucher (PBV) program established by section 8(o)(13) of the 1937 Act (42 U.S.C. 1437f(o)(13)) and for which the regulations are found at 24 CFR part 983. The changes are as follows:

Applicability of the Tenant-Based Voucher Rule (24 CFR 983.2)—Conforming Change. This proposed rule would remove the reference to cooperative housing from § 983.2. Section 983.2(b) lists regulatory provisions under the tenant-based rule at 24 CFR part 982 that do not apply to the PBV program, including special housing types. Since, pursuant to section 2835(a)(1)(F) of HERA, cooperative housing is an eligible housing type under the PBV program, the inclusion of cooperative housing under § 983.2(b) and § 983.2(c)(7)(ii) is outdated. Additionally, this proposed rule would correct a citation error in § 983.2(c)(2)(i): The reference to owner termination of tenancy, should be § 982.310, not § 982.10. The proposed rule would include additional references to regulations in 24 CFR part 982, subpart M, that are not applicable to PBV assistance in § 983.2(c)(7)(i).

PBV Definitions (24 CFR 983.3)—Proposed New Definitions and Clarifying Changes. This proposed rule would add definitions for the following terms: "housing credit agency", "project", "project-based certificate program", and "release of funds". The proposed rule would revise the

definitions of “excepted units (units in a multifamily building not counted against the 25 percent cap)”, “existing housing”, “partially assisted building”, “premises”, and “qualifying families (for purposes of exception to the 25 percent per building cap)”. The reasons for revising the definition of “existing housing” are discussed below. The other terms are revised in order to reflect HERA’s amendment to section 8(o) of the 1937 Act to substitute the term “project” for “building”. The definition of “special housing type” is also proposed to be revised, for the same reasons provided concerning the conforming change made to § 983.2; namely, in order to remove reference to cooperative housing from the applicability of the regulations of 24 CFR part 982, subpart M.

The definition of “existing housing” is proposed to be revised for the purpose of establishing clear and measurable standards in determining whether a proposed project is eligible for selection as existing housing. The definition is intended to address the potential circumvention of rehabilitation program requirements by selecting a project as existing housing when rehabilitation will be performed on the project shortly after execution of the housing assistance payment (HAP) contract. This rule proposes to revise the definition of “existing housing” to read as follows:

Existing housing. A housing unit is considered an existing unit for purposes of the PBV program, if at the time of notice of PHA selection, the unit:

(1) Will comply with HQS within 60 days of the date of such selection, and the total amount of work that must be performed to cause the unit to comply with HQS does not exceed \$1,000 per assisted unit (including the unit’s prorated share of any work to be accomplished on common areas or systems); and

(2) There is no plan to perform rehabilitation work on the unit within one year after HAP contract execution that would cause the unit to be in noncompliance with HQS and that would total more than \$1,000 per assisted unit (including the unit’s prorated share of any work to be accomplished on common areas or systems).

This rule proposes to remove the definition of “state-certified appraiser”. As discussed later in this preamble under the discussion of proposed changes to § 983.59, HUD determined that a formal appraisal of the property is no longer necessary.

Description of the PBV Program (24 CFR 983.5)—Transparency and Information Collection Change. This rule amends § 983.5(c) to provide that although a PHA has the discretion to decide whether to operate a PBV

program (and this rule does not remove that authority), the PHA must notify HUD of its intent to project-base its vouchers. The notification requirement is added to § 983.6, as discussed immediately below. The advance notification is consistent with the transparency/notification requirements found in § 983.6(c) and § 983.51 (Owner Proposal Selections Procedures).

Maximum Amount of PBV Assistance (24 CFR 983.6)—Transparency and Information Collection Change. As noted above, § 983.6 is amended to require the PHA to provide advance notification to HUD of the PHA’s intent to project-base its vouchers. The purposes of this proposed amendment is to ensure that PHAs do not exceed the 20 percent limitation on project-basing vouchers that is imposed by statute.

Special Housing Types (24 CFR 983.9)—Conforming Change. Consistent with the regulatory changes to § 983.3 described above, the proposed rule makes a conforming amendment to § 983.9 to clarify that cooperative housing is an eligible special housing type under the PBV program in accordance with 24 CFR part 982, subpart M. Section 983.9 is also amended to clarify which regulatory provisions in part 982, subpart M, are not applicable to cooperative housing under the PBV program.

Project-Based Certificate (PBC) Program (24 CFR 983.10)—Conforming Change. Section 6904 of the U.S. Troop Readiness, Veterans’ Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (Pub. L. 110–28, approved May 7, 2007) provides that a PHA may renew or extend (hereafter, collectively referred to as renew) PBC HAP contracts as PBV HAP contracts, under certain conditions. Specifically, such renewals are permitted provided that the initial PBV HAP contract is for a term of up to 15 years¹ and that the rents for the renewed contract are calculated in accordance with section 8(o)(13)(H) of the 1937 Act and HUD’s regulations at 24 CFR 983.301 through 983.305. In addition, section 8(o)(13)(C) of the 1937 Act (entitled “Consistency with PHA Plan and Other Goals) and section 8(o)(13)(D) of the 1937 Act (entitled “Income Mixing Requirements”) do not apply to renewal of PBC contracts as PBV contracts, and this proposed rule would make this conforming change.²

¹ Section 8(o)(13)(F), entitled “Contract Term,” was amended by section 2835(a)(1)(B) of HERA, which extended the contract term eligible for renewal from up to 10 years to up to 15 years. (See 42 U.S.C. 1473(o)(13)(F).)

² HUD issued PIH Notices 2008–14 and 2010–08 implementing the provisions of Public Law 110–28.

Owner Proposal Selection Procedures (24 CFR 983.51)—Conforming Change.

This proposed rule would revise paragraph (a) of this section to substitute the term “project” for “building”, consistent with the statutory change made by HERA to section 8(o) of the 1937 Act. Additionally, the proposed rule slightly rewords paragraph (b)(2) of this section to further clarify that a PHA may select, without competition, a proposal for housing assisted under a federal, state, or local government housing assistance, community development, or supportive services program that required a competition for the selection of proposals; that is, the PHA need not conduct another competition.

HUD notes that § 983.51(e) provides, in relevant part, that “under no circumstances may PBV assistance be used with a public housing unit.” HUD makes no changes to this section but finds that it is important to reiterate the basis for this requirement as provided by HUD in the PBV program final rule published on October 13, 2005, at 70 FR 59892. HUD stated in relevant part as follows:

The Department believes that Congress’ adoption of disparate or parallel statutory provisions for the public housing and voucher programs affirms that public housing and voucher programs are intended to operate as separate, and mutually exclusive, subsidy systems under the U.S. Housing Act of 1937. It is not permissible by law to combine voucher funds with public housing funds. * * * If Capital Funds (including Replacement Housing Factor Fund Grants) or Section 24 funds are used in the development of affordable housing, pro-rata must occur. For example, if a project receives \$2,000 in non-public housing HOPE VI funds and \$1,000 in Capital Funds and there are 60 units in the development, 20 of the units (one-third) are being funded with capital funds and, therefore, cannot be combined with project-based vouchers. Provided that the remaining 40 units (two-thirds) are not receiving any Public Housing funds, the units may be assisted under the PBV program. (See 70 FR 59900.)

Housing Type (24 CFR 983.52)—Proposed Change. This regulatory section provides standards by which a unit will be considered an existing unit for purposes of the PBV program. This section, as proposed to be revised, would provide that a unit must satisfy Housing Quality Standards (HQS) requirements within 60 days of the date of selection by a PHA. This section would also limit the total amount of work that must be performed to

PHAs are currently renewing PBC HAP contracts in accordance with the HUD directives. Therefore, the regulatory change is conforming in nature, reflecting practices already in effect.

facilitate compliance with HQS to \$1,000 per assisted unit. Additionally, the proposed rule provides that to be considered an existing unit for purposes of the PBV program, the owner must not plan to perform rehabilitation work on the units within one year after HAP contract execution that would cause the units to be in noncompliance with HQS and that would total more than \$1,000 per assisted unit. The reason for the proposed change to § 983.52 is to provide a clear and measurable standard as to what constitutes “existing housing” as discussed above under the changes to the PBV Definitions (24 CFR 983.3).

Prohibition of Assistance for Ineligible Units (24 CFR 983.53)—Conforming Change. Section 2835(a)(1)(F) of HERA added a new section 8(o)(13)(L) to the 1937 Act to allow PHAs to enter into HAP contracts with respect to units in cooperative housing and in high-rise elevator projects. The authority for units in high-rise elevator projects specifically states it may be exercised without review and approval by HUD. The November 24, 2008, notice advised that the provision is self-implementing. This proposed rule would make conforming changes to § 983.53 to remove the requirement of advance HUD approval for HAP contracts with respect to units in high-rise elevators projects and to make cooperative housing an eligible housing type.

Prohibition of Excess Public Assistance (24 CFR 983.55)—Conforming Change. Section 2835(a)(1)(F) of HERA provides relief from certain review requirements by adding section 8(o)(13)(M) to the 1937 Act. New section 8(o)(13)(M)(i) removes the requirement to conduct a subsidy layering review in the case of a HAP contract for an existing structure or if such a review has been conducted by the applicable state or local agency. The November 24, 2008, notice advised that the provision is self-implementing for existing housing, but not for newly constructed or rehabilitated housing.

This proposed rule would make a conforming change to § 983.55 to clarify that the subsidy layering requirements are not applicable to existing housing. The November 24, 2008, notice further advised that HUD would be issuing guidance on how such reviews must be conducted for newly constructed or rehabilitated housing. The Office of Public and Indian Housing (PIH) has issued guidelines on subsidy layering requirements for the PBV program. (See HUD’s notice published in the **Federal Register** on July 9, 2010, at 75 FR 39561.)

Applicability of 25 Percent Cap on Number of PBV Units (24 CFR 983.56)—Conforming Change. Prior to amendment by section 2835(a)(1)(A) of HERA, PBV assistance was limited to 25 percent of the units in a building. This cap in section 8(o)(13)(D)(i) of the 1937 Act is amended by replacing the term “building” with the term “project,” which is defined to mean a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. The November 24, 2008, notice advised that this substitution in terminology was self-implementing and that HUD would make a conforming change to its regulations at 24 CFR 983.56 to reflect the new terminology.

This proposed rule would make a conforming change to § 983.56, and HUD is also adding the statutory definition of “project” to the definitions in 24 CFR 983.3, as discussed earlier in this preamble. Additionally, this proposed rule would clarify that the exception to the 25 percent cap on the number of PBV units in a project includes units for the elderly and/or persons with disabilities; that is, a project for the elderly, a project for persons with disabilities, or a project that serves both categories of tenants.

With respect to the definition of “project”, HUD specifically requested comment in the November 24, 2008, notice on the impact on deconcentration efforts concerning the change in terms from “building” to “project”. One of the commenters requested that HUD’s conforming rule clarify that a PHA has the discretion to apply the definition of “project” to mean a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. HUD interprets “project” to apply to all of these structures, and a PHA must consider the entire definition and apply this definition to the proposed PBV units. HUD also interprets the term “contiguous” in the statutory definition of “project” to include “adjacent to”, as well as touching along a boundary or a point.

Another commenter expressed concern that the change in definition to “project” would allow PBV owners to set aside separate floors of mixed-occupancy buildings solely for PBV residents with disabilities. The commenter noted that the civil rights authorities prohibit unlawful segregation, not only of race but of disability as well. The commenter requested that HUD issue regulations directing PHAs to adopt written policies to forbid segregation in PBV projects.

It is HUD’s view that nothing in HERA or in this proposed rule would

alter a PHA’s responsibility to adhere to nondiscrimination requirements. Given that PHAs already have the responsibility to adhere to civil rights and nondiscrimination requirements, including, but not limited to, the express integration mandate set forth at 24 CFR 8.4(d), HUD determined that further regulation is not necessary in this area. However, HUD will remain diligent in its oversight responsibilities regarding compliance with civil rights requirements.

In addition to the foregoing changes, the proposed rule would add a new paragraph (b)(3) to make explicit that exception categories in a multifamily housing project may be combined. The exception categories in a multifamily housing project refers to those units that are occupied by elderly families and/or families with disabilities and/or families receiving supportive services and that are exempt from the overall 25 percent cap. New paragraph (b)(3) is intended to remove any ambiguity that the exception categories can be combined in determining the number of units that are exempt from the 25 percent cap.

Environmental Review (24 CFR 983.58)—Informational Change. As stated in the November 24, 2008, notice, in addition to removal of the requirement for a subsidy layering review for existing housing, section 8(o)(13)(M)(ii) of the 1937 Act relieves a PHA from undertaking an environmental review for an existing structure, except to the extent that such a review is otherwise required by law or regulation. HUD specifically solicited comment on this HERA amendment in the November 2008 notice, but did not receive any public comment on this issue.

HUD notes that any federally required environmental review is “required by law or regulation.” Given this, there do not appear to be any federally required environmental reviews that would be eliminated by this provision. HUD also notes that under its regulations in 24 CFR part 58, federal environmental reviews are undertaken by responsible entities (usually units of general local governments), and not by PHAs.

Accordingly, no changes are proposed to § 983.58, except to make a minor change to paragraph (d) of § 983.58 to note that the term “release of funds” is defined in the definition section, § 983.3, as discussed earlier in this preamble.

PHA-Owned Units (24 CFR 983.59)—Clarifying Change. In this regulatory section, a paragraph is proposed to be added to clarify the term of the initial and renewal HAP contract. This proposed revision is consistent with

section 8(o)(13)(F) of the 1937 Act, which provides that the PHA and the independent HUD-approved entity must agree on the term of the HAP contract and any HAP contract renewal for PHA-owned units.

Additionally, this rule proposes to remove the requirement that the independent entity approved by HUD to determine initial contract rents to owner must be based on an appraisal by a licensed, state-certified appraiser. This requirement was not statutory but has been administratively imposed by HUD. HUD has now determined that the requirement is no longer practical or necessary. Rent reasonableness is based on rent comparability and, given the method by which rent reasonableness is now determined, such determination does not require a state-certified appraiser. Additionally, in practice, HUD has determined that the state-certified appraiser requirement has resulted in increased delays in the execution of “agreements to enter into a housing assistance payment” (AHAPs), due to lack of availability of state-certified appraisers. PHAs have also experienced significant increased expense in order to acquire state-certified appraisers. The 1937 Act requires that an independent entity establish rents based on program requirements, and the independence of such entity, which is an entity approved by HUD, sufficiently ensure that rents are set appropriately.

Housing Quality Standards (24 CFR 983.101)—Conforming and Clarifying Change. This proposed rule would revise the regulatory section to exclude cooperative housing from the list of special housing types that are inapplicable to the PBV program, for the reasons previously discussed in this preamble.

Purpose and Content of the Agreement to Enter into a HAP Contract (24 CFR 983.152)—Clarifying Change. The preamble to the proposed rule for the Section 8 Project-Based Voucher program published on March 18, 2004 (69 FR 12949), states, at 69 FR 12951, that an “agreement is executed for units to be constructed or rehabilitated before the beginning of construction or rehabilitation.” The fact that the existing regulation speaks in terms of the owner agreeing, in the agreement, to “develop” (defined as construction or rehabilitation of project-based voucher housing after the proposal selection date) “the contract units” supports the fact that execution of the agreement is required prior to the start of construction or rehabilitation. This proposed rule would clarify the existing regulation by striving to establish a

bright-line definition of “commencement of construction” to ensure there is no confusion concerning the requirement that a PHA must enter into an agreement with the owner prior to the start of construction or rehabilitation on a project. This section, as proposed to be revised, would provide that construction commences when excavation or site preparation (including clearing of the land) begins for the housing. The preamble to the March 18, 2004, proposed rule also describes construction in this manner. Therefore, the new rule would simply clarify HUD’s policy regarding when construction commences. In addition, this proposed rule would clarify that rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

This proposed rule seeks comment on the applicability of this requirement to projects receiving other federal funds, including LIHTCs, on which construction has already started. Other federal programs may require commencement of construction before the AHAP can be formalized by HUD. HUD is exploring other means of establishing compliance with AHAP requirements through other federal programs.

When Agreement Is Executed (24 CFR 983.153)—Clarifying Change. Similar to the change made to § 983.152, the proposed change to § 983.153 would clarify when the Agreement, referenced in § 983.153, must be executed.

Purpose of HAP contract (24 CFR 983.202)—Clarifying Change. The proposed revision to this section would make explicit the existing practice authorized by regulation, which is that a HAP contract covers a single project, with the exception of single-family scattered site projects. If an owner has multiple projects, then each project must be covered by a separate HAP contract under the proposed clarification.

HAP Contract Information (24 CFR 983.203)—Conforming Change. This proposed rule would revise § 983.203 to substitute the term “project” for “building”, consistent with the statutory change.

Extension of Term of Initial Housing Assistance Payment (HAP) Contract (24 CFR 983.205(a))—Conforming Change. The maximum term of the initial HAP contract provided in section 8(o)(13)(F) of the 1937 Act is extended from 10 to 15 years as a result of the amendment to the 1937 Act made by section 2835(a)(1)(B) of HERA. In the November 24, 2008, notice, HUD advised that the provision could be implemented, commencing with the date of enactment

of HERA, July 30, 2008. This proposed rule would make a conforming change to 24 CFR 983.205 to reflect the new HAP term.

Extension of Initial Term (24 CFR 983.205)—Conforming Change. This proposed rule would make a conforming change to 24 CFR 983.205(b) to reflect the new HAP term. Section 8(o)(13)(G) of the 1937 Act, as amended by section 2835(a)(1)(C) of HERA, provides that the maximum term for an extension of the HAP contract is 15 years, at the election of the PHA and owner. A PHA may provide for multiple extensions; however, under no circumstances may extensions exceed 15 years cumulatively. The November 24, 2008, notice advised that this provision was self-implementing and could be utilized, commencing with the date of enactment of HERA, July 30, 2008, but also advised that a contract extension may not exceed 15 years cumulatively. Additionally, the November 2008 notice advised that a PHA must still determine that the extension of the contract is appropriate to achieve long-term affordability of the housing or to expand housing opportunities. One of the commenters found HUD’s direction that the contract extension “may not exceed 15 years cumulatively” to be ambiguous and requested that the conforming rule clarify that the initial contract may be up to 15 years and that one or more extensions may be up to 15 years. The proposed rule makes the additional clarifying change requested by the commenter. For further clarity, HUD adds a cross-reference to § 983.59 to address the initial term of the HAP for PHA-owned housing.

This proposed rule would make a clarifying change to 24 CFR 983.205(d) to require HUD approval when an owner seeks to terminate a HAP contract when the rent for any contract unit is adjusted below the initial rent level.

Proposed Statutory Notice Requirements: Contract Termination or Expiration (Adding a New 24 CFR 983.206). This proposed rule would add a new § 983.206 to assist PHAs in addressing the notification requirements established by section 8(c)(8)(A) of the 1937 Act that the owner must meet. Accordingly, the regulatory sections following § 983.206 are redesignated accordingly.

HAP Contract Amendments (To Add or Substitute Units) (Redesignated 24 CFR 983.207)—Conforming Change. Section 983.207 (formerly § 983.206) is proposed to be revised to substitute the term “project” for “building”, consistent with the statutory change made by HERA.

Owner Certification (Redesignated 24 CFR 983.210)—Conforming Change. Consistent with the change to § 983.53 (Prohibition of Assistance for Ineligible Units), discussed earlier, the proposed change to paragraph (i) in § 983.210 (formerly § 983.209) would clarify that the owner's certification does not apply in the case of an assisted family's membership in a cooperative.

This proposed rule would add a new paragraph (j) to § 983.210, consistent with the revised definition of "existing housing", to reflect what constitutes existing PBV housing. This revision requires the owner of PBV property to certify that there are no plans to perform rehabilitation work on the existing units within one year after execution of the HAP contract.

Removal of Unit from HAP Contract (24 CFR 983.211)—Clarifying Change. This proposed rule would add a new section, § 983.211, to clarify for PHAs when units are to be removed from the HAP contract. This requirement has always existed, but it was referenced only in the owner certification section of the regulations in part 983. The inclusion of this requirement in 24 CFR 983.211 will eliminate any possible ambiguity about the application of this requirement.

How Participants Are Selected (983.251(a) and (d))—Clarifying Change. In § 983.251(a), this proposed rule would clarify the pre-existing policy that restricts owners from leasing to family members or relatives. Specifically, this section is proposed to be revised to remove any ambiguity that a PHA may not approve the tenancy of a family if the owner (including a principal or other interested party) of the unit to be leased 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 a disability. In this regard, this proposed rule would also provide that the owner certification, already required under § 983.209, would include language that makes explicit that the unit will not be rented to the enumerated list of relatives.

With respect to accommodating a family member who is a person with disability, this rule proposes to amend § 983.251(d) by removing the third preference limit, which restricted the preference to individuals with disabilities interfering with daily activities so severely that adequate services were available only in a segregated setting. The amendment is intended to give, to persons qualifying

for a preference for services, the option of receiving community-based services that may be offered outside of the particular project.

The Lease: Provisions Governing Term of Lease and Governing Absence From Unit (24 CFR 983.256)—Clarifying Change. The proposed rule would revise § 983.256(f) pertaining to the initial term of lease to more fully address the requirements pertaining to the lease, and not simply the initial term. For example, revised paragraph (f) provides that the lease must allow for automatic renewal after the initial term of the lease and the conditions under which the lease terminates. The effect of this change is to put in place, for the PBV program, a reliable long-term lease for a tenant unless the owner provides good cause for termination of the lease or nonrenewal of the lease.

In § 983.256, this proposed rule would substitute the term "family" for "tenant" in § 983.256(g). The substitution of "family" for "tenant" is for consistency purposes, since the regulation more frequently refers to "family" rather than tenant. The proposed rule would also clarify that it is the HAP contract "for the unit" that is being referred to in the parenthetical sentence in paragraph (g).

Owner Termination of Tenancy and Eviction (24 CFR 983.257)—Conforming Change and Proposed Change. With respect to the conforming change, this proposed rule would revise § 983.257 to substitute the term "project" for "building", consistent with the statutory change. With respect to the proposed change, this rule proposes to remove paragraph (b)(3) from § 983.257, which allows an owner to refuse to renew a lease without good cause upon lease expiration. This change is made for the same reasons the change is made in § 983.256(f), which is to put in place, for the PBV program, a reliable long-term lease for a tenant unless the owner provides good cause for termination of the lease or nonrenewal of the lease. This change is consistent with the purposes of the PBV program. In the project-based context, the owner, in executing the project-based voucher HAP contract, makes a long-term commitment to providing affordable housing. This provision will preclude an owner from effectively renegeing on this commitment for the term of the contract by terminating tenant leases at the end of the initial term without good cause.

Continuation of Housing Assistance Payments (24 CFR 983.258)—Clarifying Change. This proposed rule would add a new § 983.258 that would clarify that housing assistance payments will

continue until the tenant rent equals the rent to owner. After 180 days of no subsidy payments being made on behalf of the family, the unit will be removed from the HAP contract pursuant to § 983.211.

Redesignated Regulatory Sections. With the addition of a new § 983.258, existing § 983.258 (Security deposit; amounts owed by tenant) would be redesignated as § 983.259, and no changes are proposed to be made to § 983.258 as redesignated. Existing §§ 983.259, 983.260, and 983.261 would be redesignated, respectively, as §§ 983.260, 983.261, and 983.262.

Overcrowded, Under-Occupied, and Accessible Units (Redesignated 24 CFR 983.260)—Conforming Change. This proposed rule would revise § 983.260 (formerly § 983.259) to include the term "project" in paragraph (b)(2)(i) of this section.

Clarifying Change. This proposed rule would revise § 983.260 to clarify that, if a PHA offers the family tenant-based rental assistance under the PBV program, a PHA must terminate the HAP contract for a wrong-sized or accessible unit, the earlier of the expiration of the term of the family's voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit.

When Occupancy May Exceed 25 Percent Cap on the Number of PBV Units in Each Project (Redesignated 24 CFR 983.262)—Conforming Change. Section 983.262 (formerly § 983.261) would revise paragraph (d) to substitute the term "project" for "building", consistent with the HERA change in terminology, and to correct an incorrect regulatory reference. Section 983.262 allows for the HAP contract to be amended to substitute a different unit in the project, in accordance with § 983.206(a). The correct reference is § 983.207(a). Paragraph (b) of this section would also be revised to clarify existing policy that a PHA, in giving a preference to excepted units, need not choose between the elderly or disabled families, but may give a preference to both.

Determination of Rent to Owner (24 CFR 983.301)—Clarifying Changes. Section 2835(a)(1)(D) of HERA amended section 8(o)(13)(H) of the 1937 Act to permit a PHA to use the higher section 8 rent for certain tax credit units if the LIHTC rent is less than the amount that would be permitted under section 8. The amendment made to § 983.301(d) reflects this discretion granted to PHAs. The November 24, 2008, notice advised that this statutory provision could be utilized commencing with the date of enactment of HERA, July 30, 2008. The

statute, however, did not alter the rent reasonableness requirements of section 8(o)(10)(A). These requirements must continue to be met. In addition, this proposed rule would revise § 983.301(e) to provide that the rent to owner shall not be reduced below the initial rent, with certain limitations, in accordance with § 983.302(c)(2).

Redetermination of Rent to Owner (24 CFR 983.302)—Implementing Change. This proposed rule would add a new paragraph (2) to § 983.302(c) to provide that rent paid to the owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP, except in the following situations: (1) To correct errors in calculations in accordance with HUD requirements; (2) if additional housing assistance has been combined with PBV assistance after execution of the initial HAP contract and a rent decrease is required pursuant to a subsidy layering review; or (3) if a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

Reasonable Rent (24 CFR 983.303)—Conforming Changes. Paragraph (a) of this section would be revised to include the exception to the comparability requirement of rent reasonableness, provided by the amendment to section 8(o)(13)(I)(i) made by HERA. This revision will provide that the rent to owner for a contract may not exceed the reasonable rent as determined by the PHA, except that the rent to owner shall not be reduced below the initial rent in accordance with § 983.302(c)(2). Paragraph (b)(2) of this section would be revised to include the term “project”. Also, in paragraph (f), an incorrect reference to § 983.58 is corrected to refer to § 983.59.

Other Subsidy: Effect on Rent to Owner (24 CFR 983.304)—Clarifying Change. This proposed rule would revise paragraph (e) of this section to clarify that rent reduction is mandatory when the results of a subsidy layering review disclose the need for rent reduction.

III. Regulatory Review

Executive Order 13563—Improving Regulations and Regulatory Review

The President’s Executive Order (EO) 13563, entitled “Improving Regulation and Regulatory Review,” was signed by the President on January 18, 2011, and published on January 21, 2011 (76 FR 3821). This EO requires executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in

accordance with what has been learned.” Section 4 of the EO, entitled “Flexible Approaches,” provides, in relevant part, that where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, each agency shall identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

As noted earlier in this preamble, this proposed rule would make conforming changes to the regulations of the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher programs to reflect the self-executing provisions of HERA, and would also amend the regulations required to implement those statutory provisions of HERA that are not self-implementing. Additionally, the rule would make such other changes for the purposes of updating certain regulations to reflect current practices, and clarifying other regulations which, based on experience, HUD determined would benefit from clarification. The amendments to be made by this rule bring the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher programs up-to-date with statutory requirements and existing policies and practices.

IV. Findings and Certifications

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) Imposes substantial direct compliance costs on state and local governments and the rule is not required by statute, or (2) the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Order. This rule does not have federalism implications and would not impose substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule largely makes conforming amendments to HUD regulations that govern the public and assisted housing programs, for which changes were recently made by the Housing and Economic Recovery Act of 2008. As

advised in the November 24, 2008, notice that preceded this rule, the statutory changes made to these programs were largely self-executing, and required only conforming regulatory amendments. This proposed rule makes those conforming amendments. The statutory changes to the programs, as reflected in the conforming amendments, impose no significant economic impact on a substantial number of small entities.

This proposed rule would make such other changes for the purposes of updating certain regulations to reflect current practices, and clarifying other regulations which, based on experience, HUD determined would benefit from clarification. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

Notwithstanding HUD’s view that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD’s objectives as described in this preamble.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The FONSI is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202–402–3055 (this is not a toll-free number).

Unfunded Mandates Reform Act

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

Paperwork Reduction Act

The information collection requirements contained in this interim rule have been submitted to the Office

of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not

conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number.

The burden of the information collections in this proposed rule is estimated as follows:

REPORTING AND RECORDKEEPING BURDEN

Information collection	Number of respondents	Response frequency (average)	Total annual responses	Burden hours per response	Total annual hours
24 CFR 983.6(d)—the requirement that a PHA must notify HUD of intent to project-base its vouchers	218	1	218	0.5	109
24 CFR 983.205(d)—requirement that HUD approval must be obtained when an owner seeks to terminate a HAP contract when rent is adjusted below the initial rent	15	1	15	1.0	15
24 CFR 983.206(b)—the requirement that not less than one year before termination of a PBV or PBC contract, the owner must notify the PHA and assisted tenants of the termination	20	30	600	0.25	150
Total					274

Total estimated burden hours:
In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;
- (3) Enhance the quality, utility, and clarity of the information to be collected; and
- (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this rule. Comments must refer to the proposal by name and docket number (FR-5242-P-01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Fax: (202) 395-6947, and
Collette Pollard, Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development, Room 4160, 451 Seventh Street SW., Washington, DC 20410-4000.

As an alternative to the above, interested persons may submit comments regarding the information collection requirements electronically through the Federal eRulemaking Portal at <http://www.regulations.gov>. HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the <http://www.regulations.gov> Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers applicable to the programs that would be affected by this rule are: 14.195, 14.850, 14.856, and 14.871.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Housing, Low- and moderate-income housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD propose to amend 24 CFR parts 5, 982, and 983, as follows.

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Public Law 109–115, 119 Stat. 2936, and Sec. 607, Pub. L. 109–162, 119 Stat. 3051.

2. In § 5.609, paragraph (c)(14) is revised to read as follows:

§ 5.609 Annual income.

* * * * *

(c) * * *

(14) Deferred periodic amounts from supplemental security income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.

* * * * *

PART 982—SECTION 8 TENANT BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

3. The authority citation for part 982 continues to read as follows:

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

4. In § 982.507, paragraph (a)(1) and the introductory text to paragraph (b) are revised, a new paragraph (c) is added, and existing paragraph (c) is redesignated as paragraph (d).

§ 982.507 Rent to owner: Reasonable rent.

(a) *PHA determination.* (1) Except as provided in paragraph (c) of this section, the PHA may not approve a lease until the PHA determines that the initial rent to owner is a reasonable rent.

(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:

(c) *Units assisted by low-income housing tax credits or assistance under HUD's HOME Investment Partnerships (HOME) program.* (1) For a unit receiving low-income housing tax credits (LIHTCs) pursuant to section 42 of the Internal Revenue Code of 1986 or receiving assistance under HUD's HOME Program (for which the regulations are found in 24 CFR part 92), a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

(2) If the rent requested by the owner exceeds the LIHTC rents for nonvoucher families, the PHA must perform a rent comparability study in accordance with program regulations and the rent shall not exceed the lesser of the: (i) Reasonable rent as determined pursuant to a rent comparability study and (ii) the payment standard established by the PHA for the unit size involved.

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

5. The authority citation for part 983 continues to read as follows:

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

6. In § 983.2, paragraphs (b)(3), (c)(2)(i), and (c)(7) are revised to read as follows:

§ 983.2 When the tenant-based voucher rule (24 CFR part 982) applies.

(b) * * *
(3) Provisions on the following special housing types: shared housing, manufactured home space rental, and the homeownership option.

(c) * * *
(2) * * *
(i) Section 982.310 (owner termination of tenancy) applies to the PBV program, but to the extent that those provisions differ from § 983.257, the provisions of § 983.257 govern; and

(7) In subpart M of part 982: (i) Sections 982.603, 982.607, 982.611, 982.613(c)(2), 982.619(a), (b)(1), (b)(4), (c); and

(ii) Provisions concerning shared housing (§ 982.615 through § 982.618), manufactured home space rental (§ 982.622 through § 982.624), and the homeownership option (§ 982.625 through § 982.641).

7. In § 983.3(b):
a. Definitions for "housing credit agency", "project", "project-based certificate (PBC) program", and "release of funds (for purposes of environmental review)" are added; and

b. The following definitions are revised: "excepted units (units in a multifamily building not counted against the 25 percent cap)", "existing housing", "partially assisted building," "premises," "qualifying families (for purposes of exception to 25 percent building cap)," "special housing type," and "wrong-size unit".

c. The definition for "state certified appraiser" is removed.

§ 983.3 PBV definitions.

(b) * * *
Excepted units (units in a multifamily project not counted against the 25 percent per-project cap). See § 983.56(b)(2)(i).

Existing housing. A housing unit is considered an existing unit for purposes of the PBV program, if at the time of notice of PHA selection, the units:

(1) Will comply with HQS within 60 days of the date of such selection, and the total amount of work that must be performed to cause the units to comply with HQS does not exceed \$1,000 per assisted unit (including the unit's prorated share of any work to be accomplished on common areas or systems); and

(2) There is no plan to perform rehabilitation work on the units within one year after HAP contract execution that would cause the units to be in noncompliance with HQS and that would total more than \$1,000 per assisted unit (including the unit's prorated share of any work to be

accomplished on common areas or systems).

Housing credit agency. For purposes of performing subsidy layering reviews for proposed PBV projects, a housing credit agency includes a State housing finance agency, a participating jurisdiction under HUD's HOME program (see 24 CFR part 92), or other State housing agencies that meet the definition of "housing credit agency" as defined by section 42 of the Internal Revenue Code of 1986.

Partially assisted project. A project in which there are fewer contract units than residential units.

Premises. The project in which the contract unit is located, including common areas and grounds.

Project. A project is a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. Contiguous in this definition includes "adjacent to", as well as touching along a boundary or a point.

Project-based certificate (PBC) program. The program in which project-based assistance is attached to units pursuant to an Agreement executed by a PHA and owner before January 16, 2001 (see § 983.10).

Qualifying families (for purpose of exception to 25 percent per-project cap). See § 983.56(b)(2)(ii).

Release of Funds (for purposes of environmental review). Release of funds in the case of the project-based voucher program, under 24 CFR 58.1(b)(6)(iii) and § 983.58, means that HUD approves the local PHA's Request for Release of Funds and Certification by issuing a Letter to Proceed (in lieu of using form HUD-7015.16) that authorizes the PHA to execute an "agreement to enter into housing assistance payment" (AHAP) contract or, for existing housing, to directly enter into a HAP with an owner of units selected under the PBV program.

Wrong-size unit. A unit occupied by a family that does not conform to the PHA's subsidy guideline for family size, by being either too large or too small compared to the guideline.

8. In § 983.5, paragraph (c) is revised to read as follows:

§ 983.5 Description of the PBV program.

(c) *PHA discretion to operate PBV program.* A PHA has discretion whether to operate a PBV program. HUD approval is not required, except that the

PHA must notify HUD of its intent to project-base its vouchers, in accordance with § 983.6(d).

9. In § 983.6, a new paragraph (d) is added to read as follows:

§ 983.6 Maximum amount of PBV assistance.

* * * * *

(d) Before implementing a PBV program, the PHA must submit the following information to a HUD field office for review:

(1) The total amount of annual budget authority;

(2) The percentage of annual budget authority available to be project-based; and

(3) The total amount of annual budget authority the PHA is planning to project-base under this part and the number of units that such budget authority will support.

10. In § 983.9, paragraph (a)(2) is revised and a new paragraph (c) is added to read as follows:

§ 983.9 Special housing types.

(a) * * *

(2) In the PBV program, the PHA may not provide assistance for shared housing, manufactured home space rental, or the homeownership option.

* * * * *

(c) *Cooperative housing.* (1) *Applicability of part 983.* Assistance under this housing type is subject to the requirements of part 983, except that following, §§ 983.256(b) and (c) 983.258, and 983.259 of part 983, subpart F, do not apply.

(2) *Applicability of part 982.* (i) Cooperative housing under the PBV program is also subject to the requirements of 24 CFR 982.619(b)(2), (b)(3), (b)(5), (d), and (e).

(ii) Cooperative housing under the PBV program is not subject to the requirements of 24 CFR 982.619(a), (b)(1), (b)(4), and (c).

(3) *Assistance in cooperative housing.* The regulations under 24 CFR 982.619 that are applicable to rental assistance for a family that leases a cooperative housing unit under the PBV program from the cooperative. All requirements of 24 CFR 983, subpart F, apply where a family leases a cooperative unit under the PBV program from a cooperative.

(4) *Rent to owner.* The regulations of 24 CFR part 983, subpart G, apply to PBV housing under paragraph (c) of this section. The reasonable rent for a cooperative unit is determined in accordance with § 983.303. For cooperative housing, the rent to owner is the monthly carrying charge under the occupancy agreement/lease between the member and the cooperative.

(5) *Other fees and charges.* Fees such as application fees, credit report fees, and transfer fees shall not be included in the rent to owner.

11. In § 983.10, paragraph (b) is revised and a new paragraph (c) is added to read as follows:

§ 983.10 Project-based certificate (PBC) program.

* * * * *

(b) *What rules apply?* Units under the PBC program are subject to the provisions of 24 CFR part 983, codified as of May 1, 2001, with the following exceptions:

(1) *PBC renewals.* (i) *General.* Consistent with the PBC HAP contract, at the sole option of the PHA, HAP contracts may be renewed for terms for an aggregate total (including the initial and any renewal terms) of 15 years, subject to the availability of appropriated funds.

(ii) *Renewal of PBC as PBV.* At the sole discretion of the PHA, upon the request of an owner, PHAs may renew a PBC HAP contract as a PBV HAP contract. All PBV regulations (including 24 CFR part 983, subpart G—Rent to Owner) apply to a PBC HAP contract renewed as a PBV HAP contract with the exception of §§ 983.51, 983.56, and 983.57(b)(1). In addition, the following conditions apply:

(A) The term of the HAP contract for PBC contracts renewed as PBV contracts shall be consistent with § 983.205 of this PBV regulation.

(B) A PHA must make the determination, within one year before expiration of a PBC HAP contract, that renewal of the contract under the PBV program is appropriate to continue providing affordable housing for low-income families.

(C) The renewal of PBC assistance as PBV assistance is effectuated by the execution of a PBV HAP contract addendum as prescribed by HUD and a PBV HAP contract for existing housing.

(2) *Housing quality standards.* The regulations in 24 CFR 982.401 (housing quality standards) (HQS) apply to units assisted under the PBC program.

(i) *Special housing types.* HQS requirements for eligible special housing types, under this program, apply (See 24 CFR 982.605, 982.609 and 982.614).

(ii) *Lead-based paint requirements.* (A) The lead-based paint requirements at 24 CFR 982.401(j) do not apply to the PBV program.

(B) The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 48214846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 48514856), and implementing

regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

(iii) *HQS enforcement.* The regulations in 24 CFR parts 982 and 983 do not create any right of the family or any party, other than HUD or the PHA, to require enforcement of the HQS requirements or to assert any claim against HUD or the PHA for damages, injunction, or other relief for alleged failure to enforce the HQS.

(c) *Statutory notice requirements.* In addition to provisions of 24 CFR part 983 codified as of May 1, 2001, § 983.206 of this part applies to the PBC program.

12. In § 983.51:

a. Paragraph (a) is revised by substituting the term “project” for “building” in the last sentence; and

b. Paragraph (b)(2) is revised to read as follows:

§ 983.51 Owner proposal selection procedures.

* * * * *

(b) * * *

(2) *Selection based on previous competition.* The PHA may select, without competition, a proposal for housing assisted under a federal, State, or local government housing assistance, community development, or supportive services program that required competitive selection of proposals (e.g., HOME, and units for which competitively awarded low-income housing tax credits (LIHTCs) have been provided), where the proposal has been selected in accordance with such program’s competitive selection requirements within 3 years of the PBV proposal selection date, and the earlier competitively selected housing assistance proposal did not involve any consideration that the project would receive PBV assistance.

* * * * *

13. In § 983.52, paragraph (a) is revised to read as follows.

§ 983.52 Housing type.

* * * * *

(a) *Existing housing.* (1) A housing unit is considered an existing unit for purposes of the PBV program, if at the time of notice of PHA selection, the units:

(i) Will comply with HQS within 60 days of such selection, and the total amount of work that must be performed to cause the units to comply with HQS does not exceed \$1,000 per assisted unit (including the unit’s prorated share of any work to be accomplished on common areas or systems); and

(ii) There is no plan to perform rehabilitation work on the units within

one year after HAP contract execution that would cause the units to be in noncompliance with HQS and that would total more than \$1,000 per assisted unit (including the unit's prorated share of any work to be accomplished on common areas or systems).

(2) Units for which rehabilitation or new construction was started, prior to the PHA's notice of selection, in accordance with subpart D of this part, do not qualify as existing housing.

* * * * *

14. In § 983.53:

- a. The word "and" is inserted after paragraph (a)(5);
- b. Paragraph (a)(6) is removed;
- c. Paragraph (a)(7) is redesignated as paragraph (a)(6);
- d. Paragraph (b) is removed;
- e. Paragraph (c) is redesignated as paragraph (b), and is revised to read as follows; and
- f. Paragraph (d) is redesignated as paragraph (c).

§ 983.53 Prohibition of assistance for ineligible units.

* * * * *

(b) *Prohibition against assistance for owner-occupied unit.* The PHA may not attach or pay PBV assistance for a unit occupied by an owner of the housing. A member of a cooperative who owns shares in the project assisted under the PBV program shall not be considered an owner for purposes of participation in the PBV program.

* * * * *

15. In § 983.55, paragraphs (a) and (b) are revised to read as follows:

§ 983.55 Prohibition of excess public assistance.

(a) *Subsidy layering requirements.* The PHA may provide PBV assistance only in accordance with HUD subsidy layering regulations (24 CFR 4.13) and other requirements. The subsidy layering review is intended to prevent excessive public assistance for the housing by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits. The subsidy layering requirements are not applicable to existing housing, nor applicable to housing selected as new construction or rehabilitation of housing, if HUD's designee has conducted a review, including a review of PBV assistance, in accordance with HUD's PBV subsidy layering review guidelines.

(b) *When subsidy layering review is conducted.* The PHA may not enter into

an Agreement or HAP contract until HUD or a housing credit agency approved by HUD has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

* * * * *

16. In § 983.56:

- a. In the heading of § 983.56, the word "project" is substituted for "building."
- b. The word "project" is substituted for "building" everywhere "building" appears in paragraph (a), including the heading of paragraph (a), and in paragraph (b), including the heading of paragraph (b);
- c. Paragraph (b)(2)(A) is revised to read as follows;
- d. The reference to § 983.261(d) in paragraph (b)(2)(B) is changed to § 962.262(d);
- e. A new paragraph (b)(3) is added to read as follows, and existing paragraph (b)(3) becomes paragraph (b)(4);
- f. The word "projects" is substituted for the word "building" in the introductory text to paragraph (c), including the heading of paragraph (c); and
- g. The word "project" is substituted for the word "building" everywhere "building" appears in paragraphs (c)(1) and (c)(3).

§ 983.56 Cap on number of PBV units in each project.

* * * * *

(b)(2)

* * * * *

Elderly and/or disabled families; and/or

* * * * *

(3) *Combining exception categories.* Exception categories in a multifamily housing project may be combined.

* * * * *

17. In § 983.58, paragraph (d)(1)(i) is revised to read as follows:

§ 983.58 Environmental review.

* * * * *

(d)(1) * * *

(i) The responsible entity has completed the environmental review procedures required by 24 CFR part 58, and HUD has approved the environmental certification and HUD has given a release of funds, as defined in § 983.3(b);

* * * * *

18. In § 983.59:

- a. Paragraph (b)(1) is revised;
- b. Paragraph (b)(2) is redesignated as paragraph (b)(3), and a new paragraph (b)(2) is added; and
- c. The heading of paragraph (d) and paragraph (d) are revised to read as follows:

§ 983.59 PHA-owned units.

* * * * *

(b) * * *

(1) *Determination of rent to owner for the PHA-owned units.* Rent to owner for PHA-owned units is determined pursuant to §§ 983.301 through 983.305 in accordance with the same requirements as for other units, except that the independent entity approved by HUD must establish the initial contract rents based on PBV program requirements;

(2) *Initial and renewal HAP contract term.* The term of the HAP contract and any HAP contract renewal for PHA-owned units must be agreed upon by the PHA and the independent entity approved by HUD. Any costs associated with implementing this requirement must be paid for by the PHA; and

(3) Inspection of PHA-owned units as required by § 983.103(f).

* * * * *

(d) *Payment to independent entity.* (1) The PHA may compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services.

(2) The PHA, and the independent entity, may not charge the family any fee for the services provided by the independent entity.

19. In § 983.101, paragraph (b) is revised to read as follows:

§ 983.101 Housing quality standards.

* * * * *

(b) *HQS for special housing types.* For special housing types assisted under the PBV program, HQS in 24 CFR part 982 apply to the PBV program. (Shared housing, manufactured home space rental, and the homeownership option are not assisted under the PBV program.) HQS contained within 24 CFR part 982 that are inapplicable to the PBV program pursuant to § 983.2 are also inapplicable to special housing types under the PBV program.

* * * * *

20. In § 983.152, paragraph (a) is revised, a new paragraph (b) is added, and existing paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), respectively;

§ 983.152 Purpose and content of the Agreement to enter into HAP contract.

(a) *Requirement.* The PHA must enter into an Agreement with the owner prior to the start of construction or rehabilitation. The Agreement must be in the form required by HUD headquarters (see 24 CFR 982.162).

(b) *Commencement of construction or rehabilitation.*

(1) Construction begins when excavation or site preparation (including clearing of the land) begins for the housing;

(2) Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

* * * * *

21. In § 983.153, paragraph (c) is revised to read as follows:

§ 983.153 When Agreement is executed.

* * * * *

(c) *Prompt execution of Agreement.*

The Agreement must be executed as promptly as possible after the subsidy layering review is completed (see § 983.55) and the environmental review has been completed and the PHA has received the environmental approval (see § 983.58).

22. In § 983.202, paragraph (a) is revised to read as follows:

§ 983.202 Purpose of HAP contract.

(a) *Requirement.* The PHA must enter into a HAP contract with the owner. With the exception of single family scattered site projects, a HAP contract shall cover a single project. If multiple projects exist, each project shall be covered by a separate HAP contract. The HAP contract must be in such form as may be prescribed by HUD.

* * * * *

23. In § 983.203, paragraph (h) is revised to read as follows:

§ 983.203 HAP contract information.

* * * * *

(h) The number of units in any project that will exceed the 25 percent per-project cap (as described in § 983.56), which will be set-aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and

* * * * *

24. In § 983.205, paragraphs (a), (b), and (d) are revised to read as follows:

§ 983.205 Term of HAP contract.

(a) *15-year initial term.* The PHA may enter into a HAP contract with an owner for an initial term of up to 15 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 15 years. In the case of PHA-owned units, the term of the initial HAP contract shall be determined in accordance with § 983.59.

(b) *Extension of term.* A PHA may agree to enter into an extension at the time of the initial HAP contract term or any time before expiration of the contract, for an additional term of up to

15 years if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 15 years. A PHA may provide for multiple extensions; however, in no circumstance may such extensions exceed 15 years, cumulatively. Subsequent extensions are subject to the same limitations. Any extension of the term must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of PHA-owned units, any extension of the initial term of the HAP contract shall be determined in accordance with § 983.59.

* * * * *

(d) *Termination by owner—reduction below initial rent.* The owner may terminate the HAP contract, upon notice to the PHA and HUD and approval by HUD, if the amount of the rent to owner for any contract unit, as adjusted in accordance with § 983.302, is reduced below the amount of the initial rent to owner (rent to owner at the beginning of the HAP contract term). In this case, the assisted families residing in the contract units will be offered tenant-based voucher assistance.

25. A new § 983.206 is added to read as follows, and §§ 983.206, 983.207, 983.208, and 983.209 are redesignated, respectively, as §§ 983.207, 983.208, 983.209, and 983.210.

§ 983.206 Statutory notice requirements: Contract termination or expiration.

(a) Notices required in accordance with this section must be provided in the form prescribed by HUD.

(b) Not less than one year before termination of a PBV or PBC HAP contract, the owner must notify the PHA and assisted tenants of the termination.

(c) For purposes of this section, the term “termination” means the expiration of the HAP contract or an owner’s refusal to renew the HAP contract.

(d)(1) If an owner does not give timely notice of termination, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of an owner’s inability to collect an increased tenant portion of rent.

(2) An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

§ 983.207 HAP contract amendments (to add or substitute contract units).

26. In redesignated § 983.207, paragraph (b) is revised by substituting the word “project” for “building” everywhere the word “building” appears:

27. In redesignated § 983.210, paragraph (i) is revised and a new paragraph (j) is added to read as follows:

§ 983.210 Owner certification.

* * * * *

(i) The family does not own or have any interest in the contract unit. The certification required by this section does not apply in the case of an assisted family’s membership in a cooperative.

(j) The owner of a PBV project selected as an existing project does not plan to perform rehabilitation work on the units, within one year after HAP contract execution, that would cause the units to be in noncompliance with HQS and that would total more than \$1,000 per assisted unit (including the unit’s prorated share of any work to be accomplished on common areas or systems).

28. A new § 983.211 is added to read as follows:

§ 983.211 Removal of unit from HAP contract.

Units occupied by families whose income has increased during their tenancy resulting in the tenant rent equaling the rent to the owner, shall be removed from the HAP Contract 180 days following the last HAP. If the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the project, the PHA may substitute a different unit for the unit removed from the Contract, in accordance with § 983.207.

29. In § 983.251, a new paragraph (a)(4) is added, paragraph (d)(1)(iii) is removed and the introductory text of paragraph (d) is revised to read as follows:

§ 983.251 How participants are selected.

(a) * * *

(4) A PHA may not approve a tenancy if the owner (including a principal or other interested party) of a unit 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.

* * * * *

(d) *Preference for services offered.* In selecting families, PHAs may give preference to disabled families who

qualify for services offered at a particular project or in conjunction with specific unit(s), in accordance with the limits under this paragraph. The prohibition on granting preferences to persons with a specific disability at 24 CFR 982.207(b)(3) continues to apply.

* * * * *

30. In § 983.256, paragraphs (f) and (g) are revised to read as follows:

§ 983.256 Lease.

* * * * *

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

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

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

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

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

(i) The owner terminates the lease;

(ii) The tenant terminates the lease;

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

(iv) The PHA terminates the HAP contract; or

(v) The PHA terminates assistance for the family.

(g) *Lease provisions governing absence from the unit.* The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. (PHA termination-of-assistance actions due to family absence from the unit are subject to 24 CFR 982.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.)

§ 983.257 Owner termination of tenancy and eviction.

31. In § 983.257, paragraph (b) is removed and paragraph (c) is redesignated as paragraph (b) and revised by substituting the word “project” for “building”.

32. A new § 983.258 is added, and existing §§ 983.258, 983.259, 983.260, and 983.261 are redesignated as §§ 983.259, 983.260, 983.261, and 983.262, respectively.

§ 983.258 Continuation of housing assistance payments.

HAPs shall continue until the tenant rent equals the rent to owner. The cessation of HAPs at such point will not affect the family’s other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or

other relevant circumstances if such changes occur within 180 days following the date of the last HAP by the PHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to § 983.211.

33. In redesignated § 983.260:

a. The word “project” is substituted for “building” everywhere the word “building” appears in paragraph (b)(2)(i), and paragraph (c) is revised to read as follows:

§ 983.260 Overcrowded, under-occupied, and accessible units.

* * * * *

(c) *PHA termination of housing assistance payments.* (1) If the PHA offers the family the opportunity to receive tenant-based rental assistance under the voucher program, the PHA must terminate the HAP contract for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family’s voucher (including any extension granted by the PHA) or the date upon which the family vacates the unit.

* * * * *

34. In redesignated § 983.262, paragraph (b) is revised to read as follows, and the word “project” is substituted for “building” everywhere the word “building” appears in paragraph (d), and the reference to § 983.206(a) in paragraph (d) is changed to § 983.207(a).

§ 983.262 When occupancy may exceed 25 percent cap on the number of PBV units in each project.

* * * * *

(b) In referring families to the owner for admission to excepted units, the PHA must give preference to elderly and/or disabled families, or to families receiving supportive services.

* * * * *

35. In § 983.301, paragraphs (d) and (e) are revised to read as follows:

§ 983.301 Determining the rent to owner.

* * * * *

(d) *Rent to owner for other tax credit units.* Except in the case of a tax-credit unit described in paragraph (c)(1) of this section, the rent to owner for all other tax credit units may be determined by the PHA pursuant to paragraph (b) of this section.

(e) *Reasonable rent.* The PHA shall determine the reasonable rent in accordance with § 983.303. The rent to the owner for each contract unit may at no time exceed the reasonable rent, except in cases where, upon redetermination of the rent to owner,

the reasonable rent would result in a rent below the initial rent.

* * * * *

36. In § 983.302, paragraph (c) is revised to read as follows, and the reference to § 983.206(c) is changed to § 983.207(c):

§ 983.302 Redetermination of rent to owner.

* * * * *

(c) *Rent decrease.* (1) If there is a decrease in the rent to owner, as established in accordance with § 983.301, the rent to owner must be decreased, regardless of whether the owner requested a rent adjustment.

(2) The rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract, except:

(i) To correct errors in calculations in accordance with HUD requirements;

(ii) If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to § 983.55; or

(iii) If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

* * * * *

37. In § 983.303, paragraphs (a), (b)(3), and (f)(1) are revised to read as follows:

§ 983.303 Reasonable rent.

(a) *Comparability requirement.* At all times during the term of the HAP contract, the rent to the owner for a contract unit may not exceed the reasonable rent as determined by the PHA, except that the rent to owner shall not be reduced below the initial rent in accordance with § 983.302(e)(2).

(b) * * *

(3) Whenever the HAP contract is amended to substitute a different contract unit in the same building or project; and

(f) *Determining reasonable rent for PHA-owned units.* (1) For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with § 983.59, rather than by the PHA. The reasonable rent must be determined in accordance with this section.

* * * * *

38. In § 983.304, paragraph (e) is revised to read as follows:

§ 983.304 Other subsidy: effect on rent to owner.

* * * * *

(e) *Other subsidy: rent reduction.* To comply with HUD subsidy layering requirements, at the direction of HUD or its designee, a PHA shall reduce the rent

to owner because of other governmental
subsidies, including tax credits or tax

exemptions, grants, or other subsidized
financing.

Dated: April 12, 2012.

Sandra B. Henriquez,
*Assistant Secretary for Public and Indian
Housing.*

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