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24 CFR Parts 5, 982, and 983
The Housing and Economic Recovery Act of 2008 (HERA): Changes to the Section 8 Tenant-Based Voucher and Section 8 Project-Based Voucher Programs; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 982, and 983

[Docket No. FR–5242–F–02]

RIN 2577–AC83

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: Final 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: 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 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. HUD followed the November 2008 notice with a May 15, 2012, rule that proposed to establish, in regulation, the reforms made by HERA solely to the Section 8 Tenant-Based Voucher and Project-Based Voucher programs as discussed in the November 2008 notice, to make other related changes to the regulations, and to further solicit public comment. This final rule conforms the regulations of the Section 8 Tenant-Based Voucher and Project-Based Voucher programs to the statutory program changes made by HERA, makes other related changes to these regulations as discussed in the May 2012 proposed rule, and makes further changes to the two voucher program regulations as a result of issues raised by public comment or as a result of further consideration by HUD of issues pertaining to these programs.

DATES: *Effective Date:* July 25, 2014.

FOR FURTHER INFORMATION CONTACT: For information about HUD's Voucher programs, contact Michael Dennis, Director, Office of Housing Voucher Programs, Office of Public and Indian Housing, Room 4228, telephone number 202–402–3882. 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—November 2008 Notice and May 2012 Proposed Rule

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.

November 24, 2008, Notice. HUD published a notice in the **Federal Register** on November 24, 2008, at 73 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.

May 15, 2012, Proposed Rule, Generally. HUD followed the November 24, 2008 notice with a proposed rule published on May 15, 2012, at 77 FR 28742, 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 November 2008 notice, taking into consideration public comment received on the notice, and (2) making other related regulatory changes. In the May 15, 2012, proposed rule, HUD explained that 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 revised by HERA 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 discretionary authority to determine how the statutory change should be implemented. HUD further explained that 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.

May 15, 2012, Proposed Amendments. The following presents a brief summary of the key regulatory revisions proposed by the May 15, 2012 rule. A detailed description of all proposed amendments, including correction or updating of regulatory or statutory citations, specific terminology changes, and redesignation of regulatory sections as a result of the inclusion of new sections, and the reasons for the amendments can be found in the preamble to the proposed rule at 77 FR 28743 to 28748.

Annual Income (24 CFR 5.609(c)(14)). A conforming change was made to 24 CFR 5.609 to include the Veterans Administration (VA) disability benefits with the exclusion from income for deferred Social Security benefits in § 5.609(c)(14).

Rent to Owner: Reasonable Rent (24 CFR 982.507). 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 was streamlined by section 2835(a)(2) of HERA, and the proposed rule revised § 982.507(c) to provide the streamlined process, with the exception of HOME-assisted units. As advised in the May 15, 2012, proposed rule, the rent reasonable applicable to HOME-assisted units would be addressed by separate rulemaking for the HOME program and included a placeholder to cross-reference to the HOME program regulations pending this issue being addressed by HOME program rulemaking.

Applicability of the Tenant-Based Voucher Rule (24 CFR 983.2). The proposed rule removed reference to ''cooperative housing'' from § 983.2(b)(3). Section 983.2(b) lists the types of situations to which the tenant-based voucher provisions of 24 CFR part 982 do not apply to the PBV program, and paragraph (b)(3) lists the special housing types to which the part 982

provisions do not apply. The inclusion of ''cooperative housing'' in the list of special housing types to which the part 982 provisions do not apply is incorrect, and HUD proposed to correct this error.

PBV Definitions (24 CFR 983.3). The proposed rule added new definitions, and removed and revised others to reflect HERA's amendment to section 8(o) of the 1937 Act and to remove reference to cooperative housing. In addition, the rule proposed to revise the definition of ''existing housing'' for the purpose of establishing clear and measurable standards in determining whether a proposed project is eligible for selection as existing housing. The proposed revision was 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.

Description of the PBV Program (24 CFR 983.5). The proposed rule amended § 983.5(c) to provide that although a PHA has the discretion to decide whether to operate a PBV program, the PHA must notify HUD of its intent to project-base its vouchers.

Maximum Amount of PBV Assistance (24 CFR 983.6). The proposed rule amended § 983.6 to require advance notification to HUD of the PHA's intent to project-base its vouchers.

Special Housing Types (24 CFR 983.9). The proposed rule made a conforming amendment to § 983.9 to clarify that cooperative housing is an eligible special housing type under the PBV program.

Project-Based Certificate (PBC) Program (24 CFR 983.10). 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 PBC housing assistance payment (HAP) contracts as PBV HAP contracts, under certain conditions. The amendment to § 983.10 implemented this change.

Owner Proposal Selection Procedures (24 CFR 983.51). The proposed rule revised paragraph (a) of § 983.51 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 reworded paragraph (b)(2) 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.

Housing Type (24 CFR 983.52). The proposed rule revised § 983.52, which provides standards by which a unit will be considered an existing unit for purposes of the PBV program, to provide that a unit must satisfy Housing Quality Standards (HQS) requirements within 60 days of the date of selection by a PHA. The proposed revision also would limit the total amount of work that must be performed to facilitate compliance with HQS to $1,000 per assisted unit. Additionally, the proposed revision provided 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.

Prohibition of Assistance for Ineligible Units (24 CFR 983.53). Section 2835(a)(1)(F) of HERA allows PHAs to enter into HAP contracts with respect to units in cooperative housing and in high-rise elevator projects, and provides that such authority may be exercised without review and approval by HUD. The proposed rule revised § 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). Section 2835(a)(1)(F) of HERA 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 proposed rule, in § 983.55, clarified that the subsidy layering requirements are not applicable to existing housing.

Applicability of 25 Percent Cap on Number of PBV Units (24 CFR 983.56). Prior to amendment by HERA, PBV assistance was limited to 25 percent of the units in a building. Section 2835(a)(1)(A) of HERA amended 8(o)(13)(D)(i) of the 1937 Act to replace 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 proposed rule clarified that the exception to the 25 percent cap on the number of PBV units in a project includes units for elderly families and/or disabled families; that is, a project for elderly families, a project for disabled families, or a project that serves both categories of families.

Environmental Review (24 CFR 983.58). As stated in both the November 2008 notice and the May 2012 proposed rule, HUD noted that any federally required environmental review is ''required by law or regulation,'' and HUD has not identified any federally required environmental reviews that would be eliminated by Section 8(o)(13)(M)(ii) of the 1937 Act, as added by Section 2835(a)(1)(F) of HERA. Accordingly, HUD proposed no changes to § 983.58, except to make a minor change to § 983.58(d) to note that the term ''release of funds'' is defined in § 983.3, which is the definition section,

PHA-Owned Units (24 CFR 983.59). The proposed rule added a new paragraph § 983.59 to provide a clarification of the term of the initial and renewal HAP contract that 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, the proposed rule removed 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.

Housing Quality Standards (24 CFR 983.101). The proposed rule revised § 983.101 to exclude cooperative housing from the list of special housing types that are inapplicable to the PBV program.

Purpose and Content of the Agreement to Enter into a HAP Contract (24 CFR 983.152). The May 15, 2012 rule proposed to clarify § 983.152 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. The clarification provided that construction commences when excavation or site preparation (including clearing of the land) begins for the housing.

When Agreement Is Executed (24 CFR 983.153). The proposed rule clarified when the Agreement, referenced in § 983.153, must be executed.

Purpose of HAP contract (24 CFR 983.202). The proposed rule made explicit the existing practice authorized by § 983.153, 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). The proposed rule revised § 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)). 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, and the proposed rule made a conforming change to 24 CFR 983.205 to reflect the new HAP term.

Extension of Initial Term (24 CFR 983.205). The proposed rule made a conforming change to § 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. The proposed rule provided that a PHA may provide for multiple extensions; however, under no circumstances may extensions exceed 15 years cumulatively.

The proposed rule also made a clarifying change to § 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). The proposed rule added a new § 983.206 to address the notification requirements established by section 8(c)(8)(A) of the 1937 Act, as amended by HERA, that the owner must meet.

HAP Contract Amendments (to Add or Substitute Units) (Redesignated 24 CFR 983.207). Section 983.207 (formerly § 983.206) was revised to substitute the term ''project'' for ''building'', consistent with the statutory change made by HERA.

Owner Certification (Redesignated 24 CFR 983.210). Consistent with the change to § 983.53 (Prohibition of Assistance for Ineligible Units), the May 15, 2012, rule proposed to revise paragraph (i) in § 983.210 (formerly § 983.209) to clarify that the owner's certification does not apply in the case of an assisted family's membership in a cooperative. The proposed rule also added a new paragraph (j) to § 983.210, consistent with the revised definition of ''existing housing'', to reflect what constitutes existing PBV housing.

Removal of Unit from HAP Contract (24 CFR 983.211). The proposed rule added a new section to define when units are to be removed from the HAP contract. The proposed rule inadvertently stated that this new section clarified existing policy, but in fact the new section reflected a proposed change. In addition, the preamble explanation that the change is already referenced in part 983 was also inaccurate. The preamble language should have been included in the preceding section which discussed the owner certification requirements in § 983.210. New § 983.211 addressed removing a unit from the HAP contract. PHAs receive administrative fees based on the number of units under a HAP contract. If the PHA has not paid a housing assistance payment on behalf of a family for 180 days, the family is no longer considered a participant in the program and, as such, the PHA should no longer receive administrative fees for the unit.

How Participants Are Selected (24 CFR 983.251(a) and (d)). In § 983.251(a), the proposed rule clarified the pre-existing policy that restricts owners from leasing to family members or relatives. This section was 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. The proposed rule also provided that the owner certification, already required under § 983.209, include language that makes explicit that the unit will not be rented to the enumerated list of relatives.

The Lease: Provisions Governing Term of Lease and Governing Absence from Unit (24 CFR 983.256). The proposed rule revised § 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. Revised paragraph (f) provides that the lease must allow for automatic renewal after the initial term of the lease. Consequently, the PBV program will provide tenants with long-term leases unless the owner provides a good cause for termination or nonrenewal of the lease.

Owner Termination of Tenancy and Eviction (24 CFR 983.257). The proposed rule revised § 983.257 to substitute the term ''project'' for ''building'', consistent with the statutory change. The proposed rule also removed paragraph (b)(3) from § 983.257, which allows an owner to refuse to renew a lease without good cause upon lease expiration. This change was made for the same reasons the change was made to § 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.

Continuation of Housing Assistance Payments (24 CFR 983.258). The proposed rule added a new § 983.258 to clarify that housing assistance payments 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 is to be removed from the HAP contract pursuant to § 983.211.

Overcrowded, Under-Occupied, and Accessible Units (Redesignated 24 CFR 983.260). The proposed rule revised § 983.260 (formerly § 983.259) to include the term ''project'' in paragraph (b)(2)(i) of this section. The proposed rule also revised § 983.260 to clarify, in paragraph (c), that if a PHA offers the family tenant-based rental assistance, 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). The proposed rule revised § 983.262(d) (formerly § 983.261) to substitute the term ''project'' for ''building'', consistent with the HERA change in terminology, and to correct an incorrect regulatory reference. Section 983.262(b) was also revised to clarify existing policy that a PHA, in referring families to excepted units, need not choose between elderly or disabled families, but may refer both.

Determination of Rent to Owner (24 CFR 983.301). 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 by the proposed rule to § 983.301(d) reflects the discretion granted to PHAs.

Redetermination of Rent to Owner (24 CFR 983.302). The proposed rule added 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). The proposed rule revised § 983.303(a) 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 provides 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).

Other Subsidy: Effect on Rent to Owner (24 CFR 983.304). The proposed rule revised § 983.304(e) to clarify that rent reduction is mandatory when the results of a subsidy layering review disclose the need for rent reduction.

II. Changes Made at the Final Rule Stage

In response to public comment and further consideration of certain issues by HUD, this final rule makes the following revisions to the proposed rule. With respect to changes made in response to public comment, the issues raised by the commenter and HUD's basis for responding to the comments are addressed in Section III of this preamble.

Rent to Owner: Reasonable Rent (24 CFR 982.507)—Preamble Clarification. As noted in Section I of this preamble, at the proposed rule stage, the procedure for determining the rent reasonableness standard applicable to dwelling units receiving low-income housing tax credits (LIHTC) was streamlined by section 2835(a)(2) of HERA. In the preamble to the proposed rule, at 77 FR 28743, HUD noted that HERA makes several changes to coordinate tax incentives for private housing and federal housing programs, including the Section 8 voucher program. In this preamble to the final rule, HUD clarifies that this provision is applicable only to the Section 8 tenant-based voucher program and not to the Section 8 project-based voucher program.

Additionally, at 77 FR 28743, HUD stated that the rent is to be considered reasonable if the rent 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. However, the more accurate way for HUD to have stated this provision is as follows: ''Rent reasonableness is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project not occupied by families with tenant-based assistance.'' The regulatory text for § 982.507 was stated correctly in the proposed rule and no change is required at this final rule stage.

As advised in the May 15, 2012, proposed rule, the revision to the HOME program is being made by separate rulemaking. Although a final rule making several regulatory amendments to the HOME program was published on July 24, 2013, that rule did not address this issue. Therefore, this final rule will continue to include, as a placeholder, a cross-reference to the HOME program regulations pending this issue being addressed by HOME program rulemaking.

PBV Definitions (24 CFR 983.3)—Withdrawn Proposed Revised Definition of ''Existing Housing'' but Added Revised Definition of ''Special Housing Type''. At this final rule stage, HUD determined to withdraw its proposed changes to the definition of ''existing housing.'' HUD leaves in place the currently codified definition of existing housing. Overall, commenters did not favor HUD's proposed changes, and suggested alternatives to HUD's proposal, which are described in Section III of this preamble. Given the many comments on HUD's proposed changes to the definition of ''existing housing'', HUD has decided to further consider proposed revisions to the definition of ''existing housing.'' HUD will further consider what may be the best metric for determining compliance with HQS; that is, whether HUD should measure the amount of time that must pass from the date of selection to date of compliance, or identify an appropriate dollar standard of the total amount of work that must be performed, or determine some other mechanism. HUD will resubmit for public comment any proposed changes to the definition of ''existing housing.''

At this final rule stage, HUD is adopting the proposed revised definition of ''special housing type'' but with one additional change. HUD has revised the definition of ''special housing type'' to remove reference to cooperative housing.

Cross-reference to other Federal requirements (24 CFR 983.4) Revision to ''Labor standards'' cross-reference. In this final rule, HUD updates the reference to labor standards provisions applicable to assistance under the PBV program to remove the reference to labor standards ''applicable to an Agreement'' covering nine or more assisted units and substitutes a reference to labor standards ''applicable to development (including rehabilitation) of a project comprising'' nine or more units. This language clarifies that Davis-Bacon requirements may apply to existing housing (which is not subject to the agreement) when the nature of any work planned to be performed prior to HAP contract execution or after HAP contract execution, within such post-execution period as may be specified by HUD, constitutes development of the project.

Description of the PBV Program (24 CFR 983.5) and Maximum Amount of PBV Assistance (24 CFR 983.6)—Clarification of Timing of Notification Requirements. As noted in Section I of the preamble, the proposed rule amended § 983.5(c) and § 983.6 to provide that a PHA must notify HUD of its intent to project-base its vouchers.

This final rule clarifies in § 983.6 that the notification provided by a PHA to HUD of the PHA's intent to project-base its vouchers must be provided before issuance of a Request for Proposals or a selection made pursuant to § 983.51(b)(2). This clarification is also made in § 983.5(c) by cross-reference to § 983.6(d).

Special Housing Types (24 CFR 983.9). As noted in section I the proposed rule made a conforming amendment to § 983.9 to clarify that cooperative housing is an eligible special housing type under the PBV program. This final rule clarifies the requirements for rental assistance when families lease cooperative housing from cooperative members in § 983.9(c)(3).

Owner Proposal Selection Procedures (24 CFR 983.51). In addition to the changes noted in Section I from the proposed rule, HUD is adopting a new paragraph (g) to clarify that an owner proposal selection does not require submission of a Form HUD–2530 or HUD previous participation clearance. Questions are raised from time to time as to the applicability of the previous participation review and clearance procedures and requirements that are codified in 24 CFR part 200, subpart H, to the PBV program. Section 200.213 of these regulations, entitled ''Applicability of procedure'' correctly lists the HUD programs to which the previous participation requirements apply. The PBV program is not listed as one of the programs governed by these procedures, and nor have the

regulations in 24 CFR part 983 ever cross-referenced to the requirements in 24 CFR part 200, subpart H, to confirm the applicability of these requirements and procedures.

Housing Type (24 CFR 983.52)—Withdrawn—Proposed Revised Definition of ''Existing Housing''. For the same reasons that HUD is withdrawing its originally proposed definition of ''existing housing'' in § 983.3, HUD similarly does not adopt the originally proposed definition of ''existing housing'' in § 983.52. However, in § 983.52, HUD clarifies that units for which rehabilitation or new construction commenced after the owner's proposal submission but prior to execution of the AHAP do not qualify as existing housing. Changes to the definition of ''existing housing'' will be addressed through the **Federal Register** notice described under the above discussion of § 983.3.

Prohibition of Assistance for Ineligible Units (24 CFR 983.53)—Addition of Prohibition on Assistance for Units for which Construction or Rehabilitation Commenced Prior to AHAP. As noted in Section I of this preamble, HERA allows PHAs to enter into HAP contracts with respect to units in cooperative housing and in high-rise elevator projects, and provides that such authority may be exercised without review and approval by HUD. Accordingly, the proposed rule revised § 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.

This final rule adds a new paragraph (d) to § 983.53 to clarify that a PHA may not attach or pay PBV assistance for units for which construction or rehabilitation has commenced, as defined in § 983.152 (discussed below), prior to execution of the AHAP.

Prohibition of Excess Public Assistance (24 CFR 983.55)—Further Clarification of When Subsidy Layering is Not Required. As noted in Section I of the preamble, the proposed rule clarified that the subsidy layering requirements are not applicable to existing housing. The final rule revises § 983.55 to add language that further clarifies that a ''further subsidy layering review is not required for housing selected as new construction or rehabilitation of housing, if HUD's designee has conducted a review, which included a review of PBV assistance, in accordance with HUD's PBV subsidy layering review guidelines.''

Applicability of 25 Percent Cap on Number of PBV Units (24 CFR 983.56)—Removal of Substitution of ''Project'' for ''Building'' in § 983.56(b)(1)(i). As noted in Section I of the preamble, HERA amended 8(o)(13)(D)(i) of the 1937 Act to replace 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 proposed rule clarified that the exception to the 25 percent cap on the number of PBV units in a project includes units for elderly families and/or disabled families; that is, a project for elderly families, a project for disabled families, or a project that serves both categories of families. In response to public comment, HUD agreed with commenters that the terminology for paragraph (b)(1)(i), which addresses when PBV units are not counted in the exception to the 25 percent building cap, was ambiguous. In the final rule, HUD retains the term ''building'' when used in paragraph (b)(1)(i) to refer to a single-family building.

Purpose and Content of the Agreement to enter into HAP Contract (24 CFR 983.152)—Clarification of Prohibition on Execution of Agreement when Construction or Rehabilitation Has Commenced. As noted in Section I of the preamble, the proposed rule clarifies when the Agreement must be executed and defines the start of construction or rehabilitation. The final rule adds a cross-reference to § 983.153 and states that the prohibition on construction or rehabilitation applies after proposal submission.

When Agreement Is Executed (24 CFR 983.153)—Clarification of Prohibition on Execution of Agreement when Construction or Rehabilitation Has Commenced. As noted in Section I of the preamble, the proposed rule clarified when the Agreement, referenced in § 983.153, must be executed. The final rule further clarifies that a PHA is prohibited from entering an Agreement when after proposal submission construction or rehabilitation has started prior to the execution of the Agreement.

Extension of Initial Term (24 CFR 983.205)—Clarification of Additional Extensions beyond Initial Extension of Term. As noted in Section I of this preamble, the proposed rule made a conforming change to § 983.205(b) to reflect the new HAP term. Section 8(o)(13)(G) of the 1937 Act, as amended by HERA, provides that the maximum term for an extension of the HAP contract is 15 years, at the election of the PHA and owner. The proposed rule provided that a PHA may provide for multiple extensions; however, under no circumstances may extensions exceed 15 years cumulatively.

In response to public comment, the final rule revises this section to clarify that future extensions beyond the initial extension are allowed at the end of any extension term provided that not more than 24 months prior to the expiration of the previous extension contract, the PHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. The final rule amendment further provides that extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term.

In response to public comment, the final rule also amends § 983.205(d) to remove the requirement of notice to and advance approval by HUD when owners decides to terminate the HAP contract, and maintains the existing requirement that owners provide notice to the PHA.

HAP Contract Amendments (to Add or Substitute Units) (Redesignated 24 CFR 983.207)—Addition of Language to Specify How to Add Contract Units. As noted in Section I of the preamble, the proposed rule revised § 983.207 (formerly § 983.206) to substitute the term ''project'' for ''building'', consistent with the statutory change made by HERA. In response to public comment, the final rule revises paragraph (b) to clarify how PBV contract units may be added in the same project. The revision provides that, at the discretion of the PHA, and provided that the total number of units in a project that will receive PBV assistance will not exceed 25 percent of the total number of dwelling units in the project (assisted and unassisted), (unless units were initially identified in the HAP contract as excepted from the 25 percent limitation in accordance with § 983.56(b)), or the 20 percent of authorized budget authority as provided in § 983.6, a HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same project.

Owner Certification (Redesignated 24 CFR 983.210)—Proposed Revision for Existing Housing Withdrawn. Although, at this final rule stage, HUD is withdrawing its proposed definition of ''existing housing'' in §§ 983.3 and 983.52, HUD retains proposed new paragraph (j), with certain revisions. As noted above in the discussion of § 983.4, HUD revises the reference to labor standards provisions applicable to assistance under the PBV program to clarify that Davis-Bacon requirements may apply to existing housing when the

nature of any work (including rehabilitation) planned to be performed prior to HAP contract execution or after HAP contract execution, within such post-execution period as may be specified by HUD, constitutes development of the project. Paragraph (j) of the final rule reflects that in such case, it will be necessary for the certification to encompass compliance with Davis-Bacon wage requirements.

Removal of Unit from HAP Contract (24 CFR 983.211). As noted in Section I of the preamble, the proposed rule added a new section to define when units are to be removed from the HAP contract. Section 983.211(a) requires that units with families whose income has increased during their tenancy to an amount equivalent to the rent provider to the owner, shall be removed from the HAP Contract. If the project is partially assisted, the PHA may substitute a different unit for the unit removed from the Contract if it is possible for the HAP contract to be amended. In response to public comment, HUD at the final rule stage is providing that if the project is not partially assisted, the unit removed from the HAP contract can be re-instated when the ineligible family vacates. In addition, HUD is clarifying that the PHA may substitute a different unit for the unit removed from the contract when the first eligible substitute becomes available even if at the time a unit is removed another unit is not immediately available to substitute under the HAP contract.

How Participants Are Selected (983.251(d))—Clarification of Preferences for Services Offered. In § 983.251(d), the proposed rule substituted the word ''qualify'' for ''need'' and added ''or in conjunction with specific units.'' The language submitted at the proposed rule stage stated that a preference could be provided for disabled families who ''qualify for services at a particular project or in conjunction with specific units.'' The substitution was proposed on the basis that ''qualify'' may better convey the intent of this section. However, at the final rule stage and following further consideration of ''qualify'' versus ''need'', HUD is returning to the original language of ''need services'' out of concern that ''qualify for'' may be interpreted in such a way to limit the population eligible for the preference. Additionally, HUD is returning to the original language ''services at a particular project'' out of concern that ''or in conjunction with specific units'' may be unclear. Although HUD is retaining the language currently codified in HUD's regulations, HUD will continue to examine the language of this section and how it may be improved, recognizing that neither term —'' need'' or ''qualify''—may provide the clear distinction that PHAs are looking for. The best approach to helping PHAs understand the intent of this section may be for HUD to issue guidance that provides examples of how a preference may be structured.

The Lease: Provisions Governing Term of Lease and Governing Absence from Unit (24 CFR 983.256)—Clarification of Owner Termination of Lease for Good Cause. As noted in Section I of the preamble, the proposed rule revised § 983.256(f) pertaining to the initial term of lease to more fully address the requirements pertaining to the lease.

The final rule clarifies that that if the owner terminates the lease, the termination must be for good cause.

Overcrowded, Under-Occupied, and Accessible Units (Redesignated 24 CFR 983.260). The proposed rule revised § 983.260 (formerly § 983.259) to include the term ''project'' in paragraph (b)(2)(i) of this section. The proposed rule also revised § 983.260 to clarify, in paragraph (c), 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.

The final rule further clarifies PHA termination of housing assistance payments for wrong-sized or accessible unit by revising paragraph (c) in two respects. Paragraph (c)(1) provides that if the PHA offers the family the opportunity to receive tenant-based rental assistance under the voucher program, the PHA must terminate the housing assistance payments 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, and, as clarified in this final rule, if the family does not move out of the wrong-sized unit or accessible unit by the expiration date of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

Paragraph (c)(2) provides that if the PHA offers the family the opportunity for another form of continued housing assistance in accordance with paragraph (b)(2) of § 983.260 (not in the tenant-based voucher program), and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the wrong-sized or accessible unit, at the expiration of a reasonable period as determined by the PHA, and, as clarified by this final rule, remove the unit from the HAP contract.

When Occupancy May Exceed 25 Percent Cap on the Number of PBV Units in Each Project (Redesignated 24 CFR 983.262)—Providing PHAs with the Option to Continue to Count an Excepted Unit Based on Elderly or Disabled Family Status, without an Elderly or Disabled Member under Certain Conditions. As noted in Section I of this preamble, the proposed rule revised § 983.262 (formerly § 983.261) to substitute the term ''project'' for ''building'', and to clarify in § 983.262(b) 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.

This final rule also makes a change to respond to existing concerns with respect to excepted units based on elderly or disabled family status and the loss of occupancy of the unit by the elderly or disabled family member through death, illness, or other circumstances beyond the family's control. Under current requirements, the family must vacate the unit and the PHA must cease paying housing assistance payments on behalf of the family because they no longer qualify for the excepted unit. The result of such requirements is often displacement of the family during a time when the family is dealing with hardship due to the loss, permanent or temporary of the elderly or disabled family member. The final rule adds a new paragraph (e) to § 983.262 to give PHAs the discretion to allow the family to continue to reside in the excepted unit, and to continue to count the unit as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, then in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualifying family member.

Determination of Rent to Owner (24 CFR 983.301)—Clarification that the PHA Has the Discretion to Elect in the HAP Contract that Rent to Owner Shall Not be Reduced. As noted in Section I of this preamble, 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 preamble to the proposed rule noted that HERA did not alter the rent reasonableness requirements of section 8(o)(10)(A), and that therefore these requirements must continue to be met. The proposed rule revised § 983.301(e)

to provide that that the rent to owner shall not be reduced below the initial rent, with certain limitations, in accordance with § 983.302(c)(2).

The final rule revises paragraph (e) to clarify that the PHA has the discretion to elect in the HAP contract that the rent to owner shall not be reduced below the initial rent subject to the limitations of § 983.302(c)(2). Accordingly, in this final rule, paragraph (e) provides that 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 the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner and where, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. If the PHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

Redetermination of Rent to Owner (24 CFR 983.302)—Further Clarification of When Rent to Owner Shall Not Be Reduced. As noted in Section I of this preamble, the proposed rule added 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 under certain circumstances. The final rule revises paragraph (c)(2) of § 983.302 to clarify that ''if the PHA elected within the HAP contract to not reduce rents below the initial rent to owner,'' then the rent to owner shall not be reduced below the initial rent to owner for dwelling units under the initial HAP contract except for the ''exception'' circumstances provided in the regulation.

Reasonable Rent (24 CFR 983.303). As noted in Section I of this preamble, the proposed rule revised § 983.303(a) 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 provides 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).

This final rule further clarifies the comparability requirement of § 983.303(a). Section 983.303(a) is revised to provide that 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, as provided in this final rule, where the PHA has elected in the HAP contract to not reduce rents below the initial rent under the initial HAP contract, the rent to owner shall not be reduced below the initial rent in accordance with § 983.302(e)(2).

III. Discussion of Public Comments and HUD's Responses

The public comment period on the proposed rule closed on July 16, 2012, and 22 public comments were received in response to HUD's May 15, 2012 proposed rule. Comments were submitted by individual members of the public, Fair Housing interest groups, housing associations, and public housing authorities. The following presents the significant issues and questions related to the proposed rule raised by the commenters.

A few commenters submitted comments generally about their views of the rule. These comments, for which no response is required, included such comments as the following.

A commenter stated that HUD must ''broaden its thinking with regard to administration of the project-based voucher program to recognize the important preservation tool that project-based vouchers are and will continue to be (particularly in light of the new Rental Assistance Demonstration (RAD) program). The commenter stated that, in reading the proposed changes, it was struck by a tension between expanding program use and flexibility with a desire to keep the program the small boutique program that it started out to be. The commenter stated that the tension is understandable in that the project-based voucher program was originally intended to be a very small (and voluntary) program to address tight rental market, but as Congress cuts back on funding for federal housing programs, the ability to preserve the existing housing stock has become more critical and Congress has recognized that it must use its scarce resources to the best outcome (in this case the preservation of a scarce supply of affordable rental housing). Other commenters stated that ''the PBV program is an essential component of state and local supportive housing strategies to reduce reliance on restrictive settings which violate the Americans with Disabilities Act, such as state institutions, board and care homes, adult care homes, and nursing homes.'' Another commenter recommended that HUD revise the program further to allow greater flexibility to support PBV assistance. The commenter stated that ''HUD should lobby to increase the percentage of budget authority for PBV units when the PHA is utilizing PBVs as replacement housing for public housing.''

The following presents specific issues raised by commenter and HUD's response to the comments.

Issue: Rent to Owner: Reasonable Rent (§ 982.507)

Comment: Commenters stated that HUD's proposed language at § 982.507, regarding the rent reasonableness test, is contrary to statutory intent by limiting the rent to the lesser of the reasonable rent and the payment standard. The commenters repeated the statutory language that states ''the rent shall 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, or (2) the payment standard established by the PHA for a unit of the size involved.'' The commenters recommend that HUD re-evaluate the proposed language. A commenter stated that Congress also has provided that the rent is *not* reasonable if it exceeds both the rents charged for comparable units receiving tax credits that are not occupied by voucher holders and the PHA payment standard for the unit. The commenter stated that, in other words, if the tax credit rent is $600 and the payment standard is $650, a PHA can approve a voucher rent at $650, subject to a rent reasonableness test. Using this example, HUD could not approve a rent of $675 because it is greater than the payment standard and the tax credit rent.

HUD Response: HUD disagrees with the first commenter's interpretation of the statute. The first subsection in the HERA amendment plainly states that a rent comparability analysis is not required by the PHA if the rent to owner does not exceed the rent for other comparable, non-voucher LIHTC units in the project. However, the second subsection of the HERA amendment is properly read as stating that if the proposed rent to owner will exceed the amount in the preceding paragraph, the amendment does not create an exception to the normal rent comparability requirement in section 8(o)(10)(A) of the U.S. Housing Act of 1937. In addition, the HERA amendment imposes an additional rent cap based on the payment standard in these cases. Therefore, if the rent requested by the owner exceeds the LIHTC rents for non-voucher families, the PHA must perform a rent comparability analysis in accordance with program requirements. In addition, the PHA must cap the rent at the payment standard. The rent to owner in these cases is therefore set at the lesser

of the comparable market rent determined by the PHA and the payment standard.

HUD generally agrees with the commenter that used dollar amounts to illustrate the test that must be performed when the rent requested by the owner is greater than the rents charged for other comparable LIHTC units in the project that are not occupied by voucher families. However, the commenter excluded the possible impact of the required rent comparability analysis performed by the PHA. For instance, if the PHA's comparability analysis determined that the reasonable rent was $625 that would be the rent to owner, notwithstanding the fact that the payment standard was $650.

Comment: Commenters stated that the statute does not require PHAs ''to conduct a rent reasonableness test if the requested voucher rent is at or below the tax credit rent for units not occupied by a voucher holder.'' A commenter gives an example, stating that ''if the tax credit rent paid by unassisted tenants is $600 and the rent for the voucher unit is $550, the PHA would not be required to compare the unit rent to unassisted units in the private market — the rent would be deemed reasonable.

HUD Response: Rent reasonableness is required to be determined as otherwise provided by paragraph 8(o)(10) of the 1937 Act except that rent reasonableness shall not be required if the voucher rent is equal to or lesser than other comparable LIHTC units occupied by non-voucher families. The statute does not state that such rents shall be ''deemed reasonable'' as suggested by commenters. Therefore, HUD submits that the statutory language is permissive, and that while HUD may not require a rent comparability determination in the situation described, the statute does not prohibit a PHA from performing such determination if it so chooses.

Comment: Commenters stated that the proposed language could result in reducing rents below existing rents and undercut the statute. The commenters recommended that HUD revise the language ''to follow the 'greater of' statutory language and avoid the unintended penalty for owners requesting legitimate rent increases that threaten no additional harm to assisted tenants.'' Other commenters stated that requiring an owner to reduce rent below existing rents would be contrary to HUD's own intentions.

HUD Response: Commenters appear to believe the statute states that the rent shall 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, *or* (2) the payment standard established by the PHA for a unit of the size involved. The statute actually states that the rent shall not be considered reasonable if it exceeds the greater of (1) the rents charged for other comparable units receiving LIHTC or HOME assistance in the project that are not occupied by families with tenant based assistance, *and* (2) the payment standard established by the PHA for a unit of the size involved. The statutory language imposes a payment standard cap in addition to the required rent reasonableness test both at the time of initial rent setting and when an owner requests a rent increase. As noted previously, if the rent to owner (at initial rent setting or during rent increases) does not exceed the LIHTC rent for comparable, non-voucher units, a PHA rent reasonableness analysis is not required and there is no payment standard limitation.

Comment: A commenter requested that HUD explain why it is adding the additional rent reasonableness requirement and why HERA was able to waive the rent comparison when the rent does not exceed other LIHTC projects but not when the requested rent exceeds other LIHTC rents?

HUD Response: HUD has clarified in the preamble that if the requested rent does not exceed the rent for other LIHTC units in the project not occupied by families with tenant-based assistance, that a rent reasonableness determination is not required. HUD believes that the statute is permissive and that a PHA may perform a rent reasonableness comparison in this instance if it so chooses. The statute states that the requirements of 8(o)(10) of the 1937 Act apply including 8(o)(10)(A), which requires that the rent for dwelling units for which a housing assistance payment contract is established under subsection 8(o) of the statute shall be reasonable in comparison with rents charged for comparable dwelling units in the private, unassisted local market. The HERA amendment does not render the requirement for a rent comparison analysis pursuant to section 8(o)(10)(A) of the 1937 Act inapplicable when the test under section 8(o)(10)(F)(ii) is met. Rent reasonableness requirements pursuant to section (8)(o)(10)(A) continue to apply.

Comment: A commenter recommended that HUD clarify ''that the HERA policy for determination of 'reasonable rents' for LIHTC units with tenant-based vouchers, incorporated in § 982.507(c)(2), does not apply to project-based vouchers.''

HUD Response: HUD agrees with this comment and in this preamble to this final rule HUD has clarified that the regulatory change is only applicable to the tenant-based voucher program.

Comment: A commenter stated that the HUD should leave the existing regulatory language as is because the regulatory language complies with the requirements in HERA and HERA ''does not require PHAs to lower PBV owners' rents if/when applicable FMRs decrease by five percent or more, as has been directed by some HUD Field Offices.'' The commenter stated that the regulation should allow ''PHAs to conduct rent reasonableness if warranted, but *not* for PHAs to necessarily lower the existing PBV rent in these circumstances.'' The commenter stated that ''under the circumstances described above, regarding decreases in FMR values of five percent or more, a PHA receives a property owners' annual rent increase request for a given unit but a PHA's rent reasonableness determination justifies a lower PBV rent, than a PHA can lower the PBV rent to the rent reasonable level but not lower than the initial rent. Some HUD Field Office personnel have misinterpreted and/or misapplied the PBV regulations governing reasonable rents in the PBV program, which is why we believe that clarification of the proper implementation of this regulation is welcomed.''

Another commenter requested that HUD revise § 982.507(c)(2) to clarify that under HERA PHAs are *not* required to conduct a rent reasonableness determination (in accordance with the existing regulations for Section 8 tenant-based and project-based voucher programs) if the initial rent or rent requested at subsequent intervals, is equal to or less than the rent for other comparable units receiving tax credits or assistance in the project for units that are not occupied by Section 8 tenant-based or project-based assisted households. The commenter also requested that HUD clarify that ''there could be a scenario where the initial rent requested or the rent at intervals during subsequent lease terms would be 'rent reasonable' if it is equal to *the greater of* (1) the rent for other comparable units receiving such tax credits or assistance in the project for units that are not occupied by Section 8 tenant-based or project-based assisted households; or (2) a PHA's payment standard for an applicable unit size.''

HUD Response: The HERA change relates to rents for tenant-based voucher holders in projects with LIHTCs or

HOME units. It does not apply to the project-based voucher program. In addition, the existing regulatory text at § 982.507 also does not apply to the project-based voucher program. The commenters' other concerns are addressed in response to other similar comments stated above.

Issue: Revised Definition of ''Existing Housing'' (§§ 983.3, 983.52(a))

As already discussed in this preamble, HUD is not revising the definition of ''existing housing'', but nevertheless wants to share the public comments that HUD received on this issue. Commenters responded to HUD's proposal as follows:

Comment: Several commenters submitted comments on these sections. A commenter recommended that HUD review the impact of the new limitations on existing housing. The commenter stated that while the previous text defined ''existing housing'' as any housing that met HQS upon the proposal selection date, the revised language limits existing housing to units that do not require more than $1,000 in repairs to meet HQS, and requires the owner to certify that planned rehabilitation does not exceed $1,000 in the first year of the HAP contract. Commenters stated that the proposed time limit and the monetary limit of $1,000 for performing compliance work are inappropriate.

A commenter stated that this threshold is very low and ''does not accurately capture the differences between development and acquisition-only transactions.'' Another commenter stated that this threshold may discourage owners from conducting voluntary repairs and replacements to achieve greater accessibility and/or energy efficiency. A commenter questioned what an owner should do if a tenant vacates a unit within one year after a HAP contract is executed?

A commenter stated that ''an owner should have the ability to do more than $1,000 worth of work on the unit'' because to do a simple '' 'unit turnover'—painting, cleaning and perhaps recarpeting—would cost more than $1,000.'' Other commenters expressed concern about the cap when scheduled rehabilitation is required.

A commenter recommended changing the definition to allow PHAs to determine the threshold or in the alternative if HUD determines a threshold is appropriate, a reasonable level based on guidelines and thresholds of other federal funding programs should be considered. ''For example, low-income housing tax credits and the FHA loan programs use higher rehabilitation thresholds of approximately $6,500 per unit.''

Other commenters stated that the new definition is contrary to HUD's new Rental Assistance Demonstration (RAD) program which encourages owners of certain types of assisted multifamily housing with expiring subsidy contracts to convert to PBVs. Commenter stated that many of these projects currently meet HQS but will require additional rehabilitation with tenants in place. Without the flexibility for PHAs to treat these projects as existing housing, as appropriate, many of these proposed preservation transactions will not be feasible.

A commenter stated that the same $1,000 per unit rehab number was used for Section 8 moderate rehabilitation over 8 years ago and HUD has failed to recognize inflation costs. Additionally, the commenter noted that a scheduled rehabilitation that costs more than $1,000 to meet HQS standards is not the same as a gut rehab which would require tenants to be displaced. Another commenter stated that the proposed limit will ''hamper HUD's ability to implement the recent preservation policy to encourage the conversion of Rent Supplement or Rental Assistance Payments to project-based vouchers. If HUD is indeed focused on preservation of the assisted housing stock, its rules must reflect that commitment.''

Commenters stated that this new definition will complicate transactions when eligible residents are already in place and renovations are undertaken or when renovations must be made to new or rehabilitated units that were not originally PBV units. Other commenters stated that the new definition will significantly narrow those units that will qualify as existing housing and negatively impact the preservation of existing housing. A commenter stated that the revised definition is contrary to HERA's goal to reduce regulatory requirements and make it easier to attach PBVs to existing housing.

Commenters stated that ''the procedures for rehabilitated housing will delay the initiation of rental assistance, which will create significant cash shortfalls for many preservation transactions which rely on the PBV income stream from ''Day One'' to support new financing (for rehabilitation and often acquisition, where the property is being transferred). These projects meet HQS on Day One, but may require significant additional rehab (e.g. for energy retrofits and modernization) to satisfy the requirements of lenders and tax credit investors, or to improve long-term sustainability.''

Commenters recommended that HUD maintain the current regulatory definition. A commenter also recommended eliminating the second half of the proposed definition. Other commenters recommended deleting the part of ''the proposed definition that would eliminate the possibility of rehabbing a property in the first year of the HAP contract and by increasing the per-unit rehabilitation dollar amount for units that need immediate repair to pass HQS.'' A commenter recommended the proposed definition be amended to allow PHAs discretion ''to qualify as existing housing any property that meets (or can readily meet) HQS, regardless of the anticipated level of additional future rehabilitation, where such rehabilitation will be carried out with tenants in place and is necessary and appropriate to extend the remaining useful life of the property as affordable housing.'' Another commenter recommended maintaining the current definition because the ''flexibility has been critical to preserving existing units in communities where affordable rental housing is scarce or units are being lost due to gentrification.'' Other commenters recommend that HUD preserve and promote the discretion of local PHA's by keeping the current definition.

Issue: Revising the ''PHA Owned Unit'' Definition (§ 983.3)

Comment: Commenters stated that the proposed rule failed to address the definition of ''PHA Owned Unit'' and stated that the current definition causes continued confusion to industry participants, HUD, and HUD's Office of Inspector General (OIG). A commenter stated that the purpose of distinguishing PHA-owned units in the regulation is to prevent self-dealing by PHAs where they both own and administer voucher assistance for a given unit, and that the existing definition is unnecessarily broad and in some cases has led HUD to consider units as PHA-owned where the PHA is merely a ground lessor or a mortgagee, but does not exercise control over the project itself. The commenter stated that when a unit is deemed PHA-owned, then the regulations at § 983.59 apply. Another commenter stated that these require the engagement and compensation of an independent entity, rather than the PHA, for certain functions, including inspections and rent reasonableness determinations. Another commenter recommends tightening the definition so that the § 983.59 requirements apply only in those situations where the PHA controls the project and there could actually be

a conflict of interest in a PHA performing those functions itself.

A commenter also recommended that the definition require an independent entity to be involved when a PHA is both the owner and the voucher administrator.

Some commenters stated that HUD's definition is so broad that PHAs are determined to ''own'' a property regardless if they have no control over the property operations. The commenters recommended that HUD tighten the definition to ensure that ownership equates with having control over the property and an actual conflict of interest exists.

Other commenters recommended using the following definition ''PHA-owned unit means a unit in a project that is owned by the PHA, by a PHA instrumentality, or by a limited liability company or limited partnership in which the PHA (or PHA instrumentality) holds a controlling interest in the managing member or general partner.''

HUD Response: HUD appreciates the commenters' recommendations concerning the definition of PHA-owned units. However, HUD has not proposed changes to the definition, and believes that the changes proposed by the commenter should undergo public comment before HUD adopts any such change.

Issue: New Definition of ''Release of Funds'' (§ 983.3)

Comment: A commenter stated that the revised ''release of funds'' would allow HUD to issue a release of funds in lieu of use of form 7015.16 (Authority to Use Grant Funds) but stated that form 7015.16 is just one manner in which a release funds can be effectuated. The commenter recommended that the definition be revised to reference solely a ''release of funds'' or ''a release of funds in accordance with [24 CFR] Part 58.'' Another commenter recommended removing the requirement that a specific type of ''Letter to Proceed'' be used, which ''would facilitate PHA and owner efforts to combine project based voucher (PBV) assistance with other forms of HUD funding in one Part 58 clearance.''

HUD Response: The reason for the proposed change was to translate the function of form 7015.16 to actual program operations. The form grants authority to use grant funds. Issuance of a Letter to Proceed more accurately reflects the transaction since Section 8 funding under the voucher program is not provided in grant form.

Issue: Revised Definition of ''Special Housing Type'' (§ 983.3)

Comment: A commenter recommended that, as a conforming change to the rule, HUD remove reference to ''cooperative housing.''

HUD Response: HUD agrees with this comment, and the final rule removes the reference to cooperative housing from the list of housing types inapplicable to the PBV program.

Issue: Adding a Definition of ''Financial Closing'' (§ 983.3)

Comment: A commenter recommended that HUD add a definition of ''financial closing'' in order to bring clarity to when an AHAP should be executed. The commenter stated that typically, an AHAP is executed at the financial closing of the construction financing as a condition of the lenders and investors of the project, who are depending on the commitment of the PBV assistance.'' The commenter recommended the following language: ''A financial closing occurs once all of the construction financing for a project is in place and the legal documentation committing the financing to the project has been executed.''

HUD Response: HUD appreciates the commenter's recommendation to add a definition of financial closing to the PBV definitions. However, HUD believes that such a definition is not one that should be adopted at a final rule stage but should first undergo some measure of public comment prior to adoption.

Issue: Description of the PBV Program & Maximum Amount of PBV Assistance (§§ 983.5, 983.6)

Comment: A commenter stated that the information being sought have long been required in a PHA Annual Plans by way of HUD guidance, and the commenter referenced PIH notice, PIH 2011–54, September 20, 2011. The commenter requested that HUD explain why such information is now being requested as part of this rule. The commenter recommended that § 983.5 be revised to require that a PHA ''include in its PHA plan the projected number of PBV units, their general locations and how project basing would be consistent with the plan.''

Another commenter recommended deleting the language added at § 983.6(d) because the language adds administrative burden and HUD already has appropriate reporting mechanisms in place for PHAs. Additionally, the commenter stated that the collection of information only at the beginning of the PBV program is ineffective and the PHA plan already requires information on PBVs. The commenter recommended that HUD ''amend Part 903 or the Agency Plan template.''

Other commenters recommended that HUD include in the section that the PHA include the required information in the PHA Plan.

HUD Response: HUD agrees that the language as proposed is unclear. HUD is seeking to obtain the information required under § 983.6 prior to the selection of individual PBV proposals. Such information is not collected through any other HUD system, and the collection is necessary to ensure that PHA's are not exceeding the 20 percent statutory limitation on the amount of annual budget authority a PHA may project-base. As such, § 983.6 is revised, at this final rule stage, to require that a PHA submit the requested information to HUD before issuance of a Request for Proposals or a selection made pursuant to § 983.51(b)(2), including information on the impact the selection will have on a PHA's annual budget authority.

Issue: Applicability of Owner Proposal Selection Procedures to Public Housing Revitalization and Replacement Efforts (§ 983.51(b))

Comment: A commenter stated that it supported the change to allow owner selection without a competition in connection with ''public housing improvement, development or replacement efforts.'' The commenter stated it would constitute an ''important administrative streamlining in complex public housing revitalization processes, without appreciatively affecting competitive opportunities for receipt of PBV.''

HUD Response: HUD believes that the commenter misunderstood HUD's intent. Neither the proposed nor this final rule makes the change stated by the commenter. Neither does the rule make changes to the section that prohibits the attachment of PBV assistance to public housing units. The proposed rule simply reiterates the basis for the requirement.

Comment: Commenters recommended dropping ''the requirement that a prior competitive selection process not involve any consideration that the project would receive PBV assistance.'' The commenters stated the language is unclear and creates obstacles for owners. A commenter recommended the language be revised by deleting '', and the earlier competitive selection did not involve any consideration that the project would receive project-based assistance.'' Another commenter stated that this requirement is overly burdensome because it puts ''PHAs and

owners in an untenable position since they cannot compete for vouchers without tax credits and cannot compete for tax credits without PBV assistance.'' The commenter stated if deleting the requirement is not accepted than the language should be limited to instances ''in which points were awarded for the inclusion of such vouchers.''

HUD Response: Deleting the restriction would allow for the inclusion in a competitive selection process that a project will receive PBV assistance prior to an actual PBV selection. HUD believes that accepting the commenters' suggestion would lead to the distortion of both the competitive nature of the PBV program and the legitimacy of the rationale allowing for the selection of units that have undergone other recent legitimate competitive selections. Eliminating the requirement, as suggested, would give an advantage to prospective PBV project owners in the competitive selection upon which a PHA is relying to select units under the PBV program which would result in a HUD program requirement that could possibly taint the outcome of another Federal, State or local housing program. HUD therefore declines the commenters' recommendation to remove the current regulatory language.

Comment: Commenters recommended that HUD ''change the current requirement for a local competitive process in instances where a PHA will attach project-based vouchers to units in which it has an ownership interest as part of an initiative to improve, develop or replace a public housing property or site, provided that the PHA includes the initiative in its PHA Plan.''

The commenters stated that: ''In this narrow circumstance where a PHA desires to control the revitalization or replacement of its public housing through the use of PBVs for its own units, the requirement to conduct a competitive process is unlikely to be cost-effective and will add delay and uncertainty to critical public housing revitalization efforts.'' The commenters specifically recommended providing three options, and suggested the following language for the third option: ''(3) Selection of a proposal without a competitive process for PHA-owned housing as part of an initiative to improve, develop, or replace a public housing property or site.''

HUD Response: HUD appreciates the commenters' recommendation. However, these changes were not offered at the proposed rule stage and HUD believes that they should first undergo public comment before adopting the commenters' suggestions in a rule for effect. HUD, however, will consider the commenter's recommendation if HUD decides to propose a substantive change to the competitive selection requirements in future rulemaking.

Issue: Restrictions on Using PBVs in Public Housing (§§ 983.51(d), 983.54(a))

Comment: Commenters expressed concern and recommend that HUD clarify the current language restricting the use of PBVs in public housing because it could be interpreted to prevent the combining of public housing capital funds (including HOPE VI) with project-based vouchers. The commenters stated that the current language is contrary to the goal of preservation and believes that this was not HUD's intended outcome.

A commenter recommended that the existing regulation be revised to prohibit the use of PBV assistance with units that receiving public housing operating funds only, revise the final sentence of § 983.51(e) to read as follows: ''Under no circumstances may PBV assistance be used with a unit receiving public housing operating funds.;'' and revise § 983.54(a) to read as follows: ''Units receiving public housing operating funds.''

HUD Response: HUD appreciates the commenters' concern, however, the concern has been previously addressed by the Department in the 2005 PBV Final Rule, 70 FR 59892, 59900. The Proposed Rule and this Final Rule simply restate HUD's longstanding legal interpretation on using project-based voucher assistance in public housing units. Therefore, as stated in the 2005 PBV Final Rule, HUD reiterates 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 1937 Act. It is not permissible by law to combine voucher funds with public housing funds. For HOPE VI funds that predate fiscal year (FY) 2000, it is generally permissible to combine these funds in accordance with the terms of the relevant HOPE VI appropriations act if the HOPE VI funds were not used to develop or operate public housing units. It is not permissible in any case to combine HOPE VI funds appropriated on and after FY 2000 (Section 24 funds), because Section 24 funds are public housing funds. If Capital Funds or Section 24 funds are used in the development of affordable housing, pro-ration 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.

Issue: New Language Allowing PHAs Greater Flexibility (§ 983.51)

Comment: A commenter recommended that HUD add a paragraph (g) to this section that would allow the number of ''units under a HAP contract to be increased up to the number awarded on the proposal selection date without an additional competitive selection'' at any time. The commenter stated that this change will help stabilize projects and provide long-term affordable housing when owners lose units for no fault of their own, including over-income tenants and wrong-sized families, and that the change is crucial because the regulations at § 983.211 and § 983.258 clarify that a unit must be removed from the HAP Contract if a unit is over-income or otherwise not eligible, but § 983.207 only allows the addition of a unit within three years of the execution of the HAP Contract.

Another commenter stated that to the extent that a unit loses subsidy for no fault of the owner, the regulations should clarify that the unit can be included in the HAP Contract upon lease-up of a subsequent eligible resident. The feasibility of projects is based upon the commitment of a certain level of PBV assistance during the full term of the HAP Contract. In order to preserve the affordability of the projects, the PHA must be able to provide the originally committed level of assistance when the amount of subsidy is decreased through no fault of the owner. The commenter recommended the following language ''Once a PBV proposal has been selected pursuant to this section, the PHA may increase the units under the HAP contract up to the number of units originally awarded upon the proposal selection.''

HUD Response: HUD appreciates the commenters' recommendation. However, similar to HUD's response to recommendations to change the procedures governing an owner' proposal selection for public housing revitalization and replacement efforts, HUD believes that these changes should first undergo public comment before adopting the commenters suggestions in a rule for effect. If in a future rulemaking HUD proposes a substantive change to the competitive selection

requirements, the recommendations of the commenters will be considered.

Issue: Subsidy Layering Review Not Required for Existing Housing (§ 983.55)

Comment: A commenter recommended that HUD clarify the change to § 983.55(a) by inserting a period after ''existing housing'' and making the ''nor'' clause into a separate sentence.

HUD Response: HUD agrees with the commenter and the final rule clarifies the sentence as suggested by the commenter.

Issue: Cap on Number of PBV Units in Each Project (§ 983.56)

Comment: Commenters stated that § 983.56 is unclear in regard to the types of units excluded, such as single family project units, and requests clarification in how to apply the 25 percent cap to PBV units in a project. A commenter stated it is unclear ''in the context of a project that may combine multifamily structures with structures containing one or two units. The rule was previously understood to exclude from the general calculation any building of less than four units, and we would suggest clarifying the rule to continue this practice.''

HUD Response: HUD agrees with the commenter and in this final rule does not contain the proposed change to replace the word building with project in § 983.56(b)(1)(i).

Comment: A commenter recommended the following language, ''*Combining exception categories.* Exception categories in a multifamily housing project may be combined, such that excepted units in a single project may include elderly families, disabled families, and families receiving supportive services, or any combination thereof. Additionally a project may include excepted and non-excepted units (i.e., only those units over the 25 percent per-project cap must be excepted units).''

HUD Response: HUD believes the intent of the regulation is adequately discussed in the preamble and does not believe further revision to the proposed regulatory text is necessary.

Issue: Termination of Rental Assistance for Families in ''Excepted'' Properties That No Longer Qualify for Benefits (§§ 983.56(b)(2)(ii)(B)&(C), 983.257(c), 983.261(d))

Comment: Commenters stated that the rule leaves ''unchanged, provisions in three current sections pertaining to project-based units that are ''excepted'' from the 25 percent per-property cap on voucher project basing . . . that requires remaining members of a family that no longer qualifies for elderly or disabled family status to vacate their home.'' Commenters stated that these provisions are contrary to other provisions, such as allowing families to remain in homes at the end of a FSS contract, contrary to VAWA, and contrary to HUD policy, and the commenter, as an example, referenced HUD's policy for allocating VASH vouchers in the event of domestic violence. HUD–VASH Qs and As, No. D.4.''

HUD Response: HUD agrees with the commenters that family members residing in a unit that no longer qualifies for elderly or disabled family status should not be required to vacate the unit under conditions that are beyond the control of the family, and Section II of this preamble advises of the change that HUD is making at this final rule stage to address this concern.

Comment: Commenters stated that the rule requires that to maintain occupancy the occupants must work, a requirement that is counter to the principle that housing should be voluntary, and the commenter references Notice PIH 2011–33, dated as recently as June 24, 2011, which provides that ''Under no circumstance may a PHA terminate assistance from the public housing program as a consequence of unemployment, underemployment, or otherwise failing to meet the work activity requirement for a particular public housing development.''

Commenters recommended that the PBV termination rule be removed or HUD should ''[p]redicate such terminations on the availability of tenant-based vouchers so that a family can move with continued assistance (similar to the policy that applies to over-or under-housed families at § 983.259 and that applies to public housing families at Notice PIH 2011–33); or if the property is partially assisted, allow the family to remain, substituting the housing assistance contract of their unit with another unit, if available, as is currently allowed at § 983.261(d).'' Another commenter stated: ''If the property is fully assisted, allow the family to remain but when the family vacates the new tenant would be subject to the requirements that apply to ''excepted'' units.''

HUD Response: The statutory exception to the 25 percent limitation on dwelling units receiving assistance under a PBV contract specifically requires that families receive supportive services. If a family continues to reside in an excepted unit after failing, without good cause, to complete the service requirement, the unit must be removed from the HAP contract since it only qualifies as an excepted unit if the family is receiving supportive services.

The service requirement is a condition of occupancy of the PBV unit and is a family obligation contained within the Statement of Family Responsibility that must be signed prior to leasing the unit. A family's failure to complete the service requirement, without good cause, is considered a violation of family obligations and grounds for termination from the program.

HUD disagrees that the service requirement is a work requirement. Occupancy in a unit excepted from the 25 percent limitation on PBV units in a family project is not based on employment, but rather the statute provides that the exception is allowed for units leased by families receiving supportive services.

Issue: Environmental Review for Existing Structures (§ 983.58)

Comment: Commenters expressed disagreement with HUD's interpretation of the statutory language (Section 2835(a)(1)(f) of HERA). Commenters stated that the current interpretation renders the HERA provision meaningless. Another commenter stated that ''HERA specifically provided that PHAs would not be required to undertake environmental reviews of an existing structure 'except to the extent that such a review is otherwise required by law or regulation.' '' Other commenters stated that ''HUD should have interpreted the phrase 'otherwise required' as required by a law or regulation related to other funding for the units.''

A commenter stated that HUD's interpretation violates principles of statutory construction by rendering the language superfluous, and HUD's failure to implement the statute accurately has caused PHAs additional administrative burdens, ''particularly for PHAs using Project-Based Vouchers for substantial numbers of existing units on different sites.''

A commenter recommended that HUD replace § 983.58(c), with the following: ''(c) *Existing housing.* Existing housing under this part 983 is exempt from environmental review, unless required by law or regulation related to funding for the units other than PBV assistance. If an environmental review is required, the RE [responsible entity] that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review

under the laws and authorities listed in 24 CFR 58.5.''

HUD Response: Section 2835(a)(1)(F) of HERA adds section 8(o)(13)(M)(ii) to the 1937 Act and specifically relieves PHAs from undertaking any environmental review before entering into a HAP contract for an existing structure, except to the extent such a review is otherwise required by law or regulation. A number of broadly applicable Federal statutes, executive orders, and regulations require environmental reviews of various types to be performed by Federal agencies prior to agency actions, including approving Federal assistance for a project. In the case of Section 8, Section 26 of the 1937 Act provides for the assumption by a state or unit of general local government of these environmental review responsibilities. Contrary to the commenters' insistence that HUD's interpretation of the statute renders it meaningless, Section 8(o)(13)(M)(ii) simply does not relieve a state, unit of general local government, or HUD of these responsibilities to undertake an environmental review of existing projects prior to execution of a HAP, and does not authorize HUD to declare such projects exempt from environmental review.

Comment: A commenter stated that the environmental review should be limited for existing PBV to situations where such review is required by funding sources for the units other than PBV. The commenter stated that this step will eliminate the need for PHA efforts that do not contribute significantly to environmental protection or the well-being of residents, as Congress intended.

HUD Response: Environmental reviews on existing projects are appropriately less extensive than for new construction, and include evaluation of factors such as flood hazards and site contamination that do affect the well-being of residents.

Issue: New Language for PHA Owned Units (§ 983.59)

Comment: A commenter recommends that HUD add language ''to allow PHAs to pass the costs of the PBV program to the owners and remove the requirement that an independent entity must approve a renewal.'' The commenter states that PHAs have actual expenses in providing PBV assistance which are not covered by administrative fees, and that therefore, the ''regulations should make clear that the PHA may pass those costs on to the owner to be paid as operating costs of the project, provided that the payment of the tenant shall not be increased. Additionally, since an independent entity is already approving the amount of assistance and the inspection of units, we do not believe that the independent entity is necessarily best suited to determine the appropriateness of renewals.''

Another commenter suggested that § 983.59(b) be deleted and the following language replace paragraph (d)(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; provided, however, that the PHA may pass such costs on to the owner to be paid as an operating cost of the project.''

HUD Response: The suggested changes involve statutory requirements and therefore cannot be accepted. Section 8(o)(13)(F) of the 1937 Act requires that for PHA-owned housing, the term of the contract shall be agreed upon by the agency and the unit of general local government or other entity approved by HUD in the manner provided under section 8(o)(11) of the 1937 Act. Section 8(o)(11) provides that the agency is responsible for payments for determinations made by the unit of general local government or other approved HUD entity.

Issue: Elimination of an Independent Real Estate Appraisal (§ 983.59)

Comment: A commenter stated that the proposal ''to eliminate the current requirement for a real estate appraisal to determine initial contract rents to a Section 8 building owner'' is misguided and HUD provides unsubstantiated evidence for the proposed change. The commenter recommended that the provision be deleted from the final rule and HUD should maintain the appraisal requirement.

Another commenter stated that there are certified appraiser readily available, citing that ''as of December 31, 2011, the number of active real estate appraisers in the U.S. stood at 86,800. Of this figure, approximately 30 percent, or 26,000, are classified as Certified General Real Property Appraisers.'' Another commenter stated that appraisers provide timely services, with research indicating appraisal times have stayed relatively constant, and cost competitive services, reports indicating costs have declined over the years. A commenter recommended that HUD clarify what data or research supports the conclusion that certified appraisers are not readily available, do not provide timely service, and do not provide cost competitive services.

Another commenter stated that ''it is in the best interests of the Department and taxpayers that the contract rents [paid] to building owners be based on *independent* and *objective* market information. This information is best provided by qualified real estate appraisers. Real estate appraisers are trained to provide the information sought by HUD in an objective and independent manner. We believe doing otherwise actually puts the limited funds set aside for Section 8 vouchers at risk.''

HUD Response: Based on the commenter's concerns that rents for PHA-owned units will not continue to be determined through a state-certified appraiser and, therefore, determinations will lose objectivity, HUD believes that the same objective can be achieved through rent reasonableness determinations by an independent entity. This requirement was only administratively imposed and because the same results can be achieved otherwise, HUD is eliminating the requirement as proposed.

Issue: Eliminate Requirement That an Independent Entity Inspecting PHA Units Furnish a Copy of Each Inspection Report to the HUD Field Office (§ 983.103)

Comment: A commenter stated that ''there is no evidence that this paperwork-generating requirement has resulted in better unit conditions.'' The commenter recommends deleting in § 983.103(f)(2) the language: ''and to the HUD field office where the project is located''.

HUD Response: HUD has not proposed a change to § 983.103(f)(2). Nonetheless, to address the commenter's concern, HUD believes there is value in the requirement in that it furthers the statutory intent to provide independent oversight of PHA owned housing in certain areas of program administration.

Issue: Commencement of Construction (§§ 983.152, 983.153)

Comment: Commenters responded to HUD's request for comments on the applicability of the commencement of new construction requirement for projects receiving other federal funds on which construction has already started. Commenters stated that this change would have an impact on all possible new owners that are interested in a PBV property after construction has begun rather than just those receiving other federal funds. A commenter stated ''that it is not uncommon for site preparation to have begun before a developer submits a proposal for funding. The

proposed 'commencement of construction' standard eliminates a funding agency's opportunity to influence a developer to incorporate PBV units into the development after its selection. Beyond foreclosing opportunities to incorporate PBV units into a development, it is not apparent that this definition of commencement of construction serves a useful purpose.'' A commenter recommended that HUD provide ''the greatest flexibility allowed by law for owners and PHAs to enter into AHAPs, even after the proposed definition of 'commencement of construction.' ''

Another commenter stated that it recognized the necessity of complying with NEPA and not commencing work prior to completion of environmental reviews, but stated that it sees ''no other HUD objective served by this rule that could not be accomplished by far less restrictive means.'' Other commenters stated that the complexity of financings and regulatory requirements requires flexibility for developers and finances during the process, especially when a project doesn't initially rely on PBV. A commenter stated that the layering of financing is subject to HUD workload constraints and consequent delays that have severely impacted the ability of projects to meet placed-in-service (PIS) deadlines. Another commenter stated that HUD could require that the environmental review be completed prior to ''early start activities'' and that they are in accordance with other applicable federal requirements, such as Davis-Bacon wage standards and Section 3 hiring requirements, without requiring an executed AHAP contract. The commenter recommended a simple ''certification from the owner (with HUD's standard text regarding potential penalties for false statements) that all work performed prior to AHAP execution has been so performed. If a PHA requests the early release of funding for early start work, HUD may require such a certification at that time.''

Several commenters stated that there seems to be no apparent policy rationale offered for HUD's position and recommended revising § 983.152(a) to allow an exception for extenuating circumstances. Commenters stated that they recognized the need that all part 983 requirements be met, but stated that the PHA can certify to those requirements without HUD concerning itself with the timing of executing the AHAP contract.

A commenter stated that the recommended definition will severely limit the use of the PBV program and ''does not reflect the realities of how the development process works, and is not necessitated by any regulatory requirements.'' Another commenter recommended that HUD tie the execution of the AHAP to the financial closing for the construction or rehabilitation work, provided the PHA has certified the owner has met the other HUD requirements. Specifically, the commenter suggested § 983.152(a) be revised as follows: ''Requirement. The PHA must enter into an Agreement with the owner upon financial closing. The Agreement must be in the form required by HUD'' and that § 983.153(c) be revised to read as follows: ''Prompt execution of Agreement. The Agreement must be executed after the subsidy layering and environmental approvals are received from HUD at financial closing.''

HUD Response: The determination of start of construction is necessary to ensure that units are constructed or rehabilitated in compliance with section 12(a) of the 1937 Act, and Davis-Bacon wage rates, where applicable. The Section 8 program, including the PBV program, is subject to statutory labor standards provisions in Section 12(a) of the 1937 Act. Section 12(a) of the U.S. Housing Act requires the applicability of Davis-Bacon prevailing wages to the development of low-income housing projects containing nine or more Section 8-assisted units, where there is an agreement for Section 8 use before construction or rehabilitation is commenced. HUD's position has long been that once a Section 8 housing project has been initially developed and placed under a HAP contract, a later decision by an owner to repair or rehabilitate the project as it ages does not constitute ''development'' of the Section 8 project and is not subject to Davis-Bacon wage rates. However, construction, including rehabilitation work, performed in connection with the initial placement of a project under a PBV HAP contract constitutes development of the project and is subject to Davis-Bacon wage rates where the project contains nine or more assisted units.

The final rule provides a clear definition of start of construction and rehabilitation, and requires that no construction or rehabilitation can proceed after proposal submission and prior to an AHAP being executed. After AHAP execution all construction and rehabilitation must be carried out in accordance with the AHAP and program requirements which may include Davis Bacon wage requirements.

Issue: Extension of Initial Term (§ 983.205)

Comment: Several commenters expressed disagreement with HUD's interpretation that the PBV contract must end after a 15-year renewal. A commenter stated that HUD's interpretation is contrary to the statute and proposed the limit be for a maximum of 30 years. The commenter stated that the extension contracts need to continue to give homeless people more protection.

Other commenters stated that HUD should comply with the spirit of the original PBV statute which refers to long-term affordability and unlimited number of extensions of the initial HAP contract for up to 15 years. Other commenters stated that continued renewals are extremely important to ensure long-term affordability and is essential to preserving the stock of housing affordability to extremely low income people.

A few commenters stated that the language as written is confusing. The commenters asked ''Is HUD attempting to limit the entire term of the contract to 30 years? In other words, if a PHA provides a 15 year initial HAP contract with an agreement to extend for another 15 years, HUD will disallow any further extensions?''

A commenter stated that it seeks clear language that allows for multiple renewals of 15 year terms so not to lose the already limited inventory of affordable housing to the market.

Other commenters stated that the proposed rule violates the explicit HERA amendment, which permits an advance agreement for a potentially unlimited number of 15-year extensions so long as the property meets HQS and the rents do not exceed applicable limitations. A commenter recommended removing sentences two and three, and replacing sentence one as follows: ''A PHA may agree to enter into *one or more extensions* at the time of the initial HAP contract or any time before expiration of the contract, for an additional term *or terms* of up to 15 years *each* if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families.''

A commenter recommended that HUD remove sentences two and three, and replace the first sentence as follows, ''A PHA at the time of the initial HAP contract or any time before expiration of the contract, for an additional term *or terms* of up to 15 years *each* if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families.''

Another commenter stated that § 983.205(b) should be revised to ''clarify that HAP contracts may be extended for up to 15-year terms, with no stated limit on the number of extensions.''

A commenter stated that the statute gives the PHA the authority to extend the contract ''upon a PHA's informed judgment about what is reasonably appropriate in order to achieve long-term affordability of the housing or to expand housing opportunities.'' The commenter also stated that ''Congress' use of the word ''terms,'' and use of the word ''each'' to modify 15 years, demonstrates that Congress' statutory language in HERA was *not* intended to limit a PHA to extend PBV HAP contracts to a ''term'' of up to 15 years exclusively.

Another commenter recommended removing the language at the end of § 983.205 and using the following language: ''*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 additional terms of up to 15 years each if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. 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.''

HUD Response: The proposed rule allows for an extension at the beginning of the initial HAP contract term. Essentially, an initial 30-year commitment is permissible at the commencement of the HAP contract provided the PHA is able to make the requisite determination that an extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. A 15 year initial term and a 15 year extension is consistent with requirements under LIHTC program under which the project owner must agree to maintain an agreed upon percentage of low income units for an initial 15 year compliance period and subsequent 15-year extended use period. The required LIHTC extended use period ensures that a 15-year PBV extension is appropriate to continue providing affordable housing for low-income families. The HERA amendment, and HUD's reasonable implementation of it, facilitates preservation of affordable housing for the LIHTC compliance period and extended use period. In addition, provided that the PBV program is not repealed, owners and PHAs will have the opportunity at the end of the 30 year period to go beyond 30 years of assistance (HUD uses LIHTCs as an example since LIHTCs are the main source of financing used with PBVs. The Department is not asserting that because the LIHTC period is 30 years, this is dispositive on how long extensions may be). HUD's initial limitation on contract extensions is not intended to bar the possibility for future extensions.

The final rule therefore allows for future extensions at the end of any extension term provided that not more than 24 months prior to the expiration of any extension contract, the PHA agrees to an extension of the term at the end of the previous term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. HUD is, exercising its discretion to establish a reasonable limit on the cumulative term of any contract extension in this manner because HUD believes allowing a PHA and owner to extend a HAP contract for an endless number of terms during the initial HAP contract, as suggested by some commenters, may conflict with the PHA's statutorily required determination that must be made prior to extending the underlying contract both initially and for subsequent extensions.

Issue: Terminating a HAP Contract When a Rent Reduction Falls Below Initial Rent Level (§ 983.205)

Comment: A commenter requested that HUD clarify why it is requiring, given there is no statutory requirement, for ''an owner seeking to terminate a HAP contract when the rent for any contract unit is adjusted below the initial rent level would be required to provide a notice to the PHA and HUD and seek HUD approval.'' Another commenter stated that the continued allowance that an owner can terminate a contract if a rent reduction is below the initial rent level creates a conflict with § 983.302. The commenter recommended changing § 983.302(c)(2) to include an ''a requirement that the owner accept the regular, tenant-based voucher of a prior PBV tenant. The use of a voucher in the unit would be subject to regular HCV rules of rent reasonableness and HQS compliance. But if an owner opts out of a PBV contract rather than accept a rent reduction, the PHA finds the rent to be reasonable, and the tenant wants to remain and pay the likely additional rent above the PHA payment standard, HUD's rules should encourage such stability.''

HUD Response: The regulation reflects an existing requirement. Under the May 15, 2012, rule, HUD proposed that the owner provide notice to HUD, as well as the PHA, and receive approval from HUD when terminating the HAP contract due to a rent reduction causing rents to fall below the initial rent level. Upon further consideration, HUD withdraws its proposed change and maintains the current regulatory language. A commenter stated that there is a conflict between the existing regulation of allowing the owner to terminate the contract if a rent reduction causes the rent to fall below the initial rent level, and § 983.302. HUD disagrees since in limited circumstances, as enumerated in § 983.302(c)(2) the rent to owner may be required to be reduced below the initial rent (e.g., 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 the prohibition of excess public assistance (see § 983.55)). The commenter also suggests that HUD require an owner to accept a regular voucher when the owner exercises the right to terminate assistance in accordance with (§ 983.205). HUD declines to make the change since HUD does not have the authority to require that an owner accept a voucher.

Issue: Statutory Notice Requirements (§ 983.206)

Comment: Several commenters expressed their support for this provision. Several commenters expressed support for the requirement in § 983.206(b) and (d) that would require owners to provide tenants one-year notice of the owner's intent to terminate a PBV housing assistance payment contract. Certain commenters suggested that the notice be in writing and that the notice require ''owners, after a contract is terminated, to accept any replacement tenant-based assistance provided to residents who had been assisted with PBV.'' Other commenters stated that providing notice to tenants will allow them ''to search for and secure affordable replacement housing.'' The commenters also noted support for (d) that ''ensures that tenants must be able to remain in their units without a rent increase if the owner fails to provide timely notice.''

A commenter recommended replacing the word ''notify'' with ''provide written notice'' in § 983.206(b) and revising § 983.206(d)(1). The commenter suggested that when the owner does not give timely written notice than the owner must permit the tenants in assisted units to remain in their units for the required notice period until one year following the legally required

notice, with no increase in the tenant portion of their rent and with no eviction. This same commenter recommended adding a paragraph (e) stating: ''Following termination of the contract, an owner shall accept any replacement tenant-based assistance provided to assisted tenants in residence at the time of the termination, provided that this requirement shall not limit the reasonable market rent charged by the owner.''

Another commenter requested that HUD reconsider requiring owners to provide notice one year prior to termination because it is not required by the statue and may have disadvantages to residents. The commenter stated that the statute does not require notice for the PBV program when it is tenant-based assistance. Specifically, the commenter noted that ''unlike other project based programs, if the PBV HAP Contract is terminated, each resident would receive a tenant-based voucher to either stay at the project or move to another place of their choice. A year of notice is counter-productive since it causes great concern for the residents, even though their housing assistance is not in jeopardy.'' The commenter recommended that HUD require 60 days' notice and HUD could consider requiring that ''if the Owner will continue to operate the project as rental housing, the tenants may not be evicted except under the terms of their lease.''

HUD Response: HUD appreciates the comments in support of § 983.206, but disagrees with the commenter's that stated that the statutory requirement to provide a one-year notice of termination or expiration does not apply to the PBV program. Section 8(c)(8) applies to project based assistance and Section 8(f) of the statute defines project-based assistance to include assistance provided under Section 8(o)(13) (PBV assistance).

Issue: Recommending a Change to the 3-Year Limit on Adding Units to an Existing HAP Contract (§ 983.207)

Comment: Certain commenters objected to the existing three year limit for a PHA to add units to a HAP contract. The commenters stated that the need to add usually because ''families living in those units were not eligible for the vouchers'' upon execution of the HAP contract. The commenters recommended HUD provide no limit on adding units.

Another commenter requested that HUD clarify § 983.207(d) so ''that the PHA may amend the HAP Contract at any time to add additional units, provided that the total number of units does not exceed the original award/HAP Contract. To the extent those units were part of the initial award, the fact that the contract was terminated with respect to specific units in accordance with 24 CFR 983.211 should not make those units ineligible for assistance provided that future families are eligible for assistance.'' Another commenter recommended amending § 983.207(b) by adding that ''or at any time when a unit that has been occupied by an ineligible family since that execution date becomes occupied by an eligible family'' after the language ''during the three-year period immediately following the execution date of the HAP contract.'' A commenter stated that allowing units to be added after the three years from the initial HAP contract where turnover provides ''would facilitate contract administration, as well as financing when renovations are involved.''

Another commenter stated that being able to add units is important for the feasibility of the project and the PHA should be able to increase the number of units under the HAP contract to the number originally awarded. This same commenter recommended the following language for § 983.207(b): ''*Amendment to add contract units.* At the discretion of the PHA, a HAP contract may be amended to add additional PBV contract units in the same project up to the number of units originally awarded upon the proposal selection. An amendment to the HAP contract is subject to all PBV requirements (e.g. rents are reasonable), except that a new PBV request for proposals is not required. The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.''

HUD Response: HUD appreciates the commenters' recommendation and is providing for the reinstatement of some units to the HAP contract under § 983.211.

Issue: Amendment To Add Contract Units—Clarifying the 25% Per-Project Cap When Adding Units to an Existing HAP Contract (§ 983.207)

Comment: Commenters requested that HUD amend § 983.207(b) to clarify that the HAP can ''assist more than the 25% per-project cap if the assisted units are excepted units in accordance with 983.56.'' A commenter recommended that HUD strike the language and simply require additional units to comply with the regulations in 24 CFR part 983.

HUD Response: HUD agrees with the commenter and the final rule makes this clarification. The rule clarifies that the 25 percent limitation applies unless the units are excepted units pursuant to § 983.56.

Issue: Removal of Units From HAP Contract (§§ 983.211, 983.258)

Comment: A commenter stated that the change proposed to § 983.211 is important, but recommended that HUD ''improve on the proposed rule by allowing a PHA, where there is not another unit that can be substituted to maintain the number of PBV units in the property, to allow the unit to remain under the PBV contract despite the absence of housing assistance payments for the unit. The commenter stated that alternatively, HUD should allow the reduction in units under the PBV contract to be temporary, to enable the original number of PBV units to be restored if a unit becomes vacant and is rented to an eligible family. (A change in § 983.258 also would be required to implement this recommended policy.)''

Another commenter stated that volume for PBVs are governed by budget authority rather than number of units, so ''allowing units with unsubsidized families to remain under HAP contract would facilitate program administration with no negative effects on the program.'' Other commenters stated that HUD's proposal does not provide a return of PBV units to the HAP Contract. The commenters recommended that if units are removed from the HAP contract without fault of the owner, the units should be added back to the HAP contract with no delay when the units are re-released to eligible families.

HUD Response: HUD appreciates the commenters' recommendation and is adopting language that allows for a project that is not partially assisted to re-instate units when an ineligible family vacates and clarifying when a partially assisted unit may substitute a unit in § 983.211. However, the other changes recommended by the commenters should first undergo public comment before being adopted in a rule for effect. HUD will consider such changes in future rulemaking for the PBV program.

Issue: Participant Selection—Preference for People With Disabilities (§ 983.251)

Comment: Commenters stated that the interpretation of § 983.251(d) has been challenging for PHAs and HUD, and that the use of the word ''qualify'' in place of ''need'' in the rule is an improvement in tenant selection preference policies. A commenter stated that PBV can be used to create supportive housing properties or sub-set of units at a property, and the housing could have outside service providers or on-site services provided. Other commenters

recommended that the language be changed to ''(d) *Preference for services offered.* In selecting families, PHAs may give preference to disabled families who qualify for services offered in conjunction with the assisted units, in accordance with the limits under this paragraph. . . .''

HUD Response: HUD appreciates the commenters' feedback and recommendations. As noted earlier in this preamble, the final rule uses the existing codified term ''need'' and does not substitute ''qualify'' for ''need'' based on concern that ''qualify'' may be interpreted in such a way as to exclude tenants eligible for the preference. Further, HUD does not adopt the commenters' phrase of ''services offered in conjunction with the assisted units'' because HUD returns to the existing language ''services offered at a particular project.'' HUD believes the language distinguishing between ''services offered at a particular project and services offered in conjunction with specific units'' may be misinterpreted as more limiting than the existing language.

Issue: Participant Selection—Rescreening (§ 983.251(b))

Comment: Commenters stated that tenants residing at the time of conversion from one form of assistance to PBVs should be exempt from rescreening in fulfillment of ''HUD's duty to minimize displacement in administration of its programs, 42 U.S.C. 5313 note.'' Other commenters recommended adding as the second to last sentence of § 983.251(b) the following language, ''In addition, such families who were recipients of another form of HUD rental assistance at the time of project selection will not be subject to additional elective screening requirements and may be evicted from the property only for good cause in accordance with the lease.''

HUD Response: HUD does not have the statutory authority to eliminate mandatory PHA screening requirements. The issue of permissive screening activities a PHA may engage in is beyond the scope of this rule. Any changes HUD might seek to make in the future would require that such changes be proposed to give interested parties the opportunity to comment.

Issue: Termination of Leases (§ 983.256)

Comment: Commenters stated that the preamble to the proposed rule states the intent is to provide ''a reliable long-term lease for a tenant unless the owner provides *good cause* for termination of the lease or nonrenewal of the lease.'' However, § 983.256(f)(3)(i) of the proposed regulatory text continues to allow an owner to terminate a lease without good cause. Other commenters recommended that HUD revise the language to state ''(i) The owner terminates the lease for good cause.'' A commenter recommended that that language be changed to protect those who may be targeted because of bias. Another commenter recommended that § 983.256 include explicit language stating that a tenancy may only be terminated for good cause.

HUD Response: The PBV regulations at §§ 983.256 and 983.257 must be read in conjunction with the cross-referenced tenant-based regulation (§ 982.310) which only allows termination for good cause. The PBV provision that allowed an owner to renew without good cause, former § 983.257(b)(3), has been removed. Nonetheless, to eliminate the possibility of confusion, the final rule revises § 983.256 to clearly state that an owner may only terminate a lease for good cause during the lease term.

Issue: Overcrowded, Under-Occupied, and Accessible Units (§ 983.260)

Comment: A commenter stated the rule ''states that a PHA must terminate PBV for a family in a wrong-sized unit or in a unit with unneeded accessibility features, while also requiring a PHA to provide continued housing assistance.'' Other commenters requested that HUD clarify by providing guidance regarding the type of assistance that should be offered and suggested adding language stating that ''an appropriate unit must be offered if one is available in the same building or development. If an appropriate unit is not available, a PHA may offer another form of project-based assistance. However, a PHA must always offer tenant-based voucher assistance in addition to project-based assistance, allowing a family to choose the form of assistance.''

A commenter recommended that for families that resided in a unit for at least a year the PHA should be required to offer tenant-based voucher assistance ''and allow the family to choose the form of assistance it will receive. In addition, when a family has received a tenant-based voucher because its PBV assistance is terminated due to unit size or accessibility features, the rule should explicitly require the PHA to help the family find an appropriate unit, consistent with the requirement in 24 CFR § 982.403.'' This same commenter stated that the proposed change is confusing and fails to provide protections for family similar to other HUD project-based rental assistance programs. The commenter requested that HUD use the existing language concerning termination of the ''housing assistance payment'' to prevent confusion that the ''HAP contract'' is being terminated and ''ensure that units are not made unavailable for other families who would be eligible for project-based assistance when a vacating family receives a tenant-based voucher. In addition, the final rule should clarify that such termination should occur only when an available unit has been identified for a family receiving a tenant-based voucher. This change is consistent with the parallel rule in the regular tenant-based program, and is necessary to avoid causing the displaced family to become homeless.

HUD Response: The PBV regulations at §§ 983.260(c)(1) and 983.260(c)(2) are clarified in this final rule to express HUD's intent that if a family does not move out of the wrong-sized or accessible PBV unit by the expiration of the term of the family's voucher (including any extension) or within a reasonable time of the PHA's offer of assistance in accordance with § 983.260(c)(2), the PHA must remove the unit from the HAP contract.

Issue: Suggested Change to Utility Allowance (§ 983.301(f))

Comment: A commenter recommended that HUD revise the RAD program and other preservation conversions that have a PHA utility allowance, but permit the use of property based utility allowances when available. The commenter stated that the rule directs PHAs ''to use their current PHA wide utility allowances for purposes of calculating rents'' which works when PBVs ''are added to a previously unassisted project where the property utility data is not available. However, for properties that have had HUD assistance, it is very likely that the property will have its own utility allowance which is probably more up to date than the PHA allowance and certainly will be reflective of the property.'' Allowing the use of the PHA utility allowance creates a disincentive ''for the property owner to undertake energy efficiency retrofits.''

HUD Response: This rule is limited to revising and updating regulations for the PBV program. Regulations applicable to RAD, which is a demonstration program, are covered by the RAD notices.

Issue: Implementation of the Rent Floor Permissible Rather Than Mandatory (§§ 983.301, 983.302, 983.303)

Comment: Commenters stated that the current language in §§ 983.301 and 983.302 goes beyond the statutory

language of HERA. A commenter stated that HERA explicitly delegated the authority to make the decision about rent floors for a PBV contract to the PHA, and doing so makes good policy sense. For example, the commenter stated that ''It may be important to have such rent security in locations where it could reasonably be expected that rents are volatile and the PBV contract will enable the owner to leverage additional funds for development or rehabilitation. But in other situations, such as where the PBV contract is for existing housing, such rent security could potentially come at the expense of a PHA's ability to assist additional families.'' Other commenters recommended that these two regulatory sections be revised to allow the PHA in its discretion to not reduce the rents below the initial rents, if the contract rents are not reasonable. PHAs need to retain this discretion to weigh the needs of the particular project against other projects.

A commenter requested that HUD make it clear that PHAs could reduce the rent based on the reasons specific in the rule and clarify ''that whether or not the PHA has agreed contractually to not reduce rents below the initial rent, a PHA is not required to reduce PBV rents below the initial rent if the FMR declines by more than 5% or the rent would otherwise exceed 110% of FMR. PHAs should be able to make the decisions of whether to reduce PBV rents when the FMR declines on a case-by-case basis.''

Another commenter suggested that HUD change § 983.301(e) to require that 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.'' The commenter stated that the statutory language does not require the stipulation in the PBV HAP contract and ''if a PHA chooses to include this stipulation in the PBV HAP contract with the consent of the owner, the language in HERA requires that the provision stipulate the maximum rent permitted for a dwelling unit shall not be less than the initial rent for the dwelling unit under the initial housing assistance payments contract covering the PBV assisted unit.''

HUD Response: HUD appreciates the comments received on the implementation of the HERA provision allowing initial PBV rents to be considered the rent floor for purposes of rent adjustments, but HUD disagrees with the commenters' opinion that the statutory provision explicitly delegates the authority to make the decision about rent floors for a PBV contract to the PHA. Congress explicitly delegated certain decisions to PHAs in HERA (e.g., the statute specifically states that the PHA may, in its discretion continue to provide assistance under the contract . . . for a dwelling unit that becomes vacant . . .). In regard to rent adjustments, the statute states, in relevant part, that the contract *may* provide that the maximum rent permitted for a dwelling unit shall not be less than the initial rent for the dwelling unit under the initial housing assistance payments contract. Since the HAP contract is a HUD-prescribed form, HUD proposed a reasonable policy to implement the statutory provision. However, while HUD does not agree that the statute explicitly delegates the authority to PHAs, HUD agrees that PHAs are in the best position to make such determinations based on their individual markets, and other local considerations. Therefore, the final rule provides that the PHA may elect, in the HAP contract, to establish that the initial contract rent shall serve as the rent floor. The PBV HAP contract will also be revised.

Issue: Removing Families With Below-Market Rents Who Are Not Receiving PBV Assistance From the Rent Reasonableness Calculation (§ 983.303)

Comment: Commenters stated that HUD has recognized when a housing conversion action takes place, an owner will often not raise rents on existing tenants who are not receiving rental subsidies in connection with the conversion. The commenters suggested adding a new § 983.303(c)(4) stating ''Units in the premises or project for which the owner is continuing below-market rents to families who were in occupancy but did not receive project-based voucher assistance at the beginning of the HAP contract are not to be taken into consideration for rent reasonableness determinations.''

HUD Response: The commenters are requesting that HUD expand the definition of assisted units for purposes of rent comparability to include units in the project for which the owner is continuing below-market rents to families who were in occupancy but did not receive project-based voucher assistance at the beginning of the HAP contract. In the very limited cases where a property has undergone a housing conversion action, HUD allows units occupied by tenants on the date of the eligibility event who do not receive vouchers to be considered assisted units if the owner chooses to continue charging below market rents to those families by offering lower rents, rent concessions, or other assistance to those families. These non-voucher families in a housing conversion action are often long-time tenants, many of whom are elderly and who had been paying below market rents prior to the housing conversion action. Considering such units assisted for purposes of rent reasonableness is an exception to the long-standing policy that an assisted unit is a unit that is assisted under a Federal, State, or local government program. However, for rent reasonableness determinations in the Housing Choice Voucher program, including the project-based voucher program, in the case of a family moving into a multifamily property, the PHA may choose to only consider the most recent rentals in determining the rents that the owner is charging for comparable unassisted units. In some markets, new tenants routinely pay higher rents than the rents that longer time tenants in comparable units may be paying. PHAs should refer to PIH Notice 2011–46 for guidance on rent reasonableness determinations.

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 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 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 rule makes 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.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment was made at the proposed rule stage 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(2)(C)). That FONSI remains applicable to this final rule and 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 approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB Control Number 2577–0169. 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.

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 amends 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, Pub. L. 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, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 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) *General.* 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) *LIHTC.* If the rent requested by the owner exceeds the LIHTC rents for non-voucher 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.

(3) *HOME Program.* [Reserved]

* * * * *

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'', ''partially assisted project,'' ''project'', ''project-based certificate (PBC) program'', and ''release of funds'' are added in alphabetical order;

■ b. The following definitions are revised: ''Excepted units'' ''premises,'' ''qualifying families,'' ''special housing type,'' and ''wrong-size unit''; and

■ c. The definitions for ''partially assisted building'' and ''state certified appraiser'' are 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).

* * * * *

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 State 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 contract'' (AHAP) or, for existing housing, to directly enter into a HAP with an owner of units selected under the PBV program.

* * * * *

Special housing type. Subpart M of 24 CFR part 982 states the special regulatory requirements for single-room occupancy (SRO) housing, congregate housing, group homes, and manufactured homes. Subpart M provisions on shared housing, manufactured home space rental, and the homeownership option do not apply to PBV assistance under this part.

* * * * *

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 § 983.4, the ''Labor standards'' paragraph is revised to read as follows:

§ 983.4 Cross-reference to other Federal requirements.

* * * * *

Labor standards. Regulations implementing the Davis-Bacon Act, Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708), 29 CFR part 5, and other federal laws and regulations pertaining to labor standards applicable to development (including rehabilitation) of a project comprising nine or more assisted units.

* * * * *

■ 9. 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).

■ 10. In § 983.6, paragraph (d) is added to read as follows:

§ 983.6 Maximum amount of PBV assistance.

* * * * *

(d) Before a PHA issues a Request for Proposals in accordance with § 983.51(b)(1) or makes a selection in accordance with § 983.51(b)(2), 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 pursuant to the selection and the number of units that such budget authority will support.

■ 11. 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.* Except as provided in paragraph (c)(3) of this section, assistance under this housing type is subject to the regulations of part 983, except the following sections of part 983, subpart F: §§ 983.256(b) and (c), 983.258 and 983.259 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.* Rental assistance for PBV cooperative housing where families lease cooperative housing units from cooperative members is not a special housing type and all requirements of 24 CFR 983 apply.

(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.

■ 12. 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.

(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 PBC program.

(B) The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at 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 applies to the PBC program.

■ 13. In § 983.51:

■ a. Paragraph (a) is amended by removing the term ''building'' and adding in its place ''project'' in the last sentence;

■ b. Paragraph (b)(2) is revised; and

■ c. Paragraph (g) is added 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.

* * * * *

(g) Owner proposal selection does not require submission of form HUD–2530 or other HUD previous participation clearance.

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

§ 983.52 Housing type.

* * * * *

(a) *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 substantially comply with HQS.

(1) Units for which rehabilitation or new construction began after owner's proposal submission but prior to execution of the AHAP do not subsequently qualify as existing housing.

(2) Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

* * * * *

■ 15. In § 983.53 is revised by:

■ a. Adding the word ''and'' after the semicolon in paragraph (a)(5);

■ b. Removing paragraph (a)(6);

■ c. Redesignating paragraph (a)(7) as paragraph (a)(6);

■ d. Removing paragraph (b);

■ e. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c) respectively;

■ f. Revising newly redesignated paragraph (b); and

■ g. Adding a new paragraph (d).

§ 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.

* * * * *

(d) *Prohibition against assistance for units for which commencement of construction or rehabilitation occurred prior to AHAP.* The PHA may not attach or pay PBV assistance for units for which construction or rehabilitation has commenced as defined in § 983.152 after proposal submission and prior to execution of an AHAP.

■ 16. 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. A further subsidy layering review is not required for housing selected as new construction or rehabilitation of housing, if HUD's designee has conducted a review, which included 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.

* * * * *

■ 17. In § 983.56:
■ a. The section heading is revised;
■ b. The word ''building'' is removed and ''project'' is added in its place everywhere it appears in paragraph (a), including the heading of paragraph (a), and in paragraph (b)(1) introductory text, (b)(1)(ii), (b)(2)(i), and (b)(3)(i);
■ c. Paragraph (b)(2)(ii)(A) is revised;
■ d. The reference ''§ 983.261(d)'' in paragraph (b)(2)(ii)(B) is removed and ''§ 983.262(d)'' is added in its place;
■ e. Paragraph (b)(3) is redesignated as paragraph (b)(4), and a new paragraph (b)(3) is added; and
■ f. Paragraph (c) is revised to read as follows.

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

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(A) Elderly and/or disabled families; and/or

* * * * *

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

* * * * *

(c) *Additional, local requirements promoting partially assisted projects.* A PHA may establish local requirements designed to promote PBV assistance in partially assisted projects. For example, a PHA may:

(1) Establish a per-project cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily project containing excepted units or in a single-family building,

(2) Determine not to provide PBV assistance for excepted units, or

(3) Establish a per-project cap of less than 25 percent.

■ 18. 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);

* * * * *

■ 19. 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. Paragraph (d) is 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

* * * * *

(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.

■ 20. 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.

* * * * *

■ 21. In § 983.152:
■ a. Paragraphs (a), (b), and (c) are redesignated as paragraphs (b), (a) and (d), respectively;
■ b. Newly redesignated paragraph (b) is revised; and
■ c. A new paragraph (c) is added to read as follows:

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

* * * * *

(b) *Requirement.* The PHA must enter into an Agreement with the owner at such time as provided in § 983.153. The Agreement must be in the form required by HUD headquarters (see 24 CFR 982.162).

(c) *Commencement of construction or rehabilitation.* The PHA may not enter into an agreement if commencement of construction or rehabilitation has commenced after proposal submission.

(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.

* * * * *

■ 22. In § 983.153, add introductory text and revise paragraph (c) to read as follows:

§ 983.153 When Agreement is executed.

The agreement must be promptly executed, in accordance with the following conditions:

* * * * *

(c) *Prohibition on construction or rehabilitation.* The PHA shall not enter into the Agreement with the owner if construction or rehabilitation has commenced after proposal submission

■ 23. 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.

* * * * *

■ 24. 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

* * * * *

■ 25. In § 983.205, paragraphs (a) and (b) 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. Extensions after the initial extension are allowed at the end of any extension term provided that not more than 24 months prior to the expiration of the previous extension contract, the PHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations described in this paragraph. 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.

* * * * *

■ 26A. Sections 983.206, 983.207, 983.208, and 983.209 are redesignated, respectively, as §§ 983.207, 983.208, 983.209, and 983.210.

■ 26B. A new § 983.206 is added to read as follows.

§ 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.

■ 27. In redesignated § 983.207, paragraph (b) is revised to read as follows:

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

* * * * *

(b) *Amendment to add contract units.* At the discretion of the PHA, and provided that the total number of units in a project that will receive PBV assistance will not exceed 25 percent of the total number of dwelling units in the project (assisted and unassisted), (unless units were initially identified in the HAP contract as excepted from the 25 percent limitation in accordance with § 983.56(b)), or the 20 percent of authorized budget authority as provided in § 983.6, a HAP contract may be amended during the three-year period immediately following the execution date of the HAP contract to add additional PBV contract units in the same project. An amendment to the HAP contract is subject to all PBV requirements (e.g., rents are reasonable), except that a new PBV request for proposals is not required. The anniversary and expiration dates of the HAP contract for the additional units must be the same as the anniversary and expiration dates of the HAP contract term for the PBV units originally placed under HAP contract.

* * * * *

■ 28. 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) Repair work on a project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

■ 29. A new § 983.211 is added to subpart E to read as follows:

§ 983.211 Removal of unit from HAP contract.

(a) 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 housing assistance payment on behalf of the family.

(b) If the project is fully assisted, a PHA may reinstate the unit removed under paragraph (a) of this section to the HAP contract after the ineligible family vacates the property. If the project is partially assisted, a PHA may substitute a different unit for the unit removed under paragraph (a) of this section to the HAP contract when the first eligible substitute becomes available.

(c) A reinstatement or substitution of units under the HAP contract, in accordance with paragraph (b) of this section, must be permissible under § 983.207. The anniversary and expirations dates of the HAP contract for the unit must be the same as it was when it was originally placed under the HAP contract. The PHA must refer eligible families to the owner in accordance with the PHA's selection policies.

■ 30. In § 983.251, a new paragraph (a)(4) is added 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.

* * * * *

■ 31. 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 for good cause;

(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 [Amended]

■ 32. In § 983.257, paragraph (b) is removed and paragraph (c) is redesignated as paragraph (b) and amended by removing the word ''per-building'' and adding in its place ''per-project''..

■ 33A. Sections 983.258, 983.259, 983.260, and 983.261 are redesignated as §§ 983.259, 983.260, 983.261, and 983.262, respectively.

■ 33B. A new § 983.258 is added to read as follows:

§ 983.258 Continuation of housing assistance payments.

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments 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 housing assistance payment by the PHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to § 983.211.

■ 34. In redesignated § 983.260, the word ''building'' is removed and ''project'' is added in its place everywhere it 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 housing assistance payments 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. If the family does not move out of the wrong-sized unit or accessible unit by the expiration date of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

(2) If the PHA offers the family the opportunity for another form of continued housing assistance in accordance with paragraph (b)(2) of this section (not in the tenant-based voucher program), and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the wrong-sized or accessible unit, at the expiration of a reasonable period as determined by the PHA, and remove the unit from the HAP contract.

■ 35. In redesignated § 983.262, the section heading and paragraphs (b) and (d) are revised and a new paragraph (e) is added to read as follows.

§ 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.

* * * * *

(d) A family (or the remaining members of the family) residing in an excepted unit that no longer meets the criteria for a ''qualifying family'' in connection with the 25 percent per project cap exception (i.e., a family that does not successfully complete its FSS contract of participation or the supportive services requirement as defined in the PHA administrative plan or the remaining members of a family that no longer qualifies for elderly or disabled family status where the PHA does not exercise its discretion under paragraph (e) of this section) must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying housing assistance payments on behalf of the non-qualifying family. If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the project in accordance with § 983.207(a); or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations (e.g., a family fails, without good cause, to successfully complete its FSS contract of participation or supportive services requirement) shall be terminated by the PHA.

(e) The PHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly or disabled family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly or disabled family member or long term or permanent hospitalization or nursing care), the elderly or disabled family member no longer resides in the unit. In this case, the unit may continue to count as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contact, the unit must be made available to and occupied by a qualifying family.

■ 36. 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, the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. If the PHA has not elected within the HAP contract to establish the initial rent to

owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

* * * * *

■ 37. In § 983.302:

■ a. Paragraph (c) is revised to read as set forth below; and

■ b. The reference in paragraph (e)(3) to ''§ 983.206(c)'' is removed and ''§ 983.207(c)'' is added in its place.

§ 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) If the PHA has elected within the HAP contract to not reduce rents below the initial rent to owner, 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.

* * * * *

■ 38. 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 where the PHA has elected in the HAP contract to not reduce rents below the initial rent under the initial HAP contract, 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.

* * * * *

■ 39. 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: June 16, 2014.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

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