

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 985

[Docket No. FR-4604-I-01]

RIN 2577-AC21

Revisions to SEMAP Lease-Up Indicator

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

ACTION: Interim rule.

SUMMARY: This interim rule revises the way HUD measures and verifies performance under the lease-up indicator for the Section 8 Management Assessment Program (SEMAP). Specifically, the interim rule revises the lease-up standard to measure the number of units leased against the number of units reserved and under Annual Contributions Contract (ACC), instead of against the number of units budgeted. This revised standard is consistent with established HUD policy on voucher renewals and unit allocations as formulated during negotiated rulemaking pursuant to the Quality Housing and Work Responsibility Act of 1998. In addition, this interim rule also revises the SEMAP regulations to provide for automated signature of the required SEMAP certification.

DATES: *Effective Date:* October 31, 2001. *Comments Due Date:* November 30, 2001.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Room 4210, 451 Seventh Street, SW, Room 4210, Washington, DC 20410; telephone: (202) 708-0477 (this is not a toll-free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Section 8 Management Assessment Program (SEMAP)

HUD's regulations at 24 CFR part 985 describe the policies and procedures governing the Section 8 Management Assessment Program (SEMAP). SEMAP provides for objective measurement of the performance of a public housing agency (PHA) in key areas of the Section 8 tenant-based assistance program. SEMAP enables HUD to ensure program integrity and accountability by identifying PHA management capabilities and deficiencies and by improving risk assessment to effectively target monitoring and program assistance. PHAs can use the SEMAP performance analysis to assess their own program operations.

B. Revisions to the SEMAP "Lease-Up" Indicator

Under the current SEMAP regulation at § 985.3(n), HUD determines the percent of units leased during the last completed PHA fiscal year by: (1) taking the unit months under Housing Assistance Payments (HAP) contract as shown on the PHA's latest approved year-end operating statement divided by 12; and (2) dividing by the number of units budgeted as shown on the PHA's approved budget for the same PHA fiscal year. On October 21, 1999 (64 FR 56894), HUD published its final rule implementing the statutory merger of the Section 8 tenant-based certificate and voucher programs into a new Housing Choice Voucher program. (The regulations for the new merged voucher program are located in 24 CFR part 982.) Due to the replacement of certificate funding with voucher funding, HUD has found that its data for the number of units budgeted, as shown on the PHA's approved certificate and voucher budgets for the last completed PHA fiscal year, often do not accurately reflect the number of units a PHA reasonably could have expected to lease during the fiscal year, and so are an inaccurate denominator for properly determining the lease-up rate. The number of budgeted units has been found to be unreliable for determining lease-up principally because HUD did not require that PHAs revise their certificate budgets downward late in the PHA fiscal year when certificate funding was replaced with voucher funding. Consequently, recent certificate program budgets may overstate the number of units PHAs actually expected to lease.

Due to changes in the method of funding the Section 8 tenant-based

program in 1999 (in particular the replacement of certificate funding increments with voucher funding), and the resulting changes in procedures concerning PHA certificate and voucher budgets, the current SEMAP lease-up standard and HUD's verification method for lease-up is no longer workable. Accordingly, HUD is issuing this interim rule, which revises the way HUD measures and verifies performance under the SEMAP lease-up indicator.

This interim rule provides that a PHA's performance under the SEMAP indicator will be measured by: (1) taking the unit months under HAP contract, as shown on the PHA's last year-end operating statement recorded in HUDCAPS (the HUD accounting system); and (2) dividing by the number of unit months available for leasing, based on the number of reserved units for which HUD has obligated funding under Annual Contributions Contract (ACC), and adjusted to exclude funding increments obligated during the last PHA fiscal year and not available for leasing for the entire PHA fiscal year and any units for litigation. In the event a PHA has not leased the percent of units needed to attain the points specified for the SEMAP lease-up rating due to escalating housing assistance payments and insufficient allocated budget authority to support that percent of lease-up, HUD will consider, alternatively, whether the PHA has expended that percent of allocated budget authority.

The method of verification of lease-up described in this interim rule is consistent with the policy established in HUD's October 21, 1999 (64 FR 56882) final rule for the renewal of expiring ACCs in the tenant-based Section 8 programs, and in HUD's April 19, 2000 (65 FR 21088) **Federal Register** notice on unit allocations, which requires that PHAs assist the number of families that equals the number of units under ACC with the PHA. Elsewhere in today's **Federal Register**, HUD is also publishing an amendment to the April 19, 2000 notice, to ensure a single consistent standard for lease-up of voucher assistance.

C. Signature of SEMAP Certification

This interim rule also amends § 985.101(a)(1) to remove the requirement that the SEMAP certification must be signed by the board of commissioners chairperson or by the chief executive officer of the unit of government. HUD is presently automating the SEMAP certification form for submission by PHAs via the Internet. As a result, it has become impractical to require the signatures of

the board chairperson and chief executive officer of the unit of government. Automated signature authorization by the PHA executive director or, where the PHA is a unit of local government or a state, by the Section 8 program director, is sufficient.

II. Justification for Interim Rulemaking

It is HUD's policy to publish rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking found at 24 CFR part 10. Part 10 provides, however, that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.0). HUD finds that in this case prior comment is unnecessary.

This interim rule amends § 985.3(n) only to make a technical change to the SEMAP lease-up standard and the way HUD will verify a PHA's performance under the SEMAP lease-up indicator. The change corrects a method that has become unworkable due to changes in program policy, procedure and data quality. Further, the new lease-up standard and verification method described in this interim rule conforms to established program policy for Section 8 tenant-based program fund and unit utilization, which were developed with extensive public participation using negotiated rulemaking procedures. Promulgation of this interim rule will ensure a single consistent standard for lease-up of voucher assistance.

Although HUD has determined that it is unnecessary for HUD to solicit public comment before issuing this rule for effect, HUD is issuing these amendments on an interim basis and invites public comment on the interim rule. All public comments will be considered in the development of the final rule.

III. Findings and Certifications

Environmental Impact

This interim rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Therefore, in accordance with 24 CFR 50.19(c)(1) of the Department's regulations, this interim rule is categorically excluded from the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) (the RFA), has reviewed and approved this interim rule and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows:

(1) *A Substantial Number of Small Entities Will Not be Affected.* The interim rule is exclusively concerned with public housing agencies that administer assistance under section 8 of the United States Housing Act of 1937. Specifically, the interim rule revises the way HUD measures and verifies PHA performance under the lease-up indicator for the Section 8 Management Assessment Program (SEMAP). Under the definition of "Small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few public housing agencies that are part of a political jurisdiction with a population of under 50,000 persons. The number of entities potentially affected by this rule is therefore not substantial.

(2) *No Significant Economic Impact.* The interim regulatory amendments will not change the amount of funding available under the Section 8 voucher program. Accordingly, the economic impact of this rule will not be significant, and it will not affect a substantial number of small entities.

Notwithstanding HUD's determination that this rule will not have a significant economic 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.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This interim rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–

1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This interim rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410–0500.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program numbers assigned to the Section 8 Management Assessment Program are 14.855 and 14.857.

List of Subjects in 24 CFR Part 985

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

For the reasons described in the preamble, HUD amends 24 CFR part 985 as follows:

PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

1. The authority citation for part 985 continues to read as follows:

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

2. Revise § 985.3(n) to read as follows:

§ 985.3 Indicators, HUD verification methods and ratings.

* * * * *

(n) *Lease-up.* (1) This indicator shows whether the PHA enters HAP contracts for the number of units reserved under ACC for at least one year.

(2) *HUD verification method:* (i) Percent of units leased during the last completed PHA fiscal year as determined by taking unit months under HAP contract as shown on the PHA's last year-end operating statement recorded in the HUD accounting system, and dividing by the number of unit months available for leasing, based on the number of reserved units for which

HUD has obligated funding under ACC and adjusted to exclude units associated with funding increments obligated during the last PHA fiscal year and units obligated for litigation.

(ii) In the event a PHA has not leased the percent of units needed to attain the points specified under paragraph (n)(3) of this section due to escalating housing assistance payments and insufficient allocated budget authority to support that percent of lease-up, HUD will consider alternatively, whether the PHA has expended that percent of allocated budget authority.

(3) *Rating:* (i) The percent of units leased during the last PHA fiscal year

was 98 percent or more, or the percent of allocated budget authority expended during the last PHA fiscal year was 98 percent or more. 20 points.

(ii) The percent of units leased during the last PHA fiscal year was 95 to 97 percent, or the percent of allocated budget authority expended during the last PHA fiscal year was 95 to 97 percent. 15 points.

(iii) The percent of units leased during the last PHA fiscal year was less than 95 percent, and the percent of allocated budget authority expended during the last PHA fiscal year was less than 95 percent. 0 points.

3. Revise 985.101(a)(1) to read as follows:

§ 985.101 SEMAP certification.

(a) * * *

(1) The certification must be approved by PHA board resolution and signed by the PHA executive director. If the PHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

* * * * *

Dated: August 28, 2001.

Mel Martinez,

Secretary.

[FR Doc. 01-24434 Filed 9-28-01; 8:45 am]

BILLING CODE 4210-33-P