

**DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT**

24 CFR Part 983

[Docket No. FR-5034-P-01]

RIN 2577-AC62

**Project-Based Voucher Rents for Units
Receiving Low-Income Housing Tax
Credits**

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the low-income housing tax credit (LIHTC) rent provisions of HUD's final Project-Based Voucher (PBV) program rule, which was published on October 13, 2005, and took effect on November 14, 2005. The October 13, 2005, final rule capped the PBV rents at the LIHTC rent in buildings with LIHTC units, even in cases where HUD formerly permitted such units to receive the higher rents permitted under the PBV program. After giving the issue further consideration, HUD now proposes to revert to the regulations that address this specific issue and were in effect prior to issuance of the October 13, 2005, final rule. The regulations in effect prior to the October 13, 2005, final rule did not necessarily require public housing agencies (PHAs) to cap section 8 maximum rents at the tax credit rent. PHAs may not enter into assistance contracts until HUD or an independent entity approved by HUD has conducted the required subsidy layering review and determined that the assistance is in accordance with HUD requirements.

DATES: *Comment Due Date:* July 2, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Interested persons may also submit comments electronically through the federal electronic rulemaking portal at: <http://www.regulations.gov>. HUD strongly encourages commenters to submit their comments electronically through <http://www.regulations.gov>. The comments received through this portal are posted and can be easily viewed.

Facsimile (FAX) comments are not acceptable. All communications must refer to the docket number and title. All comments and communications submitted will be available, without revision, for public inspection and

copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number). Copies of the public comments submitted electronically are also available for inspection and downloading at <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT:

David Vargas, Director, Office of Voucher Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4210, Washington, DC 20410; telephone (202) 708-2815 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

I. Background

On October 13, 2005, HUD published a final rule that comprehensively revised the regulations for HUD's PBV program, found in 24 CFR part 983. (See 70 FR 59892 *et seq.*) A detailed description of the legislative background and changes made to the program can be found in the preamble to the October 13, 2005, final rule.

Prior to the November 14, 2005, effective date of the October 13, 2005, final rule, PBV units with LIHTCs located outside of qualified census tracts could have rents set at the higher of 110 percent of the area fair market rent (FMR) or the LIHTC rent charged for comparable units in the same building that receive the tax credit and no other assistance. In other words, in areas where the tax credit rent was higher (*i.e.*, in the relatively lower-market-rent areas), the units would receive the benefit of that higher rent, but in areas where the FMR was higher (*i.e.*, in higher-market-rent areas), the units would not be capped at the tax credit rent and instead could receive the higher FMR-based rent.

The October 13, 2005, final rule changed this practice, in place for several years, under section 8(o)(13)(H) of the 1937 Act (42 U.S.C. 1437f(o)(13)(H)). The October 13, 2005, final rule provided, under § 983.304(c)(1)(v) and § 983.304(c)(2), that rent for units with tax credit may not exceed the tax credit rent in those cases where formerly, if the FMR-based rent were higher, that higher rent could be used.

Since the publication of the October 13, 2005, final rule, HUD received additional comments from PHAs and housing industry representatives expressing concern that the policy change regarding LIHTC units would impede rather than promote HUD's goal of increasing and preserving affordable housing, and requesting that HUD return to its original policy and position regarding LIHTC units. Some PHA and housing industry representatives also advised that the policy change may make many projects relying on LIHTCs non-viable because it could inhibit the financing of new projects by reducing the potential project rent, and thereby reduce the supply of low-income housing using LIHTCs.

After further consideration of this issue, HUD has determined that the policy change in the October 13, 2005, final rule concerning LIHTCs may not further HUD's mission to increase affordable housing as effectively as contemplated. While the change would cap federal subsidies, HUD hears the concerns that the change may inhibit the financing of new projects and possibly reduce, not increase, the supply of low-income housing using LIHTCs. HUD believes that concerns about excess federal subsidy may be adequately addressed using subsidy layering analysis. In this regard, HUD has determined that it would benefit by further public input on this issue.

This rule therefore proposes to reinstate the former policy in § 983.304(c) with respect to LIHTCs. In response to the public feedback received on the October 13, 2005, final rule, HUD has decided not to enforce § 983.304(c) as revised by the October 13, 2005, final rule. Instead, HUD will await further comment on this issue, as provided by this proposed rule, and will implement the final rule that results from this proposed rulemaking. In the meantime, owners who received a written notification of owner selection subsequent to the effective date of the final rule (November 14, 2005) and have entered into a Housing Assistance Payment (HAP) contract may request a redetermination of initial rents in accordance with § 983.301 of the final rule, if the initial rents were capped under the tax credit rent provision at § 983.304(c)(1)(v).

II. This Proposed Rule

For the reasons provided in Section I of this preamble, this proposed rule would remove the requirement added to § 983.304(c) by the October 13, 2005, final rule that PHAs in qualified census tracts have their rents limited by the tax credit rent. Therefore, PHAs would not

be required to reduce the PBV rent to the owner for LIHTC units merely because of the existence of LIHTCs. HUD or its designee would, however, conduct a subsidy layering review (consistent with longstanding HUD practice), which could result in rent reductions for projects with LIHTCs and PBV assistance. This review would be consistent with the prior policy. HUD is not proposing to revise or remove any other provision of the October 13, 2005, final rule.

III. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this proposed rule under Executive Order 12866 (entitled "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action," as defined in section 3(f) of the Executive Order (although not economically significant, as provided in section 3(f)(1) of the Executive Order). The docket file is available for public inspection between the hours of 8 a.m. and 5 p.m. in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposed rule, as with the prior rulemaking that led to the October 13, 2005, final rule, remains exclusively concerned with PHAs that have chosen to "project-base" 20 percent of their Housing Choice Voucher program assistance. Under the definition of "Small governmental jurisdiction" in section 601(5) of the RFA, the provisions of the RFA are applicable only to those few PHAs that are part of

a political jurisdiction with a population of under 50,000 persons. There are very few small PHAs in that category. In addition, this rule would cover only an even smaller category of PHAs—those with PBV HAP contracts for units also receiving LIHTCs. The number of entities potentially affected by this rule is therefore not substantial.

Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described by this preamble.

Environmental Impact

This interim rule involves establishment of external administrative or fiscal requirements related to a rate or cost determination, which does not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this interim rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on state and local governments and is not required by statute, or preempts state law, unless the relevant requirements of section 6 of the Executive Order are met. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4; approved March 22, 1995) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any federal mandates on any

state, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number applicable to the program affected by this proposed rule is 14.871.

List of Subjects in 24 CFR Part 983

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

For the reasons stated in the preamble, HUD proposes to amend 24 CFR part 983 to read as follows:

PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM

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

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

2. Revise § 983.304(c) to read as follows:

§ 983.304 Other subsidy: effect on rent to owner.

* * * * *

(c) *Subsidized projects.* (1) This paragraph (c) applies to any contract units in any of the following types of federally subsidized project:

(i) An insured or non-insured Section 236 project;

(ii) A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;

(iii) A Section 221(d)(3) below market interest rate (BMIR) project;

(iv) A Section 515 project of the Rural Housing Service;

(v) Any other type of federally subsidized project specified by HUD.

(2) The rent to owner may not exceed the subsidized rent (basic rent) as determined in accordance with requirements for the applicable federal program listed in paragraph (c)(1) of this section.

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Dated: March 23, 2007.

Orlando J. Cabrera,

Assistant Secretary for Public and Indian Housing.

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