



# FEDERAL REGISTER

---

Vol. 81

Tuesday,

No. 45

March 8, 2016

---

Part III

## Department of Housing and Urban Development

---

24 CFR Parts 5, 880, 884, et al.

Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs; Final Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 5, 880, 884, 886, 891, 903, 960, 966, 982, 983, 990**

[Docket No. FR 5743–F–03]

RIN 2577–AC92

**Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs**

**AGENCY:** Office of the Deputy Secretary, HUD.

**ACTION:** Final rule.

**SUMMARY:** The Department of Housing and Urban Development Appropriations Act, 2014 (2014 Appropriations Act), made several changes to the United States Housing Act of 1937 (1937 Act). Section 243 of the 2014 Appropriations Act authorized HUD to implement these changes through notice, followed by notice-and-comment rulemaking. Notices implementing the changes were published on May 19, 2014, and June 25, 2014. HUD issued a proposed rule on January 6, 2015, to codify these changes in regulation. In addition, the January 2015 rule proposed changes to streamline regulatory requirements pertaining to certain elements of the Housing Choice Voucher (HCV), Public Housing (PH), and various multifamily housing (MFH) rental assistance programs; to reduce the administrative burden on public housing agencies (PHAs) and MFH owners; and to align, where feasible, requirements across programs, including the Housing Opportunities for Persons with AIDS (HOPWA) and HOME Investment Partnerships (HOME), which are administered by HUD's Office of Community Planning and Development (CPD). HUD also issued an interim rule on September 8, 2015, implementing changes to flat rents in the Public Housing program made by the Department of Housing and Urban Development Appropriations Act, 2015 (2015 Appropriations Act).

This final rule makes changes to the regulatory text as presented in the January 2015 proposed rule, including additional changes in response to public comment as well as further consideration by HUD of changes proposed in January 2015, and finalizes the regulatory changes contained in the September 2015 interim rule.

**DATES:** *Effective Date:* April 7, 2016.

**FOR FURTHER INFORMATION CONTACT:** For questions regarding programs operated by HUD's Office of Community

Planning and Development, contact Henrietta Owusu, Director, Program Policy Division, Office of Affordable Housing Programs, at 202–402–4998. For the HCV program, contact Becky Primeaux, Director, Housing Voucher Management and Operations Division, at 202–402–6050. For questions regarding the Multifamily Housing programs, contact Katherine Nzive, Director, Program Administration Office, Asset Management and Portfolio Oversight, at 202–708–3000. For the Public Housing program, contact Todd Thomas, Program Analyst, Public Housing Management and Occupancy Division, at 678–732–2056. None of the phone numbers included is toll-free. Persons with hearing or speech impairments may access these numbers through TTY by calling the toll-free Federal Relay Service at 800–877–8339. Any of the above-listed contacts may also be reached via postal mail at the following address: Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The 2014 Appropriations Act made changes to certain provisions of the 1937 Act, such as allowing for biennial physical inspections of certain assisted properties and permitting alternative inspection methods to be used in certain circumstances, codifying in statute the definition of “extremely low-income,” and capping utility allowances at the lesser of the unit size on the voucher or the size of the unit leased by the family. These changes were implemented by notice;<sup>1</sup> a proposed rule to codify the changes in regulation was published on January 6, 2015, at 80 FR 423.

In addition, HUD has solicited recommendations in recent years on how to streamline program operations to reduce costs and enhance efficiency while still maintaining HUD's core program oversight functions. The January 2015 proposed rule included programmatic changes to implement many of these suggestions. A detailed description of all proposed amendments, including technical corrections also proposed, and the reasons for the amendments can be found in the preamble to the January 6, 2015 proposed rule at 80 FR 424 to 428.

As further discussed below, portions of this final rule affect the PH program,

<sup>1</sup> Notice PIH 2014–12, published May 19, 2014, implemented the changes to flat rents; 79 FR 35940, “HUD Implementation of Fiscal Year 2014 Appropriations Provisions on Public Housing Agency Consortia, Biennial Inspections, Extremely Low-Income Definition, and Utility Allowances” (June 25, 2014), implemented all other changes.

the HCV program, the CPD programs mentioned above,<sup>2</sup> and the following MFH programs:<sup>3</sup>

- Project-Based Section 8 (New Construction, State Agency-Financed, Substantial Rehabilitation, Rural Housing Services, Loan Management Set-Aside, and Property Disposition Set-Aside).
- Section 8 Moderate Rehabilitation.
- Rent Supplement Program.
- Section 202 Supportive Housing for the Elderly (including Project Assistance Contract and Project Rental Assistance Contract (PRAC)).
- Section 811 Supportive Housing for Persons with Disabilities (including PRAC and Project Rental Assistance).
- Section 236 Interest Reduction Payments Program.
- Rental Assistance Payment (RAP) Program.
- Sections 221(d)(3) and (d)(5)—FHA Insurance Programs for New Construction or Substantially Rehabilitated Multifamily Rental Housing.

Some of the new flexibilities will require a PHA to make changes to the PHA's Admissions and Continued Occupancy Policy, Administrative Plan, or PHA plan in order for the PHA to adopt the new authorities. HUD encourages all PHAs adopting such flexibilities to make all required amendments as expeditiously as possible.

The 2015 Appropriations Act amended section 3 of the 1937 Act to allow for additional flexibility to the requirement that the flat rental amount be set at no less than 80 percent of the applicable FMR, as established under 8(c) of the 1937 Act. HUD may allow a PHA to establish a flat rent based on an FMR that is based on an area geographically smaller than would otherwise be used, if HUD determines that the resulting FMR more accurately reflects local market conditions. In addition, a PHA may apply to HUD for an exception allowing a flat rental amount that is lower than the amount otherwise determined under the two

<sup>2</sup> The only provision in this final regulation that applies directly to the CPD programs is the earned income disregard. Other provisions that apply do so indirectly, either because of references in program-specific regulations or due to particular eligible activities that follow the requirements of the Housing Choice Voucher program. The parenthetical statements at the end of each subpart of section II.A, exclude mention of CPD programs.

<sup>3</sup> In the January 6, 2015 proposed rule, HUD inadvertently included reference to FHA's Section 235 Homeownership program, but as provided in a final rule published on April 3, 2015, this program is no longer active and the regulations were removed by the April 3, 2015 final rule. See <http://www.gpo.gov/fdsys/pkg/FR-2015-04-03/pdf/2015-07597.pdf>.

allowable FMRs, if HUD determines that the two FMRs do not reflect the market value of the property and the lower flat rental amount is based on a market analysis of the applicable market. In either case, the alternative flat rent must not create a disincentive for families seeking to become economically self-sufficient to continue to reside in public housing.

On September 8, 2015, at 80 FR 53709, HUD published an interim rule to amend HUD's regulations implementing the 2014 Appropriations Act language on flat rents to allow PHAs the opportunity to take advantage of the 2015 Appropriations Act authority that provides PHAs with more flexibility in setting flat rents. HUD advised that the interim rule superseded the portion of the January 2015 proposed rule year that addressed the issue of setting flat rents in public housing. Although HUD issued the September 2015 rule as an interim rule for effect, HUD sought public comment for a period of 60 days. By the end of the comment period on November 9, 2015, HUD received seven comments.

## II. Changes Made at the Final Rule Stage

In response to public comment and as a result of further consideration of certain issues by HUD, this final rule makes the following revisions to the January 2015 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 IV of this preamble. No changes are made to the September 2015 interim rule on flat rents.

### A. HCV, MFH, and PH Program Regulations

#### 1. Verification of Social Security Numbers (§ 5.216)

The use of the phrase "date of admission" appeared twice in the proposed rule, first to identify the endpoint of the 6-month period during which a family member under the age of 6 years who lacks a Social Security Number (SSN) may have been added to an applicant family, and then again to identify the starting point for the 90-day period allotted to such a family to obtain an SSN for the newly added child. Commenters stated that, in the HCV program, the "date of admission" is typically the date of lease-up (*i.e.*, the effective date of the Housing Assistance Payment (HAP) contract). Prior to lease-up, however, a PHA may have expended considerable time and resources pulling

a family from the waiting list, obtaining the necessary verifications, procuring a Housing Quality Standards (HQS) inspection, and performing a rent reasonableness determination. Lease-up could ultimately occur more than 6 months from the date the child was added to the household, which would result in the household being ineligible for admission to the program. To obviate such a scenario, HUD has, in this final rule, adopted two separate "dates of admission" for the HCV program for purposes of this provision: The date of voucher issuance and the date of lease-up. Specifically, the endpoint of the 6-month period during which a family member under the age of 6 years may be added to the household is the date of voucher issuance; the 90-day clock does not start ticking until the date of lease-up. (This provision applies to the HCV/Project-Based Voucher (PBV), Rent Supplement, Section 8, Sections 221(d)(3) and (d)(5), Section 236, 202/811, and PH programs.)

#### 2. Definition of Extremely Low-Income Families (§§ 5.603, 903.7, 960.102)

The definition of an extremely low-income family in the final rule is revised to include the phrase "a very low-income family," which is included in the statutory definition and was inadvertently omitted from the proposed rule. (This provision applies to the HCV/PBV, Section 8, and PH programs. It does not apply to the Rent Supplement, Section 235, Section 236, Sections 221(d)(3) or (d)(5) programs.)

#### 3. Use of Actual Past Income (§ 5.609)

For the reasons presented below, HUD has decided against pursuing the regulatory changes included in the proposed rule.

#### 4. Exclusion of Mandatory Education Fees From Income (§ 5.609(b)(9))

There is no change from the proposed rule. The final rule includes fees within the definition of tuition. (This provision applies to the HCV/PBV, Section 8, and PH programs. It does not apply to the Rent Supplement, Section 236, Sections 221(d)(3) or (d)(5) programs.)

#### 5. Streamlined Annual Reexamination for Fixed Incomes (§§ 5.657, 880.603, 884.218, 886.124, 886.324, 891.410, 891.610, 891.750, 960.257, 982.516)

Based on comments submitted, this provision was revised substantially from the proposed rule, which would have provided for a streamlined annual reexamination of family income for any family whose income consists solely of fixed sources. The final rule provides for a streamlined income determination

for any fixed source of income, even if a person or a family with a fixed source of income also has a non-fixed source of income. The final rule requires that, upon admission to a program, third-party verification of all income amounts must be obtained for all family members, and a full reexamination and redetermination of income must likewise be performed every 3 years. In the interim, a streamlined income determination may be performed for a family member with a fixed source of income by applying to a previously determined or verified source of income a cost of living adjustment (COLA) or interest rate adjustment specific to each source of fixed income. The COLA or current interest rate applicable to each source of fixed income must be obtained either from a public source or from tenant-provided, third-party generated documentation. In the absence of such verification for any source of fixed income, third-party verification of income amounts must be obtained.

While the final rule amends more regulatory provisions than the proposed rule, the policy has not changed.

Instead, there are cross-references to 24 CFR 5.657(d), pertaining to the reexamination of family income and composition in Section 8 project-based assistance programs, inserted in various MFH regulations herein to avoid confusion and ensure the policy is included in the regulations for all programs this provision is intended to affect. (This provision applies to the HCV/PBV, Section 8 (other than Moderate Rehabilitation), 202/811, and PH programs. It does not apply to the Rent Supplement, Section 236, Sections 221(d)(3) or (d)(5) programs.)

HUD recognizes that prior to the issuance of this final rule, the Fixing America's Surface Transportation Act, or FAST Act, was signed into law.<sup>4</sup> Section 78001 of that Act modified the 1937 Act to allow PHAs and owners to undergo full income recertification for families with 90 percent or more of their income from fixed-income sources every three years instead of annually. HUD believes that while the FAST Act provisions and the provisions contained in this rule are very similar, they offer different benefits; therefore, HUD is retaining the flexibilities in this final rule and will issue implementation regulations for the FAST Act separately.

#### 6. Earned Income Disregard (EID) (§§ 5.617, 960.255)

The proposed rule included a requirement that families maintain continual employment in order to

<sup>4</sup>Public Law 114-94, signed December 4, 2015.

obtain EID benefits over a straight 24-month period, and it allowed families who received the full EID benefit and then subsequently requalified for the benefit to obtain it again (*i.e.*, the proposed rule eliminated the maximum lifetime disallowance). The proposed rule also included a carve-out for the HOPWA program, which retained the provision unchanged.

In the final rule, all HUD programs to which the EID applies (including the HOPWA program) are aligned, the lifetime disallowance is retained, and the requirement to maintain continual employment is dropped. Ultimately, the only change to the existing regulation adopted in the final rule is that the benefit now applies for a straight 24-month period, with a clear start date and end date, irrespective of whether a family maintains continual employment during the 24-month period. PHAs and grantees are no longer obliged to track employment starts and stops, but only the start date, the 12-month date (on which the amount of the disregard may change from 100 percent to not less than 50 percent of earned income), and the 24-month (end) date.

For families enrolled and participating in EID prior to the effective date of this regulation, the previous requirements will continue to apply. (This provision applies to the HCV/PBV, HOME, HOPWA, and PH programs. It does not apply to the MFH programs.) HUD intends to publish a notice describing the changes and the administrative requirements prospectively. For current recipients of the EID, HUD will reiterate that regulations in effect immediately prior to this rule will continue to apply until the benefit period expires for these families.

#### B. HCV and PH Program Regulations

##### 1. Family Declaration of Assets Under \$5,000 (§§ 960.259, 982.516)

Upon further consideration and in light of comments received, HUD made a modest change to this provision from the proposed to the final rule. The proposed rule would have authorized a PHA to rely on a family's declaration starting with the first reexamination and going forward indefinitely. In the final rule, a PHA must obtain third-party documentation of assets every 3 years. The Office of Multifamily Housing Programs in HUD's Office of Housing noted support for expansion of this provision to its rental assistance programs and is issuing an interim final rule to do just that.

##### 2. Utility Reimbursements (§§ 960.253, 982.514)

The proposed rule provides a PHA with the option of making utility reimbursement payments "quarterly," for reimbursements totaling \$20 or less per quarter. For the final rule, this provision is modified somewhat. The amount is raised to \$45 or less per quarter. If the PHA opts to make the payments on a quarterly basis, the PHA must institute a hardship policy for the tenants if such payments would create a financial hardship for them. Based on a request for clarification, this provision was modified slightly for this final rule to make clear that reimbursements must occur no less frequently than once every calendar-year quarter. Additionally, HUD is issuing an interim final rule to expand this provision to MFH programs.

#### C. PH Program Regulations

##### 1. Public Housing Rents for Mixed Families (§ 5.520(d))

There is no change from the proposed rule. The final rule requires PHAs to use the established flat rent applicable to the unit to calculate rents for mixed families. The final rule also requires that a mixed family's payment be equivalent to their total tenant payment (TTP) when their TTP exceeds the flat rent.

##### 2. Tenant Self-Certification for Community Service Requirements (§§ 960.605, 960.607)

Just as in the proposed rule, the final rule permits PHAs to accept a tenant's signed self-certification of compliance with the community service requirement. However, to better ensure compliance with the community service requirement, HUD is requiring PHAs to review a sample of self-certifications and validate their accuracy with the third-party verification procedures currently in place. The PHA will also need to notify tenants that any self-certification may be subject to such validation.

##### 3. Public Housing Grievance Procedures (§§ 966.4 and 966.52 Through 966.57)

Upon further consideration and in light of comments received, HUD has decided against pursuing regulatory changes pertaining to the requirement that a PHA prepare a summary of any informal settlement. HUD has also decided against pursuing changes related to the ability of either party to a grievance to request, at their own expense, that a transcript of a grievance hearing be prepared. Further, in light of comments received, HUD has provided a clarification regarding the Limited

English Proficiency requirements related to grievance procedures.

This final rule maintains the elimination of the requirement that PHAs consult resident organizations before appointing a hearing officer. However, in light of comments that residents should have input into the selection process, HUD is requiring that PHAs include their policies regarding the selection process in the tenant lease form, which is subject to a 30-day comment period. Finally, the final rule also maintains the elimination of the requirement that PHAs retain a redacted copy of each hearing decision to be made available to prospective complainants, and in the place of that requirement, requires PHAs to maintain a log of hearing officer decisions as described through HUD guidance.

##### 4. Limited Vacancies (§ 990.150)

There is no change from the proposed rule. The final rule clarifies that the number of vacant units eligible for operating subsidy must be not more than 3 percent of the total units, on a project-by-project basis.

#### D. HCV Program Regulations

##### 1. Start of Assisted Tenancy (§ 982.309)

For the reasons presented below, HUD has decided against pursuing the regulatory changes included in the proposed rule.

##### 2. Biennial Inspections and the Use of Alternative Inspection Methods (§§ 982.405, 982.406, 983.103)

Upon further consideration, HUD made a change to this provision to clarify that if an alternative inspection method employs sampling, the PHA may rely upon that method only if HCV units are included in the population of units forming the basis of the sample. In addition, in response to public comments, HUD is requiring PHAs wishing to rely upon inspection methods other than those conducted pursuant to the Low-Income Housing Tax Credit (LIHTC) or HOME programs, or inspections performed by HUD, to submit to HUD the protocol for the inspection method they wish to use along with the PHA's analysis showing that the desired protocol meets or exceeds HQS. A PHA must submit these materials to HUD for approval and may not rely upon such alternative inspection methods until such approval has been granted.

##### 3. Housing Quality Standards (HQS) Reinspection Fees (§ 982.405)

The Department made modest changes to this provision based on comments expressing concern about the

broad nature of this authority and requests for clarity about the treatment of fees. The proposed rule would have authorized a PHA to charge a reasonable fee if a cited deficiency remained upon reinspection. The final rule states that the fee may be charged only if an owner stated that a deficiency had been fixed and the deficiency is found during reinspection to persist or if a reinspection conducted after the expiration of the timeframe for repairs reveals that the deficiency persists. With respect to the fee, the final rule makes clear that any fees collected may be used only for activities related to the provision of tenant-based assistance.

#### 4. Exception Payment Standards for Providing Reasonable Accommodations (§§ 982.503, 982.505)

There is no change from the proposed rule. The final rule allows a PHA to approve a payment standard of not more than 120 percent of the FMR without HUD approval if required as a reasonable accommodation for a family that includes a person with a disability.

#### 5. Family Income and Composition: Regular and Interim Examinations (§ 982.516(c)–(e))

There is no change from the proposed rule. The final rule eliminates the requirement that a voucher agency conduct a reexamination of income whenever a new family member is added, aligning the voucher and PH regulations.

#### 6. Utility Payment Schedules (§ 982.517)

For the reasons presented below, HUD has decided against pursuing the regulatory changes included in the proposed rule that would have authorized a PHA to define “unit type” as simply “attached” or “detached.”

### III. Discussion of Public Comments and HUD's Responses

The public comment period on the proposed rule closed on March 9, 2015, and 92 public comments were received in response to HUD's January 6, 2015, proposed rule. Comments were submitted by individual members of the public, Fair Housing advocacy groups, housing associations, and PHAs. The following presents the significant issues and questions related to the proposed rule raised by the commenters, and HUD's responses to these issues and questions.

#### A. CPD, HCV, MFH, and PH Program Regulations

##### 1. Verification of Social Security Numbers (§ 5.216)

*Issue: Proposal Expansion.* Commenters had several suggestions for HUD to expand the proposed relief, including allowing relief if there is a newly added family member over the age of six. Others suggested that HUD simply establish a maximum time period during which a family may receive a subsidy without providing a missing SSN instead of allowing for two extension periods or that HUD should allow families to self-certify as to having obtained SSNs. Commenters also stated that the waiver should be allowed only if any enforcement action is consistent with the Administrative and Continued Occupancy Policy (ACOP) and/or the Administrative Plan and/or Tenant Selection Plan (TSP).

*HUD Response:* Existing regulations permit a participant household to add a new household member under the age of 6 years, even if that household member lacks an SSN at the time of admission. The participant household then has 90 days to obtain and provide documentation necessary to verify the SSN of the new household member; the processing entity may grant the household an additional 90-day extension. HUD's intent in proposing changes to the regulations governing applicants is to align the requirements for applicants with those that govern participants, including with respect to enforcement. The changes proposed above either go beyond the current requirements for participant households or vary from those requirements. As such, they are contrary to HUD's intent, and HUD declines to adopt them.

*Issue: Expansion to Homeless Programs.* Commenters asked HUD to expand the proposal by providing waivers to allow PHAs to house homeless individuals who are unable to provide documentation of their SSN by giving the families 90 days to provide the information.

*HUD Response:* HUD agrees that adopting similar flexibility with respect to homeless individuals who lack SSNs would facilitate HUD's efforts to serve homeless families. However, HUD is unable to adopt this recommended change at this time, because it is beyond the scope of this rulemaking.

*Issue: Timing of Waiver.* Commenters asked HUD to use the date of voucher issuance instead of the date of admission, as the date of admission usually means the date of lease-up and does not account for time for finding a unit and inspections.

*HUD Response:* HUD agrees with this comment and has adopted it in this final rule.

*Issue: Objections.* Some commenters objected to the proposal, stating that it would actually increase burden on PHAs. Others asked HUD to modify its systems to properly accept a delayed certification when there is a new child in the family or when a foster agency refuses to provide the SSN. Commenters also asked HUD to allow the use of other forms of identification, such as Individual Taxpayer Identification Numbers.

*HUD Response:* Several of the comments provided pertain only indirectly to the changes proposed by HUD and are therefore beyond the scope of this rulemaking. With respect to the assertion that this change may result in additional tracking and monitoring, HUD notes that, for processing entities that typically request waivers in order to house such families, the change reduces burden. In addition, the change creates benefits that offset any modest burden. Specifically, they eliminate a barrier that could otherwise prevent families from being housed, requiring no greater monitoring and tracking than is performed for participant households.

##### 2. Definition of Extremely Low-Income (ELI) Families (§§ 5.603, 903.7, 960.102)

*Issue: Low-Income Families.* Commenters stated that the proposed change should not exclude households from meeting ELI eligibility who are between 30 percent and 50 percent of area median income (AMI).

*HUD Response:* HUD agrees with the comment and has added “very low-income” language to the final rule.

*Issue: Requested Changes.* Commenters stated that because the new definition of ELI has delayed the release of income limits, the proposal should not be finalized. Similarly, it was suggested that HUD remove income targeting completely.

*HUD Response:* The final rule codifies the definition of ELI in HUD's 2014 Appropriations Act. The FY 2014 Appropriations Act defines “extremely low-income family” to mean a very low-income family whose income does not exceed the higher of 30 percent of AMI or the poverty level. It would be contrary to the statutory change to delay in proceeding with issuance of this final rule.

Income targeting is a statutory requirement of section 16 of the 1937 Act and cannot be removed through rulemaking without statutory authority.

### 3. Use of Actual Past Income (§ 5.609)

*Issue: Objections to the Proposed Change.* Many commenters objected to the proposal's requirement that a PHA use one definition of annual income (either actual past income or projected income) for all families in a program. Also, many commenters objected to the prohibition against using both the past income provision and the provision authorizing a streamlined annual reexamination for fixed-income families. Commenters stated that these restrictions limit PHA discretion and therefore fail to provide administrative savings to PHAs.

Additionally, commenters stated that the provision did nothing to alleviate the burden associated with performing interim income reexaminations. The commenters stated that many families experience fluctuations in income over the course of a year, and that each time this happens, a housing provider must calculate income based on projected income, rather than past income. The commenters stated that furthermore, the proposal required housing providers that adopted a definition based on actual past income to calculate expenses for such things as child care and medical care during the same 12-month period, and it is difficult to have the same timeframes for all sources of income.

Other commenters stated that using past income was not an accurate way to set rent.

*HUD Response:* HUD agrees that the proposal provided minimal, if any, streamlining benefit, and required impractical actions on the part of housing providers in using the same time frames for income and deductions. Given the concerns raised about the proposal, HUD has decided not to adopt the use of actual past income in the final rule.

### 4. Exclusion of Mandatory Education Fees From Income (§ 5.609(b)(9))

*Issue: Requests for Clarification.* Some commenters supported the change, but expressed doubt that this provided streamlining relief and perhaps, instead, added to a PHA's burden, particularly in determining the amount of fees charged and then verifying those fees. Others asked for additional guidance on what fees would fall under this new policy.

*HUD Response:* HUD notes that this provision is included in the rule, not as administrative relief, but to codify in regulation language included in recent appropriations acts that has excluded from income those amounts needed to

pay mandatory student fees.<sup>5</sup> Additional guidance from HUD regarding what constitutes such fees is forthcoming in the form of a notice that relies on the Department of Education definitions of tuition and fees. For example, a mandatory education fee would include student service fees. That same notice will provide guidance on how to verify fee information. (Note: Such fees are already excluded for purposes of the PH program, pursuant to § 5.609(b)(9).)

### 5. Streamlined Annual Reexamination for Fixed Incomes (§§ 5.657, 960.257, 982.516)

*Issue: Clarifications and Minor Changes.* Commenters supported streamlining reexaminations for families with fixed income, but asked that HUD make some small changes. In addition to the many requests that HUD permit both fixed-income streamlining and the use of actual past income, commenters asked that HUD allow for streamlined reexaminations even when the family does not have all of its income from fixed-income sources or when some family members have a variable income and others have a fixed income. Commenters also asked that either the regulatory definition of "fixed" income be made more flexible or HUD grant PHAs flexibility to establish their own definition.

*HUD Response:* As explained above, HUD has dropped the provision that would have authorized PHAs and owners to define annual income as "actual past income." At the same time, in response to comments, HUD has revised this streamlined annual reexamination measure to provide PHAs and owners with the option of conducting a streamlined income redetermination for any fixed-income source, irrespective of whether an individual or a family also has a non-fixed source of income. This means that the regulation no longer requires a family to have 100 percent of its income from fixed sources, which resolves a number of the concerns expressed by commenters. The final rule also adopts an expanded list of fixed sources of income. With respect to income from annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts, if a family member receives income from any of these sources and the income consists solely of periodic payments at reasonably predictable levels, then the income

source may be considered to be "fixed." HUD believes that these changes respond to a number of the comments received and will provide substantial relief to PHAs and owners.

*Issue: Objections and Significant Changes.* Some commenters stated that the proposal did not provide any streamlining benefit, and, to fully streamline, HUD should eliminate or modify the medical expense through methods like a standard deduction or self-certification of medical expenses. Commenters expressed concern that allowing streamlined recertification for fixed income families would allow such families to overlook sources of income. Some stated that HUD should still require annual income verifications, because some families would have some members with fixed income and others with variable income.

*HUD Response:* While HUD is amenable to adopting several of the suggestions made by commenters, HUD will not eliminate certain requirements, such as the requirement to verify medical expenses and otherwise calculate adjustments to annual income for fixed-income families. For ongoing medical expenses, PHAs and owners already have the option to determine anticipated expenses by calculating expenses paid by the family in the 12 months preceding recertification. For past one-time, nonrecurring medical expenses that have been paid in full, PHAs and owners already have the option of including these expenses at an initial, interim, or annual recertification; if such an expense has not been paid in full but is instead being paid subject to a payment plan, then the expense would be counted as anticipated either at the time it occurs, through an interim recertification, or at an upcoming annual recertification. Further, HUD will not adopt the use of self-certification of medical expenses and other deductions, due to the risk of improper payment. Along the same lines, the final rule makes clear that a full examination of family income must be conducted upon admission to a program. Also, for PHAs and owners that choose to adopt the streamlined income redetermination, a full examination of family income must be performed at least every 3 years.

### 6. Earned Income Disregard (§§ 5.617, 960.255)

*Issue: Definition of "continually employed" and effect on employment.* Several commenters requested that HUD modify the proposal by clarifying the requirement that the family remain continually employed.

<sup>5</sup> See section 213 of the Transportation, Housing and Urban Development, and Related Agencies Appropriations Act, 2015 (Pub. L. 113-235, approved Dec. 16, 2014).

In contrast to these commenters, other commenters suggested that this change should not be made, because residents eligible for EID would not be able to be continually employed for 24 months. Others objected to allowing residents to re-qualify for EID, either because it would create an additional burden on PHAs or because it could create an incentive for individuals to leave jobs when the EID expires. Some commenters expressed concern that a family losing the EID during the 24-month period would be able to qualify for a new EID period immediately, allowing for an infinite time frame to receive the EID. Commenters also suggested that HUD allow PHAs the option to allow the EID time clock to run during periods of unemployment but disregard any unemployment benefits an individual receives.

*HUD Response:* HUD has determined to drop the continuous employment requirement from this rulemaking. For all HUD programs that require an EID, HUD is retaining the ability of these residents to start and stop employment and still retain the benefit of the EID. However, these residents may only receive the benefit for up to 24 consecutive months from the date of initial increase in annual income. If an individual becomes eligible to receive the EID, the 24-month period will not stop if the circumstance that triggered the EID ceases; however, if the individual experiences an event that would again provide an EID benefit during the 24-month period, then the individual will be provided the rent incentive. This change eliminates the burdensome process of tracking EID starts and stops over a 48-month time period, but still provides some flexibility to tenants to receive the EID if they again obtain employment.

HUD will retain the one-time EID eligibility. Specifically, after the expiration of the 24-month period, individuals will be ineligible to receive subsequent EID benefits. HUD believes that these changes maintain the balance that HUD seeks to incentivize employment among residents while reducing the burden of administering the benefit.

*Issue: Exclusion in the second 12 months.* Commenters asked that HUD make the income exclusion 100 percent for the first year and 50 percent for the second 12 months.

*HUD Response:* HUD disagrees with this suggestion. The statutory language at section 3(d) of the 1937 Act requires PHAs to disregard 100 percent of any increase in income for the first 12 months. However, for the second 12 months, PHAs must disregard not less

than 50 percent of any increase in income. PHAs have discretion during the second 12-month period to disregard more than 50 percent of any increase in income. Therefore, HUD will not adopt this suggested change.

*Issue: Limiting the availability of EID.* Commenters suggested that HUD align the EID effective date with a family's annual reexamination date. Others suggested that HUD should allow for income to be calculated using actual past earned income for everyone in lieu of EID, or that EID should be available only for individuals with disabilities. Commenters also suggested that HUD should allow PHAs to implement EID on their own reporting cycle.

*HUD Response:* HUD's intent in this rulemaking, with respect to EID, is to streamline the EID tracking process by reducing the time during which a program participant may be eligible to receive the benefit of the EID. HUD believes the changes in this rulemaking also more closely align to the statute that governs the EID. The changes suggested above are inconsistent either with the statute or with HUD's intent in this rulemaking. As a result, HUD will not adopt the suggested changes.

*Issue: Additional guidance.* HUD was asked for specific guidance for families that have already started EID under the previous regulations.

*HUD Response:* HUD agrees with this comment and has revised the final regulation to make clear that the previous regulations apply to such families.

*Issue: HOPWA carve-out.* Some commenters stated that allowing HOPWA to have an EID policy different from other programs with tenant populations that have disabilities is unfair to the tenants in those non-HOPWA programs.

*HUD Response:* HUD agrees with this recommendation and has eliminated the HOPWA program carve-out in this final rule. The final rule applies the EID uniformly to all families eligible for the benefit.

*Issue: Elimination of EID.* Some commenters suggested HUD should eliminate EID entirely, either because it clashes with PH's minimum rent requirement or because the family self-sufficiency program is better. Others stated that the EID should not be extended to the Shelter Plus Care and Moderate Rehabilitation/Single-Room Occupancy (SRO) programs. Some suggested that the EID time period should be limited to only three months to discourage individuals from quitting jobs at the expiration of the EID time period to avoid rent increases or that the EID time period should be expanded to

48 months to allow for more gradual rent increases.

*HUD Response:* As noted in response to an earlier comment, HUD's intent in this rulemaking, with respect to EID, is to streamline the EID tracking process by reducing the time during which a program participant may be eligible to receive the benefit of the EID. HUD believes the changes in this rulemaking more closely align to the statute that governs the EID. The changes suggested above are inconsistent either with the statute or with HUD's intent in this rulemaking. As a result, HUD will not adopt the suggested changes.

#### *B. HCV and PH Program Regulations*

##### 1. Family Declaration of Assets Under \$5,000 (§§ 960.259, 982.516)

*Issue: Increasing Threshold.* Many commenters asked that HUD increase the maximum amount of assets that can be self-certified to \$10,000.

*HUD Response:* The final rule has not adopted this suggestion. The \$5,000 amount is consistent with other policies. Existing regulations require housing providers to calculate the imputed income for assets over \$5,000. Also, the Internal Revenue Service permits housing credit agencies and owners to accept a certification from families of assets under \$5,000. Commenters stated that there are few residents with assets greater than \$5,000.

*Issue: Expansion to Admission.* Some commenters asked that HUD modify the proposal to allow families to use self-certification at both admission and reexamination.

*HUD Response:* The final rule clarifies in the preamble that this provision applies to families at reexamination. At admission, all assets of a family will be verified as is the current practice. Also, the final rule requires a PHA to obtain third-party documentation of all family assets every three years.

*Issue: Method of Certification.* Commenters asked that HUD allow families to certify to total assets instead of requiring declaration of each separate asset.

*HUD Response:* A family's declaration of total assets may be included on a single form with each asset listed. HUD will issue further guidance about this provision of the final rule.

*Issue: Expansion to Multifamily.* Commenters asked that HUD allow this provision to apply to multifamily housing as well.

*HUD Response:* The Office of Multifamily Housing Programs, which operates various rental assistance programs, is issuing an interim final rule to accomplish this expansion.

*Issue: Larger Changes to the Proposal.* Some commenters asked that HUD eliminate the consideration of assets when determining income, as income from assets usually has little, if any, effect on the amount of rent paid by a family. Other commenters state that self-certification does not actually reduce burden on PHAs and may actually increase work for PHA staff.

*HUD Response:* Totally eliminating consideration of assets when determining income is outside the scope of this rulemaking. HUD will keep the suggestion in mind as it examines other opportunities to streamline program requirements.

Additionally, this provision is optional for PHAs. A PHA may continue to verify such assets at both admission and annual reexaminations.

## 2. Utility Reimbursements (§§ 960.253, 982.514)

*Issue: Optional Nature of Provision.* Commenters asked that HUD make this policy optional or allow PHAs to determine the frequency with which they make utility reimbursement payments. For example, some commenters requested that HUD permit annual reimbursements.

*HUD Response:* The changes in this rulemaking are optional, and PHAs that do not believe this provision is beneficial to their program administration may continue to provide utility reimbursements monthly. Nothing in this rulemaking permits a PHA not to provide a utility reimbursement if such a reimbursement is due. Nor does the rulemaking offer PHAs the option of making such payments less frequently than quarterly.

*Issue: Frequency of Payments.* Commenters asked whether the quarterly reimbursement period would be based on the calendar year or when the family moves in. Others asked for clarification on whether the payments are reimbursements or future payments.

*HUD Response:* The final rule has been modified to clarify that the quarterly periods are to be based on the calendar year, not the move-in date. However, HUD is not amending other policies governing when utility reimbursements are sent.

*Issue: Hardship Exemption.* Commenters stated that HUD should not allow any hardship exemption.

*HUD Response:* While the proposed rule did not contain a hardship exemption, HUD has decided for some families, waiting for a quarterly reimbursement amount may be untenable. Therefore, the final rule now requires that if PHAs make quarterly

reimbursements, the PHA must have a hardship policy in place for tenants.

*Issue: Quarterly Reimbursement Threshold Amount.* Commenters requested that HUD increase to \$50 the maximum amount of reimbursements that may be sent quarterly.

*HUD Response:* HUD agrees that raising the threshold for quarterly reimbursements will increase the number of families under this provision and expand the streamlining efforts. While not raising the amount to \$50 per quarter, HUD has raised the threshold to \$45 per quarter (\$15 per month). Any burden placed on families due to this higher amount is now offset by the requirement that PHAs opting to issue quarterly utility reimbursements must include a hardship exemption policy if the quarterly payments impose a financial hardship on families.

*Issue: Alternative Reimbursement Methods.* Commenters asked that HUD support options other than checks for making utility reimbursement payments.

Some commenters suggested that quarterly reimbursements would not help PHAs that use automatic deposits onto a debit card.

*HUD Response:* HUD supports the use of alternative utility reimbursement methods, including debit cards. PHAs that choose to use such alternative methods should ensure that such reimbursement methods do not generate fees that must be paid by the tenant.

The use of quarterly reimbursement may benefit PHAs that use automatic deposits. If it does not, then HUD expects that such PHAs will not exercise this option.

*Issue: Elimination of Low Reimbursement Amounts.* Commenters asked that HUD eliminate utility reimbursements that are less than \$10 per month or eliminate reimbursements entirely.

*HUD Response:* HUD does not agree that utility reimbursements for amounts less than \$10 per month should be eliminated. The elimination of such reimbursements would violate sections 3 and 8 of the 1937 Act (42 U.S.C. 1437a and 1437f), which require that families pay no more than 30 percent of their annual gross income in rent for their assisted housing. HUD has determined that such rental payments are for housing and reasonable utilities costs. Therefore, eliminating a utility reimbursement of any amount would result in some program participants paying more than the maximum amount of rent that the family should pay. HUD will not adopt the suggested change.

*Issue: Setting Rents by Income Bands.* Commenters stated that the

reimbursement burden would be completely eliminated if rents were solely determined by income bands.

*HUD Response:* HUD does not have the statutory authority to permit the use of rents based on income bands in the PH or HCV programs. Therefore, HUD will not adopt this suggestion.

*Issue: Direct Payments.* Commenters stated that owners should be able to submit utility payments directly to utility providers.

*HUD Response:* This rulemaking does not eliminate the option available to PHAs to make direct payments to utility providers in lieu of making utility reimbursement payments to tenants.

*Issue: Prorated Reimbursements.* Commenters stated that owners should be given the option to prorate the utility allowance payment based on any projected move out date; if a payment has already been disbursed when a tenant moves out, the owner should be allowed to offset the difference by using the security deposit, charging the resident for the difference, or adjusting the voucher payment amount.

*HUD Response:* This rulemaking requires PHAs to make a prorated utility reimbursement payment in the case of a family that moves out in advance of the next scheduled quarterly reimbursement. Likewise, if a family leaves the program with an outstanding credit from the PHA for a utility reimbursement, the PHA must reconcile the credit with the family prior to the expiration of the lease, in the case of PH, or when the HAP contract terminates or shortly thereafter, in the case of the HCV program.

## C. PH Program Regulations

### 1. Public Housing Rents for Mixed Families (§ 5.520(d))

The comments received on this proposal were all positive and did not urge any changes. Therefore HUD is adopting the proposal, unchanged in the final rulemaking.

### 2. Tenant Self-Certification for Community Service and Self-Sufficiency Requirement (§§ 960.605, 960.607)

*Issue: Review of Certifications.* Several commenters stated that HUD should not require PHAs to obtain third-party verification when reviewing the self-certifications or should limit the times when a PHA should follow up with a third party in the review of certifications.

*HUD Response:* HUD agrees that it would be unnecessarily burdensome on PHAs to obtain additional third-party verification when reviewing each self-



certification. HUD is not, therefore, mandating such a process when reviewing tenant self-certifications. PHAs must, however, review the self-certifications to ensure that they are complete and provide sufficient information in order to follow up as necessary. Further, HUD strongly encourages PHAs to investigate community service compliance when there are questions of accuracy. Finally, in a change from the proposed rule, HUD is requiring PHAs to validate a sample of self-certifications and notify residents that their self-certifications may be subject to such validation in order to ensure that residents remain compliant with the community service and self-sufficiency requirement (CSSR).

*Issue: Objections to Self-Certification.* Several commenters objected to the proposal to allow self-certification, stating that it would reduce compliance with the CSSR.

*HUD Response:* While HUD understands the concerns that some residents may attempt to submit fraudulent self-certifications, the changes permit, but do not require, PHAs to accept a tenant self-certification of compliance with the CSSR in lieu of obtaining independent third-party verification. PHAs that are concerned about the potential for fraudulent self-certifications may continue to require third-party verification of compliance for each eligible resident.

*Issue: Elimination of Community Service Requirement.* Several commenters suggested that it would be better if HUD eliminated the community service requirement for PH entirely.

*HUD Response:* The CSSR is mandated by section 12(c) of the 1937 Act (42 U.S.C. 1437j(c)). HUD is therefore unable to eliminate the CSSR.

### 3. Public Housing Grievance Procedures (§§ 966.4 and 966.52 Through 966.57)

*Issue: Alignment.* Commenters suggested that all grievance procedures should be aligned across PH, Section 8, and MFH programs. This would allow for only one administrative hearing for any action. Other commenters suggested applying the revised definition of "hearing officer" to the HCV program, as well.

*HUD Response:* In general, this streamlining rule aligns program requirements where possible to simplify administration of HUD programs. In the case of the PH program, which in some cases requires grievance procedures that are beyond what is required under state/local law, it would be impractical for HUD to seek to fully align the PH

program with other HUD rental assistance programs.

*Issue: Hearing Postponements.* Many commenters objected to language in § 966.56(c), which would limit the timing of any hearing postponements to five days. The commenters stated that the provision places unnecessary time restrictions, and timeframes should remain at the discretion of PHAs on a case-by-case basis.

*HUD Response:* HUD's intent in this provision is to clarify, through the use of plain language, the flexibility afforded to the hearing officer regarding the length of time for which a hearing may be postponed. The regulatory language was changed from "not to exceed," to "no more than." The change is not substantive, does not reduce the flexibility afforded to the PHA, and is not disadvantageous to the complainant. The final rule is unchanged from the proposed rule.

*Issue: Limited English Proficiency (LEP) Requirements.* Several commenters expressed concern with the newly included LEP requirements in § 966.56. The commenters asked whether a PHA must provide materials in multiple languages, and stated that PHAs should be allowed to use common sense when providing LEP materials to complainants.

Other commenters asked that HUD expand the LEP requirements beyond written materials to include providing translators at various conferences and meetings and materials in other languages for any notice related to a proposed adverse action. Some commenters stated that written materials may be inappropriate, as some residents may be illiterate in their spoken language.

Some commenters also disagreed with HUD's placement of the LEP requirements under a heading of accommodations for persons with disabilities, as limited English proficiency is not a disability.

*HUD Response:* HUD's intent in this provision is to clarify in the regulations the LEP requirements already in place for the PH program. On January 22, 2007,<sup>6</sup> HUD published final guidance in the **Federal Register**. This rulemaking does not introduce requirements that are beyond what is included in HUD's final LEP guidance. The final rule has been amended to clarify PHA obligations.

HUD agrees with the comments regarding the placement of the language, and has moved the requirement to § 966.56(g).

*Issue: Due Process.* Commenters suggested methods to assure due process rights for complainants, including relying exclusively on local courts or limiting the streamlined process only for drug activity. Some commenters stated that PHAs should be required to set forth a basic schedule, including witness lists and supporting documents and limiting the types of testimony a PHA may introduce without allowing cross-examination of witnesses. Commenters also asked that HUD provide additional guidance on how flexible a PHA may be with certain procedures, in order to reduce the exposure of PHAs to legal challenges.

*HUD Response:* HUD's intent in this rulemaking is to remove overly prescriptive process requirements for PH grievances, where those requirements are not mandated by statute. The changes proposed above either attempt to maintain or add to existing requirements. The changes are not consistent with HUD's intent in this rulemaking; therefore, HUD will not adopt these suggested changes.

*Issue: Consultation with Residents in Appointing Hearing Officers.* Some commenters expressed concern that the proposal eliminates the requirement for PHAs to consult with residents in appointing hearing officers, stating that it damages residents' rights to impartial hearings.

*HUD Response:* Requiring a process to consult with residents over the selection of a hearing officer when PHAs ultimately have the final say about whom to select would be an unnecessarily burdensome process requirement, and therefore contrary to the intent of this rulemaking which is to reduce burden. Further, PHAs still may, but are no longer required to, consult with residents about the hearing officer. This suggestion would maintain the current burdensome process and is inconsistent with HUD's intent in this rulemaking. HUD will not adopt this suggestion.

However, in light of these comments, HUD agrees that tenant input into hearing officer selection process can be valuable. Therefore, HUD is requiring that PHAs include their policies for selection of hearing officers in the dwelling lease, which is subject to a 30-day comment period before any changes can be made.

*Issue: Informal Settlements.* Commenters asked that HUD continue to require the summary of informal settlements, stating that HUD could provide a template in order to reduce administrative burden.

*HUD Response:* HUD agrees that there is value in the preparation of the

<sup>6</sup> See <http://www.gpo.gov/fdsys/pkg/FR-2007-01-22/pdf/07-217.pdf>.

summary, as it provides an opportunity for both parties to prepare for any forthcoming grievance hearing. As such, HUD will not change the previous requirement that a summary be prepared. HUD will explore whether a template summary would be useful at reducing administrative burden for PHAs.

*Issue: Meeting Recordings and Transcripts.* Commenters stated that HUD should still require PHAs to allow residents to record a meeting and have a transcript made, as elimination of this requirement doesn't ease the burden to the PHA, but it eliminates a benefit for future proceedings.

*HUD Response:* HUD agrees with this comment and this final rule reinstates language making clear that any party to a grievance may arrange to obtain a hearing transcript, at their own expense.

*Issue: Retention of Hearing Officer Decisions.* Commenters expressed concern that HUD was eliminating the requirement that PHAs maintain copies of decisions of hearing officers. Commenters stated that the records are important to maintaining transparency for PHAs; the commenters stated that electronic records would reduce burdens for keeping the records.

*HUD Response:* HUD's regulation at 24 CFR 966.56(b)(1) requires that tenants be afforded a hearing based on relevant facts related to the specific grievance. HUD disagrees that prior decisions are necessarily relevant to the individual facts related to a specific grievance hearing. Further, the retention of such documents is time-consuming and costly for PHAs. The suggested change is inconsistent with HUD's intent in this rulemaking, which is to reduce administrative burden and program costs. Therefore, HUD will not adopt the suggested change.

However, HUD agrees that basic information related to past hearing decisions could be useful for HUD oversight and for ensuring transparency in the process. Therefore, in lieu of the requirement to maintain redacted hearing decisions and making such decisions available to the public, HUD is requiring that PHAs maintain a simple log, as described in forthcoming HUD guidance, that provides basic information on past hearing decisions.

*Issue: Informal Hearings.* Commenters stated that HUD should reinstate informal hearings prior to a formal grievance in order to avoid more costly formal hearings whenever possible.

*HUD Response:* This final rulemaking did not eliminate the informal hearing (*i.e.*, informal settlement of grievance) prior to a formal grievance hearing, as initially proposed. Requirements related

to the informal hearing are contained in 24 CFR 966.54.

#### 4. Limited Vacancies (§ 990.150)

*Issue: Consistency with local vacancy rates.* Commenters stated that PHAs should be allowed to maintain vacancy rates that are comparable with that of the jurisdiction. Others asked HUD to set the allowed vacancy rate at not less than 5 percent, as permitted in the LIHTC and Project-Based Rental Assistance (PBRA) programs.

*HUD Response:* The limited vacancy provision allows for funding for vacancies of up to 3 percent. Five other types of approved vacancies are included in the existing regulation related to particular project circumstances such as modernization, special uses, litigation, disasters, and casualty losses as well as an appeal provision for vacancies due to changing market conditions.

*Issue: Effect on small agencies.* Some commenters objected to new language that the commenters stated would reduce subsidies to PHAs and could destabilize small agencies. Others stated that the proposal does not allow for consideration of market conditions or specific local conditions for small PHAs, which would hurt struggling agencies.

*HUD Response:* The proposed language retains the special consideration for PHAs with 100 units or less. HUD's Public Housing Operating Fund (Operating Fund) regulations continue to allow for appeals for changing market conditions and specific local condition.

*Issue: Basis for calculation.* Commenters asked that vacancies be judged on a PHA-wide basis to permit balance of high-demand areas with others where there is a low demand, because one or two vacancies could cause a vacancy rate over 3 percent. The commenters stated that PHAs should be allowed to manage their portfolio as a single program, similar to the way the private sector would do so.

*HUD Response:* This clarification of the limited vacancy rule retains the approach that funding is both determined and provided at a project level. The foundation of the transition to asset management, which was adopted by both PHAs and HUD at the time of promulgation of the new Operating Fund rule, was for certain PHAs to migrate away from PHA-level management and funding for those that converted to asset management. Instead, funding, budgeting, accounting, and management are all conducted at the project level. HUD recognizes each PHA's discretion as a property and

financial manager of real estate to group buildings to optimize efficient property management and financial viability. The Operating Fund regulations and HUD systems currently allow PHAs to group buildings into a project(s) to best serve the interests of the property and residents.

*Issue: Lag time.* Commenters objected to the change because occupancy numbers being used are 12–18 months in the past, requiring PHAs to operate on non-applicable past information.

*HUD Response:* The Operating Fund formula in 24 CFR part 990 is based on use of historical performance data as a basis to fund current year needs. The clarification of the limited vacancy language does not modify the tenure of performance data used to calculate Operating Subsidy eligibility.

*Issue: Negotiated rulemaking.* Some commenters stated that HUD should stand by agreements reached through the negotiated rulemaking process that established the current operating fund formula.

*HUD Response:* The clarification of the limited vacancies provision is consistent with the negotiated rulemaking process.

#### 5. Flat Rents (§ 960.253)

*Issue: Phase-in of rent increases less than 35 percent.* Commenters asked that HUD reinstate an earlier policy that would allow PHAs to use discretion in implementing any higher flat rents. This would have allowed PHAs to phase in small flat rent increases—those below 35 percent—over a three-year period.

*HUD Response:* The initial discretion for phasing in small increases was due to the fact that the changes in the 2014 Appropriations Act set all flat rents at 80 percent of FMR, with no possibilities for exceptions to that amount. HUD received indications that this might be softened in a future year, permitting PHAs to set flat rents using more localized market data. As a result, HUD used its discretion to limit the impact of flat rent changes on PHAs and tenants by allowing the higher rents to be phased in.

With the passage of the 2015 Appropriations Act, however, HUD believes that PHAs have sufficient flexibility to set flat rents that reflect the true market value of their units, and therefore the three-year phase-in for small flat rent increases is unnecessary. However, the statutory requirement to phase in increases exceeding 35 percent for families already paying flat rents remains in the rule.

*Issue: Deadline for compliance.* Commenters asked HUD to extend the

January 1, 2016 deadline for flat rents to take effect.

*HUD Response:* This comment misinterprets the effective date of the new flat rent requirements. HUD did not establish a hard deadline of January 1, 2016 for new flat rents to take effect. PHAs were already required to establish flat rents at no less than 80 percent of the applicable FMR as required by PIH Notice 2014–12. That notice clarified that PHAs were required to update flat rents no later than 90 days after HUD published new, final FMRs. The 90-day effective date of new flat rents based on new FMRs was also included in the interim rule and the accompanying guidance provided through notice PIH 2015–13. Once HUD publishes new final FMRs in any given year, PHAs will be required to update flat rents within 90 days of the publication of those FMRs and must begin applying them prospectively to new admissions and at family annual recertifications. In years where HUD takes longer than 12 months between the publication of new FMRs, PHAs are permitted to continue to charge flat rents at the current FMR, SAFMR, or approved exception flat rent amount until HUD publishes new FMRs and the 90-day effective date has taken place.

*Issue: Lowering rents when FMRs or SAFMRs decrease.* Commenters asked HUD for additional clarity on the requirements for when market rents decrease, particularly whether PHAs retain discretion to reduce flat rents when FMRs decrease.

*HUD Response:* PHAs must set flat rents at no less than 80 percent of the FMR or SAFMR, or they may submit an exception request establishing flat rents based on a market analysis. There is no such requirement limiting a PHA from lowering a flat rent in years where the FMR or SAFMR decreases. Therefore, in years where an FMR or SAFMR decreases, PHAs have the discretion to lower flat rents, but they may not set flat rents at less than 80 percent of the FMR or SAFMR unless they submit a new exception request.

*Issue: Rent reasonableness guidance.* Commenters suggested that a possible explanation for why flat rents have been set incorrectly in the past is due to a lack of guidance from HUD on proper rent reasonableness assessments.

*HUD Response:* While that may be true for some PHAs, HUD has heard anecdotally that there were many reasons why flat rents may not have been set correctly. However, in an effort to support PHAs when trying to determine the market value of their public housing, HUD will publish future

guidance on rent reasonableness assessments for public housing.

*Issue: Updating rent levels when an exception rent has been requested.* Commenters asked for additional clarification on what the requirements were related to adjusting flat rent levels when the PHA is intending to submit a request for exception rents.

*HUD Response:* In this initial year, any PHAs that submit exception requests prior to the expiration of the 90-day period after the publication of new FMRs may continue to charge flat rents at the current levels until the PHA is notified of HUD's decision on their exception request. However, if a PHA fails to submit an exception request prior to the expiration of the 90 day period after the publication of new FMRs, that PHA may still submit an exception request, but must update flat rents to no less than 80 percent of the FMR or SAFMR until such time that HUD notifies the PHA of its decision on the exception request.

*Issue: Flat rents and self-sufficiency.* Commenters stated that PHAs should have the discretion to set flat rents lower than 80 percent of market rents in order to encourage families to become self-sufficient.

*HUD Response:* Flat rents themselves are intended to encourage self-sufficiency. They are a maximum amount of rent that a family could be charged; once a family begins to pay flat rent, any increases in income do not have an effect on their rental payment. Because families have the ability to choose between paying an income-based rent or a flat rent, families that choose to pay flat rents are inevitably paying a lower percentage of income than other public housing households which is a self-sufficiency incentive. Therefore, HUD does not believe that any additional discretion regarding flat rents is necessary to encourage economic self-sufficiency.

*Issue: Reduced exception rent requests.* Commenters asked that PHAs only be required to submit exception rent requests every three years instead of annually.

*HUD Response:* HUD is bound by the statutory framework, which stipulates that exception requests must be submitted if the applicable FMR or SAFMR do not reflect the market value of a property. As such, the statute requires a comparison of the FMR or SAFMR to a current market study in order to determine whether the market value of a property is less than the current FMR or SAFMR. Therefore, HUD does not have the authority to permit PHAs to use market studies that are not current for exception requests.

*Issue: LIHTC rents and public housing flat rents.* Commenters asked for additional clarity on how the flat rents regulation impacts the LIHTC rents.

*HUD Response:* PHAs that manage public housing units that were developed or modernized using LIHTC must set maximum rents for such units at the required maximum LIHTC rents, even if this is lower than the minimum flat rent amount for a particular unit.

*Issue: Opposition.* Several commenters objected to the flat rent policy entirely, stating that it would increase rent burden, cause higher turnover, and negatively impact tenant employment.

*HUD Response:* Although HUD recognizes that there are consequences to changes in flat rents, HUD believes that the changes included in the FY 15 Appropriations Act, which have been included in this rulemaking, provide sufficient flexibility to PHAs to set accurate, market-based rents. Further, tenants concerned about rent burden are reminded that they are provided a safeguard in this rulemaking from large annual increases in rent, and they are always able to elect to pay the income-based rent which is set at 30 percent of income.

#### D. HCV Program Regulations

##### 1. Start of Assisted Tenancy (§ 982.309)

*Issue: Objections.* Many commenters objected to this proposal, stating that landlords seek to lease units as quickly as possible, and this could delay tenants from being able to move into their units. In high-demand areas, this could reduce the number of landlords willing to participate in the voucher program, limiting choice to voucher holders. Many commenters also expressed concern that this would have negative consequences for families that need to move immediately or alternatively would cause tenants to have to move out of a unit before being able to move into a new one. Other commenters stated that this would concentrate administrative tasks into a single time of the month for PHAs, actually increasing their burden.

*HUD Response:* HUD has decided against promulgating this change. Several commenters favored the proposed change, but input from groups ranging from landlords to tenant advocates suggested that the change would have an adverse effect on the ability of HCV-assisted tenants to access housing. While the proposed change would have been optional at the discretion of the PHA, and HUD estimates that PHAs would choose not to adopt any measure that would make

it more difficult for HCV-assisted tenants to access housing, HUD ultimately decided that it could move forward with the change only if it also required any PHA opting to implement the provision to also put into place an exception policy for certain families (e.g., victims of domestic violence) or situations (e.g., HAP terminations due to HQS violations). Ultimately, requiring the adoption of an exception policy would counter any administrative relief provided by implementing the proposed change. Taking all of these factors into consideration, HUD declines to include this provision in this final rule.

## 2. Biennial Inspections and the Use of Alternative Inspection Methods (§§ 982.405, 983.103)

*Issue: HUD Systems.* Commenters suggested ways that HUD could improve its inspection procedures. Some commenters suggested that the electronic systems be updated for biennial inspections, and others asked for a centralized database for inspection reports and data, which could then be accessed by PHAs in order to obtain the results of alternative inspection methods. Some commenters stated that HUD should review inspection protocols with input from PHAs and implement “best practices” across the board. Commenters also asked for consolidating inspection standards between HUD programs and LIHTC.

*HUD Response:* While these comments are helpful in that they specify improvements to HUD systems that would simplify the inspection process, advise of the burden that results from differences in inspection protocols and standards, and point out at least one way in which an expansion of this provision could bring about further streamlining, they are either beyond the scope of this rulemaking or would require statutory changes.

In addition, HUD’s information technology investment decisions are made enterprise-wide based on available resources as appropriated by Congress. HUD will explore ways to move to electronic reporting systems with available resources. In particular, HUD is considering the creation of a national-level affordable housing database that could be utilized in the way described.

*Issue: Keep Proposal Optional.* Some commenters stated that PHAs may want to inspect properties more frequently for oversight purposes, and therefore asked that biennial and alternative inspections remain optional for PHAs.

*HUD Response:* As authorized by Congress and proposed in this rulemaking, the use of biennial

inspections is at the discretion of the PHA; PHAs will retain the discretion to inspect annually any properties that warrant more frequent attention. The same is true of alternative inspection methods—their use is entirely at the discretion of the PHA, per the statute and this rulemaking. Nothing in this final rule requires a PHA to adopt biennial inspections or alternative inspection methods.

*Issue: Remediation Protocols.* Commenters offered several suggestions on how to remediate problems identified by alternative inspections. Some stated that HUD should allow PHAs to rely upon the remediation protocol of the alternative inspection method; there would be no burden relief if PHAs have to conduct HQS inspections anyway for units that failed the alternative inspection the first time. Some commenters suggested that this could be satisfied by providing HUD with a certification from the inspecting agency that the deficiencies have been mitigated. Commenters stated that HUD should allow PHAs to decide if they will conduct a remedial HQS inspection or rely on the owner to provide proof of actions to remedy defects.

*HUD Response:* HUD is sympathetic to the suggestion that any streamlining benefit of this provision is offset by the requirement that a PHA inspect a property using HQS when the property has already been inspected using an alternative inspection method and such method reveals the existence of violations that would have resulted in a “fail” score under HQS. For an alternative inspection method that employs sampling, however, as is the case with inspections of properties subsidized with LIHTCs, any cited deficiencies that would ultimately be corrected may exist as well in units not included in the sample, including units occupied by HCV-assisted households. HUD has an obligation to determine whether such deficiencies exist in units occupied by such households and, if they do, to assure that the units are once again brought into compliance with HUD’s housing quality standards.

PHAs are only precluded from relying on an alternative inspection method if a property inspected pursuant to the method fails an inspection. In all cases where a property passes an inspection, even if deficiencies are identified, a PHA may rely upon the alternative inspection method to demonstrate compliance with HUD’s housing quality standards. If a property fails an inspection due to identified deficiencies, it may be the case that remedial actions taken pursuant to the alternative inspection method fall short

of what would be required under HUD’s housing quality standards.

In any circumstance in which a PHA is prohibited from relying on an alternative inspection method, HUD declines, for the reasons identified above, to adopt alternative remediation measures as a substitute for a PHA’s determination that a unit occupied by an HCV-assisted family meets the requirements for occupancy and funding under the HCV program.

*Issue: Reinspection Sampling.* In the case of residents with tenant-based vouchers living in mixed-finance properties, commenters stated that HUD should authorize biennial inspection of a random sample of units consisting of at least 20 percent of the contract units in each building.

*HUD Response:* Congress specifically authorized the use of alternative inspections, including inspections conducted pursuant to requirements under the low-income housing tax credit (LIHTC) program. The LIHTC program employs sampling. A PHA may adopt an alternative inspection method that is specifically authorized by Congress or approved by HUD and employs sampling.

*Issue: Alternative Inspection Standards.* Commenters suggested that HUD require HUD’s Real Estate Assessment Center (REAC) to approve or disapprove a PHA’s certification that an alternative inspection method meets HUD standards prior to allowing the PHA to employ the alternative inspection method.

*HUD Response:* HUD has adopted this suggestion in this final rulemaking.

*Issue: Local Jurisdiction Inspections.* Commenters asked that HUD allow PHAs to use inspections done for local jurisdictions, even when the inspections are done by local agencies.

*HUD Response:* The statute authorizes PHAs to rely on inspections conducted under a “Federal, state, or local housing program.” HUD interprets a “local housing program” to include a local housing code. Subject to the conditions established in this final rule, a PHA may rely upon an inspection conducted pursuant to a local housing code to meet its obligation to inspect units occupied by HCV-assisted tenants during the course of a housing assistance payments contract. In order to rely upon such an inspection, a PHA must submit a copy of the local housing code to HUD, along with an analysis by the PHA showing that the local housing code standard meets or exceeds HQS. Once HUD has reviewed these materials, and then only if HUD approves use of the inspection method, the PHA may rely upon it. The PHA must certify annually to HUD that

the local housing code has not changed; if it has changed, then the PHA must again obtain HUD approval to rely upon the standard, submitting a copy of the revised code and an analysis showing that the revised standard meets or exceeds HQS.

*Issue: Objections.* Some commenters expressed dissatisfaction with the proposal, particularly with alternative inspections, and stated that HUD should not continue with the proposal.

*HUD Response:* HUD is required by law to implement biennial inspections and inspections via alternative inspection methods.

### 3. Housing Quality Standards (HQS) Reinspection Fees (§ 982.405)

*Issue: Burden on PHAs and Deterrence to Landlords.* Some commenters objected to the proposal, stating that landlords would be reluctant to pay reinspection fees and would therefore be deterred from participating in the Section 8 program. Others stated that charging fees to landlords would be a burden to PHAs, and therefore should remain optional and up to the PHA to decide how to implement.

*HUD Response:* The proposed change made it optional for a PHA to charge a reinspection fee, and this final rule retains the optional nature of the provision. If a PHA has a concern that charging a fee may deter landlords from participating in the program or may result in additional work (*i.e.*, securing payment of a fee, once assessed), then the PHA will want to take these factors into consideration when determining whether to impose a reinspection fee. As long as a PHA complies with the requirements of this regulation when imposing a reinspection fee, nothing in this regulation would constrain a PHA from adopting local policies specific to the administration of such a fee. For example, a PHA could specify in its Administrative Plan that an owner will be charged a reinspection fee only after a second reinspection reveals that the defect persists. PHAs will need to determine whether and how best to use this reinspection fee authority, based upon their local circumstances.

*Issue: Use of Fees and When to Charge.* Some commenters suggested that the collected fees be added to administrative fee amounts available to a PHA.

*HUD Response:* Fees will be included in a PHA's administrative fee reserve and may be used only for activities related to the provision of Section 8 tenant-based assistance.

*Issue: Guidance.* Several commenters asked HUD to provide additional

guidance on what constitutes a "reasonable" fee; such guidance will be necessary to reduce PHA administrative burden.

*HUD Response:* HUD will issue guidance on what constitutes a "reasonable" fee.

*Issue: When Charges May Be Assessed.* Commenters asked that HUD clarify the proposal to avoid charges for full HQS inspections instead of merely for reinspections of previously identified deficiencies. Others asked for information on how the proposal would relate to special inspections that are not initial or regularly scheduled inspections, or what would happen if a landlord or tenant does not attend or allow entrance for the inspection. Commenters also asked that HUD expand the proposal to allow for the charging of fees even when a landlord has not indicated deficiencies have been corrected, when the allotted time for repairs has expired but a pre-scheduled reinspection reveals the repairs have not been made.

*HUD Response:* The final rule makes clear that a fee may be assessed under two circumstances: First, if a landlord affirms that a repair has been made and a subsequent reinspection shows that it has not and, second, when the allotted period of time for making the repair has lapsed and a reinspection shows that the repair has not been made, whether or not the landlord has affirmed that it was.

*Issue: Expansion of Proposal.* Some commenters also suggested that HUD expand the proposal to allow for fees for all reinspections. Others stated that PHAs should be allowed to redirect funds from abated rents to cover the costs of inspections instead of charging fees. Finally, commenters stated that HUD should consider other incentives for landlords, such as allowing tenants to pay rent into repair escrow accounts.

*HUD Response:* HUD appreciates these suggestions and observations but has declined to adopt them as part of this rulemaking.

### 4. Exception Payment Standards for Providing Reasonable Accommodations (§§ 982.503, 982.505)

*Issue: Unit Special Features.* Commenters stated that HUD should include a consideration of special features of the unit when establishing a reasonable rent between 110 percent and 120 percent of area fair market rent (FMR).

*HUD Response:* There was strong support for retaining this provision unchanged, and HUD has done so. A PHA must take special features into consideration when there is a

reasonable accommodation request. In accordance with 24 CFR part 8, a PHA must provide a higher payment standard if requested as a reasonable accommodation for a family that includes an individual with disabilities. HUD's regulation implementing section 504 of the Rehabilitation Act, at 24 CFR part 8, is referenced in 24 CFR 982.505(d). In addition, under 24 CFR 8.28(a)(3), PHAs are already required, when issuing a voucher to a family that includes an individual with disabilities, to assist the family in locating an available, accessible dwelling unit. For example, PHAs are required to provide a current listing of available units known to the PHA.

*Issue: HAP Funding.* Commenters stated that PHAs will be challenged to provide higher payment standards when HAP funding is already constrained.

*HUD Response:* HUD acknowledges the concerns about funding constraints. PHAs are nonetheless required to assist families that include an individual with disabilities, including by providing a higher payment standard as a reasonable accommodation, if the family requests such an accommodation and it is necessary in order for the family to obtain suitable housing.

### 5. Family Income and Composition: Regular and Interim Examinations (§ 982.516(c)–(e))

*Issue: Timing of Interim Examinations.* Commenters supported this proposal, but also asked that it remain optional for PHAs. Some asked for further clarification from HUD regarding whether a PHA is required to conduct an interim examination when a family member is added, and at what point such an examination might be required. Several commenters also pointed out that the new proposed language did not align regulations between the PH and Section 8 programs.

*HUD Response:* HUD agrees with providing clarity to the proposed change to 24 CFR 982.516. With the removal of paragraph (e) ("Family member income"), HUD is removing from part 982 the requirement that a PHA perform an interim examination whenever a new family member is added. The corresponding regulation for the PH program (24 CFR 960.257) contains no such requirement. The removal of paragraph (e) from § 982.516 provides HUD with the opportunity to issue uniform guidance on interims—in other words, guidance that will apply to both the PH and HCV programs. Having reviewed data on the reasons for which interims are requested and considering a number of alternatives, including establishing thresholds below which

PHAs would not be required to conduct interims, HUD determined that the greatest potential for streamlining lies in issuing uniform guidance. Other options either created their own administrative challenges and/or had the potential to have a negative effect on program participants. For example, authorizing PHAs to limit interims to circumstances in which a change in family income or composition would result in a rent increase of some threshold dollar amount would require PHAs to determine whether the threshold had been met, which would in itself be a burdensome exercise. At the same time, a finding that the threshold had not been met, resulting in no change to a family's rent, could place a burden on tenants.

*Issue: Discretion and Threshold Amounts.* Several commenters requested that HUD continue to leave policies regarding recertifications up to the discretion of PHAs.

*HUD Response:* Nothing in this final rule alters PHA discretion with respect to interims.

#### 6. Utility Payment Schedules (§ 982.517)

*Issue: Objections to the Proposal.* Many commenters objected to the proposal to consolidate the utility payment schedules. Some commenters stated that the definition of “attached” and “detached” are unclear, and HUD should provide additional information. Other commenters stated that consolidating the schedules would penalize tenants in certain types of units because energy use is not always comparable under such broad categories. Some commenters suggested that the proposal could raise fair housing issues by impacting larger families in multi-bedroom units. Others stated that the proposed 60-day notice was insufficient to protect tenants from decreased utility allowances.

Some commenters stated that, in areas served by more than one PHA, perhaps with differing policies on how to define unit types, the proposal would create confusion for program applicants and participants.

*HUD Response:* Considering the totality of the comments submitted on the proposal to authorize PHAs to establish utility payment schedules that limit “unit type” to either “attached” or “detached,” HUD has decided against adopting this provision. HUD acknowledges comments that the proposal may have an unintended and inequitable effect on certain households, and believes this issue merits additional analysis in order to determine the extent to which these outcomes may occur and to weigh those outcomes against the

benefits of streamlining. In addition, comments focused on jurisdictional questions caused HUD to realize that the proposal could create confusion—for program applicants, especially—in the event PHAs with overlapping jurisdictions opted to adopt different definitions of “unit type” (*i.e.*, one relying on the traditional method and the other choosing to define unit type as either “attached” or “detached”).

*Issue: Broader Utility Allowance Changes.* Commenters asked HUD to consider broader changes to utility allowances. Commenters suggested that HUD completely eliminate utility allowance schedules or allow flat utility allowances based on average per-bedroom size or household size. Others suggested that HUD provide an annual utility cost adjustment factor for each locale instead of requiring PHAs to calculate utility costs on their own. Finally, some commenters suggested that HUD establish a more equitable utility subsidy approach, accounting for other forms of assistance, such as utility caps or utility credits.

*HUD Response:* Based on comments received, HUD recognizes that having a holistic look at utility allowance calculations may be merited. Should HUD initiate such a review, these comments will be taken into consideration. The suggestions are, however, beyond the scope of this rulemaking.

#### E. Other Comments

In addition to comments on specific proposals, commenters also suggested regulatory and other changes that HUD could make for streamlining and other burden-reducing benefits.

#### 1. Enterprise Income Verification (EIV)/ Information Verification

*Issue: EIV Reports.* Some commenters suggested that certain reports (*e.g.*, New Hires, New Move-In, Income Discrepancy) should not be used as frequently, if at all. The commenters suggested that, to the extent such reports provide useful information, the information could be gathered at other times or using other methods.

*HUD Response:* HUD appreciates the comments regarding the use of the various EIV reports. HUD understands that the information generated through some reports may reflect delayed information. However, EIV has significantly reduced improper payments in HUD's programs, and these reports help PHAs and HUD to monitor program participants and address discrepancies in a timely manner. Further, changes to EIV are beyond the scope of this rulemaking.

*Issue: EIV Use and Expansion.* Many commenters suggested that HUD modify the EIV system by adding additional income sources, including past income, in the system or allowing verification of SSNs through EIV. Other commenters suggested that HUD consider alternatives to EIV, such as the Work Number or cooperative agreements with state agencies. Finally, commenters asked for more frequent updates to EIV.

*HUD Response:* HUD appreciates the comments about how to improve or supplement EIV; however, these suggestions are outside of the scope of this rulemaking.

#### 2. Income Determinations and Rent Settings

*Issue: Calculation of Income.* Commenters offered suggestions on ways that they stated would be easier to calculate tenant income and rent. Some stated that HUD should base rents on gross income, rather than adjusted income. Others suggested that HUD modify the process for deducting medical expenses from income by using past expenses or a standard deduction. A standard childcare deduction was also proposed. One commenter suggested that HUD consider the automation-based process for certification and verification incorporated by the Affordable Care Act.

Commenters also asked HUD to allow for less frequent income reexaminations, either on a biennial or a triennial basis. This change could be authorized based on family type (*i.e.*, elderly, disabled) or family income status (*i.e.*, extremely low-income, very low-income).

Some commenters requested an increase in the minimum rent or that HUD reinstate the “frozen rental income” regulation provision to encourage tenants to have earned income. Others asked that HUD consider limiting the inclusion of assets by only including actual income from assets or only including assets disposed of for less than fair market value for assets over a given threshold. Some stated that HUD should count assets disposed of since the two previous annual reexaminations instead of the previous two years.

Commenters stated that HUD should not allow tenants to claim no income, but instead should require that all tenants maintain a minimum income.

Finally, commenters stated that PHAs should not be required to conduct rent reasonableness determinations when a PHA is using a fair market rent determined by HUD or when a proposed rent has already been approved by HUD or its administrator.

*HUD Response:* HUD requested comments from the public about other opportunities to align requirements across programs, and HUD appreciates receiving these additional comments. Some of the suggestions are outside the scope of this rulemaking or would require statutory change. However, HUD will consider these suggestions for future streamlining changes.

HUD has taken actions on other suggestions. HUD's FY 2016 budget proposes three-year recertification of income for fixed income families, increasing the threshold for deduction of medical and related care expenses, and a Utilities Conservation Pilot that would make it easier for PHAs to access energy incentives from energy investments. Also, HUD is conducting a rent reform demonstration to compare the current rent structure in subsidized housing to an alternate structure in terms of impact on household employment, earnings, hardship, homelessness, and on simplification and cost of PHA administrative processes.

### 3. Fees and Payments

*Issue: Funding and Improper Payments.* Many commenters provided suggestions on how to improve and streamline payments to owners and PHAs. Several suggested increased funding for administrative fees or physical inspections. Other commenters stated that HUD should permit voucher HAP reserves to be used for administrative purposes when the administrative fee proration is below 90 percent.

Some commenters requested HUD freeze the rolling utility base to allow PHAs to recoup savings from energy conservation methods. Others asked HUD to allow expedited implementation of lower payment standards in the voucher programs. Several commenters suggested that HUD revise its process for determining project expense levels, accounting for the age of properties and using the negotiated rulemaking inflation factor. One commenter stated that HUD should permit rent increases to owners in the HCV program only on a contract anniversary date.

Commenters also provided suggestions on reforming improper payment procedures. A commenter asked that HUD not require owners to provide proof of the costs involved in recovering improper payments. Commenters also suggested that HUD not specify what makes repayment of improper payments "affordable" to residents, as the current definition is

confusing and leads to extra work for staff.

*HUD Response:* As is the case on HUD's response to the preceding issue, many of the comments are outside the scope of this rulemaking or would require action by Congress, but HUD will consider these for future streamlining changes. With respect to freezing the rolling base to allow PHAs to recoup savings from energy conservation methods, this is permitted now when a PHA has entered into an energy performance contract.

### 4. Miscellaneous Suggestions

*Issue: Broader Streamlining and Other Suggestions.* Many commenters had specific suggestions on how to align requirements and processes across programs. Some suggested that HUD use the Public Housing Administrative Reform Initiative to find some additional streamlining suggestions. Others stated that HUD should have just a single entity review grantee compliance with various program requirements instead of allowing multiple agencies to have oversight.

Some commenters asked HUD to modify inspection protocols, including by explicitly stating that a physical reinspection of deficiencies is not required. Others stated that HUD should not use the Uniform Physical Conditions Standards for HCV, but should continue to use the HQS. Commenters further asked that HUD reconsider the requirement that failed HQS items be reinspected prior to the HAP contract effective date, instead allowing families to move in while the owner has 30 days to repair the failed items.

Commenters also stated that HUD should limit requirements under section 3 of the 1937 Act to only programs under the Office of Housing. Others asked that HUD institute a threshold of activity below which Section 3 requirements would not apply.

Some commenters asked that eligibility and reporting procedures be standardized across housing programs both in HUD and across other Federal agencies. Others stated that HUD should extend the zero-subsidy time limit for voucher holders to align policies between the voucher and PBRA programs. Many commenters also stated that HUD should allow PHAs the discretion on whether or not to require community service in PH, as it is not required in other HUD programs.

A commenter stated that HUD should incorporate policies from the Multifamily Handbook into the PH and voucher programs to provide additional information on how a PHA should

consider a tenant family's circumstances when they fail to recertify in a timely manner.

Some commenters stated that HUD should allow PHAs to be eligible for Housing Trust Fund money for PH rehabilitation. Others asked that HUD clarify that PHAs with 250 or more units of PH are still able to use operating reserves for capital improvements.

Commenters also asked for clarity on the HCV Tenancy Addendum and on qualifying for the Capital Fund Activity exclusion for environmental assessments.

*HUD Response:* HUD will take these suggestions into consideration as it seeks to identify additional opportunities to reduce the administrative burden on PHAs and owners and to align the requirements across programs, where feasible. The majority of these suggestions is beyond the scope of this rulemaking, or would require statutory change. However, for others, HUD can address through administrative guidance. With respect to the suggestion that HUD thoroughly review the final report of the Public Housing Administrative Reform Initiative, this report is among the documents initially reviewed by HUD's streamlining working group, which ultimately initiated this rulemaking.

*Issue: Regulatory Relief in Property Assessment.* Several commenters asked HUD to suspend PHA plan requirements or for a moratorium on the Physical Needs Assessment. Commenters asked for waivers of asset management regulations affecting funding, such as cash transfers between properties, fee caps, and Asset Management Project (AMP) configurations. Commenters further asked for broad waivers under 24 CFR part 5 and for the Public Housing Assessment System and Section Eight Management Assessment Program to be advisory only for non-statutory items. Finally, commenters stated that HUD should ensure that PHAs are fully trained before any changes go into effect.

*HUD Response:* HUD remains interested in identifying opportunities to reduce the burden on PHAs, owners, and grantees that administer rental assistance. While the suggestions provided here are outside the scope of this rulemaking, they are helpful in identifying for HUD areas on which to focus attention. HUD will continue to look for opportunities to streamline and simplify the administration of its programs, and to align the requirements across programs, to the extent feasible and reasonable, applying the same lens to future proposals as it employed for this rulemaking effort. Specifically, any

proposal to relieve the administrative burden on PHAs, owners, and grantees will need to be balanced against important tenant protections and HUD's obligation to provide program oversight. With respect to guidance and training, HUD is aware that PHAs, owners, and grantees may have questions about how best to implement several of the provisions in this rule. HUD will provide opportunities to address those questions, through additional written guidance, training, and other means that enable HUD to respond to requests for information.

*Issue: Statutory Changes.* Commenters requested changes that they acknowledged would require congressional action. These proposals include an earned income deduction for all families, eliminating voucher portability, expanding Moving to Work, the Small Housing Authority Reform Proposal, triennial recertification for fixed-income families, increasing the flat deduction for elderly families or persons with disabilities, increasing the medical expense deduction, or eliminating eligibility differences among programs.

*HUD Response:* For several of these suggestions, HUD has previously sought statutory change. In its FY14 budget proposal, for example, HUD included several statutory changes that were ultimately enacted by Congress and have now been implemented with the publication of this final rule. HUD will continue to look for opportunities to streamline and simplify the administration of its programs, and to align the requirements across programs, to the extent feasible and reasonable, applying the same lens to future proposals as it employed for this rulemaking effort. Specifically, any proposal to relieve the administrative burden on PHAs and owners will need to be balanced against important tenant protections and HUD's obligation to provide program oversight.

#### IV. Findings and Certifications

##### *Executive Orders 12866 and 13563, Regulatory Planning and Review*

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulation and Regulatory Review) directs executive agencies to analyze regulations that are "outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline,

expand, or repeal them in accordance with what has been learned." Executive Order 13563 also directs that where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a "significant regulatory action" as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive Order).

As already discussed in this preamble, the regulatory changes by this streamlining rule are designed to reduce administrative burdens on PHAs, enable PHAs to better target assistance to families, and reduce Federal costs. Some of the changes in this rule are due to statutory changes enacted in the FY 2014 Appropriations Act and have specific estimates of financial savings that may be expected (specifically the change in the definition of "extremely low-income" and the cap on the utility allowance). Other changes (biennial inspections, streamlining income recertifications) may have estimates on savings generated by Moving-to-Work (MTW) agencies that already implemented such flexibilities. Some provisions of this rule, however, focus solely on providing or revising regulatory provisions that reduce administrative burdens on PHAs, but that are optional for PHAs to utilize. Consequently HUD is unable to quantify costs and benefits for this rule overall because of the flexibility provided.

The rule provides PHAs with the discretion as to whether they will implement those regulations that provide alternative means of implementing several required administrative actions. HUD recognized that there is a need for greater flexibility for PHAs to operate programs that fit their communities and to use savings generated in time from these provisions to better focus resources on their operational priorities. However, savings are difficult to estimate as the changes are not mandatory. HUD's FY2015 budget estimated Federal savings for two of the provisions, changing the definition of "extremely low-income" and placing a cap on the utility allowance. HUD's budget did not contain savings estimates for other provisions which would yield efficiencies for PHAs, not HUD. For the provision permitting biennial inspections, savings data comes from Moving-to-Work (MTW) agencies experiences and reporting.

In FY2015, HUD estimated that the revised definition of extremely-low income will reduce Federal costs by an estimated \$155 million. The change increases access to HUD rental assistance for working poor families, in rural areas in particular. In such areas, median incomes are often so low that families with a fulltime worker have incomes that exceed 30 percent of AMI, even though the families remain below the Federal poverty level. In the voucher program in particular, where 75 percent of vouchers issued each year must be targeted to ELI families, this change will enable more working poor families to qualify for voucher assistance.

Additionally, HUD estimated in its FY2015 budget that limiting the utility allowance payment for tenant-based vouchers to the family unit size for which the voucher is issued, irrespective of the size of the unit rented by the family, will generate estimated savings of \$50 million.

Permitting biennial inspections for HCV units will reduce the administrative and financial burden on PHAs and high-performing landlords and enable PHAs to concentrate their inspection resources on the more marginal and higher-risk units. Of the 34 MTW agencies, 23 have adopted or proposed to adopt biennial inspection schedules. The Cambridge Housing Authority estimated a net savings of \$122,234, or more than 3,737 hours of staff time in 2014 compared to 2008. The Housing Authority of the County of San Mateo reduced the number of inspections to approximately 2,086 annually from 4,172 and reported savings of \$52,150 in inspection costs. HUD believes that PHAs adopting this flexibility will experience similar savings in time and costs.

Determining the complete amount of financial and time savings for this rule is difficult because, as noted, the majority of the provisions are discretionary for PHAs, and HUD believes that each PHA will evaluate its own circumstances in financing and staffing and adopt those provisions that are most cost-effective for them.

##### *Executive Order 13132, Federalism*

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



substantial direct compliance costs on state and local governments nor preempt state law within the meaning of the Executive 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 reduces the administrative burden on PHAs, MFH owners, and certain CPD grantees in many aspects of administering assisted housing. Such PHAs, MFH owners, and CPD grantees, regardless of size, will benefit from the burden reduction proposed by this rule. These revisions impose no significant economic impact on a substantial number of small entities. As discussed above, many of the new provisions are voluntary, and each PHA or MFH owner will be able to adopt the streamlining provisions that offer the greatest benefit to them, further reducing any negative effects on small entities. 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 with respect to the environment was made on the proposed rule 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)). The Finding remains applicable to this final rule. The Finding 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 Finding by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339.

#### *Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (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 will not impose any federal mandates on any state, local, or tribal governments or the private sector within the meaning of UMRA.

#### *Paperwork Reduction Act*

The information collection requirements contained in this 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 numbers 2577–0220 and 0169. In accordance with the Paperwork Reduction Act of 1995, 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: 14.103, 14.123, 14.135, 14.149, 14.157, 14.181, 14.195, 14.235, 14.241, 14.326, 14.850, 14.871, and 14.872.

#### **List of Subjects**

##### *24 CFR Part 5*

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs—housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

##### *24 CFR Part 880*

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

##### *24 CFR Part 884*

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

##### *24 CFR Part 886*

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

##### *24 CFR Part 891*

Aged, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development,

Rent subsidies, Reporting and recordkeeping requirements.

##### *24 CFR Part 903*

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

##### *24 CFR Part 960*

Aged, Grant programs—housing and community development, Individuals with disabilities, Pets, Public housing.

##### *24 CFR Part 966*

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

##### *24 CFR Part 982*

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

##### *24 CFR Part 983*

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

##### *24 CFR Part 990*

Accounting, Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD amends 24 CFR parts 5, 880, 884, 886, 891, 903, 960, 966, 982, 983, and 990 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. Amend § 5.216 as follows:

- a. Designate the second paragraph (g)(1)(ii) as paragraph (g)(1)(iii);
- b. Revise paragraph (h)(1);
- c. In paragraph (h)(2), remove the phrase “paragraph (h)(1)” and add in its place “paragraph (g)(1)”; and
- d. Add paragraph (h)(3).

The revision and addition read as follows:

#### **§ 5.216 Disclosure and verification of Social Security and Employer Identification Numbers.**

\* \* \* \* \*

(h) \* \* \*

(1) Except as provided in paragraphs (h)(2) and (3) of this section, if the

processing entity determines that the assistance applicant is otherwise eligible to participate in a program, the assistance applicant may retain its place on the waiting list for the program but cannot become a participant until it can provide the documentation referred to in paragraph (g)(1) of this section to verify the SSN of each member of the household.

(3) If a child under the age of 6 years was added to the assistance applicant household within the 6-month period prior to the household's date of admission (or, for the HCV program, the date of voucher issuance), the assistance applicant may become a participant, so long as the documentation required in paragraph (g)(1) of this section is provided to the processing entity within 90 calendar days from the date of admission into the program (or, for the HCV program, the effective date of the Housing Assistance Payment contract). The processing entity must grant an extension of one additional 90-day period if the processing entity determines that, in its discretion, the assistance applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside the control of the assistance applicant. If the applicant family fails to produce the documentation required in paragraph (g)(1) of this section within the required time period, the processing entity must follow the provisions of § 5.218.

- 3. Amend § 5.520 as follows:
- a. Revise paragraph (c)(1) introductory text;
- b. In paragraph (c)(1)(v), remove the comma;
- c. Revise paragraph (c)(2) introductory text;
- d. In paragraphs (c)(2)(ii) introductory text and (c)(2)(iii), remove the comma;
- e. Revise paragraph (d); and
- f. Add paragraph (e).

The revisions and addition read as follows:

**§ 5.520 Proration of assistance.**

\* \* \* \* \*

(c) \* \* \*

(1) *Section 8 assistance other than assistance provided for a tenancy under the Section 8 Housing Choice Voucher Program.* For Section 8 assistance other than assistance for a tenancy under the voucher program, the PHA must prorate the family's assistance as follows:

\* \* \* \* \*

(2) *Assistance for a Section 8 voucher tenancy.* For a tenancy under the

voucher program, the PHA must prorate the family's assistance as follows:

\* \* \* \* \*

(d) *Method of prorating assistance for Public Housing covered programs.* (1) The PHA must prorate the family's assistance as follows:

(i) *Step 1.* Determine the total tenant payment in accordance with section 5.628. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(ii) *Step 2.* Subtract the total tenant payment from the PHA-established flat rent applicable to the unit. The result is the maximum subsidy for which the family could qualify if all members were eligible ("family maximum subsidy").

(iii) *Step 3.* Divide the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy."

(iv) *Step 4.* Multiply the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ("eligible family members").

(2) The product of steps 1 through 4 of paragraphs (d)(1)(i) through (iv) of this section is the amount of subsidy for which the family is eligible ("eligible subsidy"). The family's rent is the PHA-established flat rent minus the amount of the eligible subsidy.

(e) *Method of prorating assistance when the mixed family's total tenant payment (TTP) is greater than the public housing flat rent.* When the mixed family's TTP is greater than the flat rent, the PHA must use the TTP as the mixed family TTP. The PHA subtracts from the mixed family TTP any established utility allowance, and the sum becomes the mixed family rent.

■ 4. In § 5.603(b), revise the definitions of "Extremely low income family" and "Total tenant payment" to read as follows:

**§ 5.603 Definitions.**

\* \* \* \* \*

(b) \* \* \*

*Extremely low-income family.* A very low-income family whose annual income does not exceed the higher of:

(1) The poverty guidelines established by the Department of Health and Human Services applicable to the family of the size involved (except in the case of families living in Puerto Rico or any other territory or possession of the United States); or

(2) Thirty (30) percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the area median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

\* \* \* \* \*

*Total tenant payment.* See § 5.628.

\* \* \* \* \*

**§ 5.609 [Amended]**

■ 5. Amend § 5.609(b)(9) by adding the phrase "and any other required fees and charges" after "tuition" in the first sentence.

■ 6. Amend § 5.617 as follows:

- a. Revise paragraph (a);
- b. In paragraph (b), add the definition of "baseline income" in alphabetical order; and
- c. Revise paragraph (c) to read as follows:

**§ 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.**

(a) *Applicable programs.* The disallowance of earned income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

(b) \* \* \*

*Baseline income.* The annual income immediately prior to implementation of the disallowance described in paragraph (c)(1) of this section of a person with disabilities (who is a member of a qualified family).

\* \* \* \* \*

(c) *Disallowance of increase in annual income—(1) Initial 12-month exclusion.* During the 12-month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) *Second 12-month exclusion and phase-in.* Upon the expiration of the 12-

month period defined in paragraph (c)(1) of this section and for the subsequent 12-month period, the responsible entity must exclude from annual income of a qualified family at least 50 percent of any increase in income of such family member as a result of employment over the family member's baseline income.

(3) *Maximum 2-year disallowance.* The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) of this section is limited to a lifetime 24-month period. The disallowance applies for a maximum of 12 months for disallowance under paragraph (c)(1) of this section and a maximum of 12 months for disallowance under paragraph (c)(2) of this section, during the 24-month period starting from the initial exclusion under paragraph (c)(1) of this section.

(4) *Effect of changes on currently participating families.* Families eligible for and participating in the disallowance of earned income under this section prior to *May 9, 2016* will continue to be governed by this section in effect as it existed immediately prior to that date (see 24 CFR parts 0 to 199, revised as of April 1, 2016).

\* \* \* \* \*

■ 7. In § 5.657, add paragraph (d) to read as follows:

**§ 5.657 Section 8 project-based assistance programs: Reexamination of family income and composition.**

\* \* \* \* \*

(d) *Streamlined income determination.* For any family member with a fixed source of income, an owner may elect to determine that family member's income, as required by paragraph (b) of this section, by means of a streamlined income determination. A streamlined income determination must be conducted by applying, for each fixed-income source, the verified cost of living adjustment (COLA) or current rate of interest to the previously verified or adjusted income amount.

(1) "Family member with a fixed source of income" is defined as a family member whose income includes periodic payments at reasonably predictable levels from one or more of the following sources:

(i) Social Security, Supplemental Security Income, Supplemental Disability Insurance;

(ii) Federal, state, local, or private pension plans;

(iii) Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts; or

(iv) Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

(2) An owner must use a COLA or current rate of interest specific to the fixed source of income in order to adjust the income amount. The owner must verify the appropriate COLA or current rate of interest from a public source or through tenant-provided, third party-generated documentation. If no such verification is available, then the owner must obtain third-party verification of income amounts in order to calculate the change in income for the source.

(3) For any family member whose income is determined pursuant to a streamlined income determination, an owner must obtain third-party verification of all fixed-income amounts every 3 years. Other income for each family member must be determined pursuant to paragraph (b) of this section.

**PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION**

■ 8. The authority citation for part 880 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

■ 9. In § 880.603, add paragraph (c)(4) to read as follows:

**§ 880.603 Selection and admission of assisted tenants.**

\* \* \* \* \*

(c) \* \* \*

(4) *Streamlined income determination.* An owner may elect to follow the provisions of 24 CFR 5.657(d).

**PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS**

■ 10. The authority citation for part 884 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

■ 11. In § 884.218, add paragraph (d) to read as follows:

**§ 884.218 Reexamination of family income and composition.**

\* \* \* \* \*

(d) *Streamlined income determination.* An owner may elect to follow the provisions of 24 CFR 5.657(d).

**PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS**

■ 12. The authority citation for part 886 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

■ 13. In § 886.124, add paragraph (d) to read as follows:

**§ 886.124 Reexamination of family income and composition.**

\* \* \* \* \*

(d) *Streamlined income determination.* An owner may elect to follow the provisions of 24 CFR 5.657(d).

■ 14. In § 886.324, add paragraph (d) to read as follows:

**§ 886.324 Reexamination of family income and composition.**

\* \* \* \* \*

(d) *Streamlined income determination.* An owner may elect to follow the provisions of 24 CFR 5.657(d).

**PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES**

■ 15. The authority citation for part 891 continues to read as follows:

**Authority:** 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

■ 16. In § 891.410, add paragraph (g)(4) to read as follows:

**§ 891.410 Selection and admission of tenants.**

\* \* \* \* \*

(g) \* \* \*

(4) *Streamlined income determination.* An owner may elect to follow the provisions of 24 CFR 5.657(d).

■ 17. In § 891.610, add paragraph (g)(4) to read as follows:

**§ 891.610 Selection and admission of tenants.**

\* \* \* \* \*

(g) \* \* \*

(4) *Streamlined income determination.* An owner may elect to follow the provisions of 24 CFR 5.657(d).

■ 18. In § 891.750, add paragraph (c)(4) to read as follows:

**§ 891.750 Selection and admission of tenants.**

\* \* \* \* \*

(c) \* \* \*

(4) *Streamlined income determination.* An owner may elect to follow the provisions of 24 CFR 5.657(d).

## PART 903—PUBLIC HOUSING AGENCY PLANS

■ 19. The authority citation for part 903 continues to read as follows:

**Authority:** 2 U.S.C. 1437c; 42 U.S.C. 1437c-1; Pub. L. 110-289; 42 U.S.C. 3535d.

■ 20. In § 903.7, revise paragraph (a)(1)(i) to read as follows:

### § 903.7 What information must a PHA provide in the Annual Plan?

\* \* \* \* \*

(a) \* \* \*  
(1) \* \* \*

(i) Families meeting the definition of extremely low-income families in 24 CFR 5.603.

\* \* \* \* \*

## PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

■ 21. The authority citation for part 960 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 1437z-3, and 3535(d).

■ 22. In § 960.102, revise paragraph (a) to read as follows:

### § 960.102 Definitions.

(a) Definitions found elsewhere:

(1) *General definitions.* The following terms are defined in 24 CFR part 5, subpart A: 1937 Act, drug, drug-related criminal activity, elderly person, federally assisted housing, guest, household, HUD, MSA, premises, public housing, public housing agency (PHA), Section 8, violent criminal activity.

(2) *Definitions under the 1937 Act.* The following terms are defined in 24 CFR part 5, subpart D: annual contributions contract (ACC), applicant, elderly family, family, person with disabilities.

(3) *Definitions and explanations concerning income and rent.* The following terms are defined or explained in 24 CFR part 5, subpart F (§ 5.603): Annual income, economic self-sufficiency program, extremely low-income family, low-income family, tenant rent, total tenant payment, utility allowance.

\* \* \* \* \*

■ 23. Amend § 960.253 as follows:

■ a. Revise paragraph (b);

■ b. In paragraph (c)(1), remove the phrase “PHA’s rent policies” and add in its place “PHA’s policies”;

■ c. Remove the last sentence of paragraph (c)(3) and add paragraph (c)(4);

■ d. Revise paragraphs (d) and (e)(2);

■ e. Redesignate paragraph (f) as paragraph (g); and

■ f. Add a new paragraph (f).

The revisions and addition read as follows:

### § 960.253 Choice of rent.

\* \* \* \* \*

(b) Flat rent. The flat rent is determined annually, based on the market rental value of the unit as determined by this paragraph (b).

(1) The PHA must establish a flat rent for each public housing unit that is no less than 80 percent of the applicable Fair Market Rent (FMR) as determined under 24 CFR part 888, subpart A; or

(2) HUD may permit a flat rent of no less than 80 percent of an applicable small area FMR (SAFMR) or unadjusted rent, if applicable, as determined by HUD, or any successor determination, that more accurately reflects local market conditions and is based on an applicable market area that is geographically smaller than the applicable market area used in paragraph (b)(1) of this section. If HUD has not determined an applicable SAFMR or unadjusted rent, the PHA must rely on the applicable FMR under paragraph (b)(1) or may apply for an exception flat rent under paragraph (b)(3).

(3) The PHA may request, and HUD may approve, on a case-by-case basis, a flat rent that is lower than the amounts in paragraphs (b)(1) and (2) of this section, subject to the following requirements:

(i) The PHA must submit a market analysis of the applicable market.

(ii) The PHA must demonstrate, based on the market analysis, that the proposed flat rent is a reasonable rent in comparison to rent for other comparable unassisted units, based on the location, quality, size, unit type, and age of the public housing unit and any amenities, housing services, maintenance, and utilities to be provided by the PHA in accordance with the lease.

(iii) All requests for exception flat rents under this paragraph (b)(3) must be submitted to HUD.

(4) For units where utilities are tenant-paid, the PHA must adjust the flat rent downward by the amount of a utility allowance for which the family might otherwise be eligible under 24 CFR part 965, subpart E.

(5) The PHA must revise, if necessary, the flat rent amount for a unit no later than 90 days after HUD issues new FMRs.

(6) If a new flat rent would cause a family’s rent to increase by more than 35 percent, the family’s rent increase must be phased in at 35 percent annually until such time that the family chooses to pay the income-based rent or

the family is paying the flat rent established pursuant to this paragraph.

(c) \* \* \*

(4) The PHA may elect to establish policies regarding the frequency of utility reimbursement payments for payments made to the family.

(i) The PHA will have the option of making utility reimbursement payments not less than once per calendar-year quarter, for reimbursements totaling \$45 or less per quarter. In the event a family leaves the program in advance of its next quarterly reimbursement, the PHA must reimburse the family for a prorated share of the applicable reimbursement. PHAs exercising this option must have a hardship policy in place for tenants.

(ii) If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount of utility reimbursement paid to the utility supplier.

(d) *Ceiling rent.* A PHA using ceiling rents authorized and established before October 1, 1999, may continue to use ceiling rents, provided such ceiling rents are set at the level required for flat rents under this section. PHAs must follow the requirements for calculating and adjusting flat rents in paragraph (b) of this section when calculating and adjusting ceiling rents.

(e) \* \* \*

(2) The dollar amounts of tenant rent for the family under each option, following the procedures in paragraph (f) of this section.

(f) *Choice between flat and income-based rents.* Families must be offered the choice between a flat rental amount and a previously calculated income-based rent according to the following:

(1) For a family that chooses the flat rent option, the PHA must conduct a reexamination of family income and composition at least once every three years.

(2) At initial occupancy, or in any year in which a participating family is paying the income-based rent, the PHA must:

(i) Conduct a full examination of family income and composition, following the provisions in § 960.257;

(ii) Inform the family of the flat rental amount and the income-based rental amount determined by the examination of family income and composition;

(iii) Inform the family of the PHA’s policies on switching rent types in circumstances of financial hardship; and

(iv) Apply the family’s rent decision at the next lease renewal.

(3) In any year in which a family chooses the flat rent option but the PHA chooses not to conduct a full examination of family income and

composition for the annual rent option under the authority of paragraph (f)(1) of this section, the PHA must:

(i) Use income information from the examination of family income and composition from the first annual rent option;

(ii) Inform the family of the updated flat rental amount and the rental amount determined by the most recent examination of family income and composition;

(iii) Inform the family of the PHA's policies on switching rent types in circumstances of financial hardship; and

(iv) Apply the family's rent decision at the next lease renewal.

\* \* \* \* \*

■ 24. Amend § 960.255 as follows:

■ a. In paragraph (a), add the definition of "baseline income" in alphabetical order; and

■ b. Revise paragraph (b) to read as follows:

**§ 960.255 Self-sufficiency incentives—Disallowance of increase in annual income.**

(a) \* \* \*

*Baseline income.* The annual income immediately prior to implementation of the disallowance described in paragraph (c)(1) of this section of a person who is a member of a qualified family.

\* \* \* \* \*

(b) *Disallowance of earned income—*

(1) *Initial 12-month exclusion.* During the 12-month period beginning on the date on which a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from the annual income (as defined in § 5.609 of this title) of a qualified family any increase in the income of the family member as a result of employment over the baseline income of that family member.

(2) *Phase-in of rent increase.* Upon the expiration of the 12-month period defined in paragraph (b)(1) of this section and for the subsequent 12-month period, the PHA must exclude from the annual income of a qualified family at least 50 percent of any increase in income of such family member as a result of employment over the family member's baseline income.

(3) *Maximum 2-year disallowance.* The disallowance of increased income of an individual family member as provided in paragraph (b)(1) or (b)(2) of this section is limited to a lifetime 24-month period. It applies for a maximum of 12 months for disallowance under paragraph (b)(1) of this section and a maximum of 12 months for disallowance under paragraph (b)(2) of

this section, during the 24-month period starting from the initial exclusion under paragraph (b)(1) of this section.

(4) Effect of changes on currently participating families. Families eligible for and participating in the disallowance of earned income under this section prior to May 9, 2016 will continue to be governed by this section in effect as it existed immediately prior to that date.

\* \* \* \* \*

■ 25. In § 960.257, revise the section heading and paragraphs (a)(2) and (b) to read as follows:

**§ 960.257 Family income and composition: Annual and interim reexaminations.**

(a) \* \* \*

(2) For families who choose flat rents, the PHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every three years in accordance with the procedures in § 960.253(f).

\* \* \* \* \*

(b) *Interim reexaminations.* (1) A family may request an interim reexamination of family income or composition because of any changes since the last determination.

(2) The PHA must make the interim reexamination within a reasonable time after the family request. The PHA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition.

(3) *Streamlined income determination.* For any family member with a fixed source of income, a PHA may elect to determine that family member's income by means of a streamlined income determination. A streamlined income determination must be conducted by applying, for each fixed-income source, the verified cost of living adjustment (COLA) or current rate of interest to the previously verified or adjusted income amount.

(i) "Family member with a fixed source of income" is defined as a family member whose income includes periodic payments at reasonably predictable levels from one or more of the following sources:

(A) Social Security, Supplemental Security Income, Supplemental Disability Insurance;

(B) Federal, state, local, or private pension plans;

(C) Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts; or

(D) Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

(ii) A PHA must use a COLA or current rate of interest specific to the fixed source of income in order to adjust the income amount. The PHA must verify the appropriate COLA or current rate of interest from a public source or through tenant-provided, third party-generated documentation. If no such verification is available, then the PHA must obtain third-party verification of income amounts in order to calculate the change in income for the source.

(iii) For any family member whose income is determined pursuant to a streamlined income determination, a PHA must obtain third-party verification of all income amounts every 3 years.

\* \* \* \* \*

■ 26. In § 960.259, revise paragraph (c)(1) introductory text, and add paragraph (c)(2) to read as follows:

**§ 960.259 Family information and verification.**

\* \* \* \* \*

(c) \* \* \*

(1) Except as provided in paragraph (c)(2) of this section, the PHA must obtain and document in the family file third-party verification of the following factors, or must document in the file why third-party verification was not available:

\* \* \* \* \*

(2) For a family with net assets equal to or less than \$5,000, a PHA may accept, for purposes of recertification of income, a family's declaration that it has net assets equal to or less than \$5,000, without taking additional steps to verify the accuracy of the declaration.

(i) The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.

(ii) A PHA must obtain third-party verification of all family assets every 3 years.

■ 27. In § 960.605, revise paragraphs (c)(2) through (5) to read as follows:

**§ 960.605 How PHA administers service requirements.**

\* \* \* \* \*

(c) \* \* \*

(2) The PHA must give the family a written description of the service requirement, and of the process for claiming status as an exempt person and for PHA verification of such status. The PHA must also notify the family of its determination identifying the family members who are subject to the service requirement, and the family members who are exempt persons. The PHA must also notify the family that it will be

validating a sample of self-certifications of completion of the service requirement accepted by the PHA under § 960.607(a)(1)(ii).

(3) The PHA must review family compliance with service requirements and must verify such compliance annually at least 30 days before the end of the 12-month lease term. If qualifying activities are administered by an organization other than the PHA, the PHA may obtain verification of family compliance from such third parties or may accept a signed certification from the family member that he or she has performed such qualifying activities.

(4) The PHA must retain reasonable documentation of service requirement performance or exemption in a participant family's files.

(5) The PHA must comply with non-discrimination and equal opportunity requirements listed at § 5.105(a) of this title and affirmatively further fair housing in all their activities in accordance with the AFFH Certification as described in § 903.7(o) of this chapter.

■ 28. In § 960.607, revise paragraph (a) to read as follows:

**§ 960.607 Assuring resident compliance.**

(a) *Acceptable documentation demonstrating compliance.* (1) If qualifying activities are administered by an organization other than the PHA, a family member who is required to fulfill a service requirement must provide one of the following:

(i) A signed certification to the PHA by such other organization that the family member has performed such qualifying activities; or

(ii) A signed self-certification to the PHA by the family member that he or she has performed such qualifying activities.

(2) The signed self-certification must include the following:

(i) A statement that the tenant contributed at least 8 hours per month of community service not including political activities within the community in which the adult resides; or participated in an economic self-sufficiency program (as that term is defined in 24 CFR 5.603(b)) for at least 8 hours per month;

(ii) The name, address, and a contact person at the community service provider; or the name, address, and contact person for the economic self-sufficiency program;

(iii) The date(s) during which the tenant completed the community service activity, or participated in the economic self-sufficiency program;

(iv) A description of the activity completed; and

(v) A certification that the tenant's statement is true.

(3) If a PHA accepts self-certifications under paragraph (a)(1)(ii) of this section, the PHA must validate a sample of such self-certifications using third-party certification described in paragraph (a)(1)(i) of this section.

\* \* \* \* \*

**PART 966—PUBLIC HOUSING LEASE AND GRIEVANCE PROCEDURE**

■ 29. The authority citation for part 966 continues to read as follows:

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

■ 30. Revise § 966.4(n) to read as follows:

**§ 966.4 Lease requirements.**

\* \* \* \* \*

(n) *Grievance procedures.* (1) The lease must provide that all disputes concerning the obligations of the tenant or the PHA must (except as provided in § 966.51(a)(2)) be resolved in accordance with the PHA grievance procedures. The grievance procedures must comply with subpart B of this part.

(2) The lease must include a description of the PHA's policies for selecting a hearing officer.

\* \* \* \* \*

■ 31. Amend § 966.52 by adding a sentence at the end of paragraph (a) and adding paragraph (e), to read as follows:

**§ 966.52 Requirements.**

(a) \* \* \* A PHA may establish an expedited grievance procedure as defined in § 966.53.

\* \* \* \* \*

(e) The PHA must not only meet the minimal procedural due process requirements contained in this subpart but also satisfy any additional requirements required by local, state, or federal law.

■ 32. In § 966.53, revise paragraphs (b), (d), and (e) to read as follows:

**§ 966.53 Definitions.**

\* \* \* \* \*

(b) *Complainant* shall mean any tenant whose grievance is presented to the PHA or at the project management office.

\* \* \* \* \*

(d) *Expedited grievance* means a procedure established by the PHA for any grievance concerning a termination of tenancy or eviction that involves:

(1) Any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the PHA's public housing premises by other residents or employees of the PHA; or

(2) Any drug-related or violent criminal activity on or off such premises.

(e) *Hearing officer* means an impartial person or persons selected by the PHA, other than the person who made or approved the decision under review, or a subordinate of that person. Such individual or individuals do not need legal training. PHAs must describe their policies for selection of a hearing officer in their lease forms as required by § 966.4, changes to which are subject to a 30-day comment period as described in § 966.3.

\* \* \* \* \*

**§ 966.54 [Amended]**

■ 33. Amend § 966.54 by removing the phrase "under § 966.55".

**§ 966.55 [Removed]**

■ 34. Remove § 966.55.

■ 35. Amend § 966.56 as follows:

■ a. Revise paragraph (a);

■ b. In paragraph (b)(2), remove the comma;

■ c. Remove paragraphs (c) and (f);

■ d. Redesignate paragraphs (d), (e), (g), and (h) as paragraphs (c), (d), (e) and (f), respectively;

■ e. Revise redesignated paragraph (c); and

■ f. Add paragraph (g).

The revisions and addition read as follows:

**§ 966.56 Procedures governing the hearing.**

(a) The hearing must be scheduled promptly for a time and place reasonably convenient to both the complainant and the PHA and held before a hearing officer. A written notification specifying the time, place, and the procedures governing the hearing must be delivered to the complainant and the appropriate official.

\* \* \* \* \*

(c) If the complainant or the PHA fails to appear at a scheduled hearing, the hearing officer may make a determination to postpone the hearing for no more than 5 business days or may make a determination that the party has waived his right to a hearing. Both the complainant and the PHA must be notified of the determination by the hearing officer. A determination that the complainant has waived the complainant's right to a hearing will not constitute a waiver of any right the complainant may have to contest the PHA's disposition of the grievance in an appropriate judicial proceeding.

\* \* \* \* \*

(g) *Limited English Proficiency.* PHAs must comply with HUD's "Final

Guidance to Federal Financial Assistance Recipients Regarding Title VI Discrimination Affecting Limited English Proficient Persons” issued on January 22, 2007 and available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/promotingfh/lep-faq](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/promotingfh/lep-faq).

■ 36. Revise § 966.57 to read as follows:

**§ 966.57 Decision of the hearing officer.**

(a) The hearing officer must prepare a written decision, including the reasons for the PHA’s decision within a reasonable time after the hearing. A copy of the decision must be sent to the complainant and the PHA. The PHA must retain a copy of the decision in the tenant’s folder. The PHA must maintain a log of all hearing officer decisions and make that log available upon request of the hearing officer, a prospective complainant, or a prospective complainant’s representative.

(b) The decision of the hearing officer will be binding on the PHA unless the PHA Board of Commissioners determines that:

(1) The grievance does not concern PHA action or failure to act in accordance with or involving the complainant’s lease on PHA regulations, which adversely affects the complainant’s rights, duties, welfare or status; or

(2) The decision of the hearing officer is contrary to applicable Federal, State or local law, HUD regulations or requirements of the annual contributions contract between HUD and the PHA.

(c) A decision by the hearing officer or Board of Commissioners in favor of the PHA or which denies the relief requested by the complainant in whole or in part will not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.

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

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

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

■ 38. In § 982.402 add a sentence at the end of paragraph (d)(2) to read as follows:

**§ 982.402 Subsidy standards.**

\* \* \* \* \*

(d) \* \* \*

(2) \* \* \* However, utility allowances must follow § 982.517(d).

■ 39. Amend § 982.405 as follows:

■ a. In paragraph (a), remove the word “annually” and add in its place “biennially”;

■ b. Revise paragraph (e); and

■ c. Add paragraphs (f) and (g).

The revision and addition read as follows:

**§ 982.405 PHA initial and periodic unit inspection.**

\* \* \* \* \*

(e) The PHA may not charge the family for an initial inspection or reinspection of the unit.

(f) The PHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. The PHA may establish a reasonable fee to owners for a reinspection if an owner notifies the PHA that a repair has been made or the allotted time for repairs has elapsed and a reinspection reveals that any deficiency cited in the previous inspection that the owner is responsible for repairing pursuant to § 982.404(a) was not corrected. The owner may not pass this fee along to the family. Fees collected under this paragraph will be included in a PHA’s administrative fee reserve and may be used only for activities related to the provision of Section 8 Tenant-Based Rental Assistance.

(g) If a participant family or government official reports a condition that is life-threatening (*i.e.*, the PHA would require the owner to make the repair within no more than 24 hours in accordance with § 982.404(a)(3)), then the PHA must inspect the housing unit within 24 hours of when the PHA received the notification. If the reported condition is not life-threatening (*i.e.*, the PHA would require the owner to make the repair within no more than 30 calendar days in accordance with § 982.404(a)(3)), then the PHA must inspect the unit within 15 days of when the PHA received the notification. In the event of extraordinary circumstances, such as if a unit is within a Presidentially declared disaster area, HUD may waive the 24-hour or the 15-day inspection requirement until such time as an inspection is feasible.

**§ 982.406 [Redesignated as § 982.407]**

■ 40. Redesignate § 982.406 as § 982.407.

■ 41. Add a new § 982.406 to read as follows:

**§ 982.406 Use of alternative inspections.**

(a) *In general.* (1) A PHA may comply with the inspection requirement in § 982.405(a) by relying on an alternative inspection (*i.e.*, an inspection conducted for another housing assistance program) only if the PHA is able to obtain the results of the alternative inspection.

(2) If an alternative inspection method employs sampling, then a PHA may rely on such alternative inspection method to comply with the requirement in § 982.405(a) only if HCV units are included in the population of units forming the basis of the sample.

(3) Units in properties that are mixed-finance properties assisted with project-based vouchers may be inspected at least triennially pursuant to 24 CFR 983.103(g).

(b) *Administrative plans.* A PHA relying on an alternative inspection to fulfill the requirement in § 982.405(a) must identify the alternative inspection method being used in the PHA’s administrative plan. Such a change may be a significant amendment to the plan, in which case the PHA must follow its plan amendment and public notice requirements, in addition to meeting the requirements in § 982.406(c)(2), if applicable, before using the alternative inspection method.

(c) *Eligible inspection methods.* (1) A PHA may rely upon inspections of housing assisted under the HOME Investment Partnerships (HOME) program or housing financed using Low-Income Housing Tax Credits (LIHTCs), or inspections performed by HUD, with no action other than amending its administrative plan.

(2) If a PHA wishes to rely on an inspection method other than a method listed in paragraph (c)(1) of this section, then, prior to amending its administrative plan, the PHA must submit to the Real Estate Assessment Center (REAC) a copy of the inspection method it wishes to use, along with its analysis of the inspection method that shows that the method “provides the same or greater protection to occupants of dwelling units” as would HQS.

(i) A PHA may rely upon such alternative inspection method only upon receiving approval from REAC to do so.

(ii) A PHA that uses an alternative inspection method approved under this paragraph must monitor changes to the standards and requirements applicable to such method. If any change is made to the alternative inspection method, then the PHA must submit to REAC a copy of the revised standards and requirements, along with a revised comparison to HQS. If the PHA or REAC

determines that the revision would cause the alternative inspection to no longer meet or exceed HQS, then the PHA may no longer rely upon the alternative inspection method to comply with the inspection requirement at § 982.405(a).

(d) *Results of alternative inspection.* (1) In order for a PHA to rely upon the results of an alternative inspection to comply with the requirement at § 982.405(a), a property inspected pursuant to such method must meet the standards or requirements regarding housing quality or safety applicable to properties assisted under the program using the alternative inspection method. To make the determination of whether such standards or requirements are met, the PHA must adhere to the following procedures:

(i) If a property is inspected under an alternative inspection method, and the property receives a “pass” score, then the PHA may rely on that inspection to demonstrate compliance with the inspection requirement at § 982.405(a).

(ii) If a property is inspected under an alternative inspection method, and the property receives a “fail” score, then the PHA may not rely on that inspection to demonstrate compliance with the inspection requirement at § 982.405(a).

(iii) If a property is inspected under an alternative inspection method that does not employ a pass/fail determination—for example, in the case of a program where deficiencies are simply identified—then the PHA must review the list of deficiencies to determine whether any cited deficiency would have resulted in a “fail” score under HQS. If no such deficiency exists, then the PHA may rely on the inspection to demonstrate compliance with the inspection requirement at § 982.405(a); if such a deficiency does exist, then the PHA may not rely on the inspection to demonstrate such compliance.

(2) Under any circumstance described above in which a PHA is prohibited from relying on an alternative inspection method for a property, the PHA must, within a reasonable period of time, conduct an HQS inspection of any units in the property occupied by voucher program participants and follow HQS procedures to remedy any identified deficiencies.

(e) *Records retention.* As with all other inspection reports, and as required by § 982.158(f)(4), reports for inspections conducted pursuant to an alternative inspection method must be obtained by the PHA. Such reports must be available for HUD inspection for at least three years from the date of the latest inspection.

■ 42. Amend § 982.503 as follows:

- a. Add paragraph (b)(1)(iii);
■ b. Remove the first word in paragraph (b)(2) and in its place add “Except as described in paragraph (b)(1)(iii) of this section, the”; and
■ c. Revise paragraph (c)(2).

The revision and addition read as follows:

§ 982.503 Payment standard amount and schedule.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(iii) The PHA may establish an exception payment standard of not more than 120 percent of the published FMR if required as a reasonable accommodation in accordance with 24 CFR part 8 for a family that includes a person with a disability. Any unit approved under an exception payment standard must still meet the reasonable rent requirements found at § 982.507.

\* \* \* \* \*

(c) \* \* \*

(2) Above 110 percent of FMR to 120 percent of published FMR. The HUD Field Office may approve an exception payment standard amount from above 110 percent of the published FMR to not more than 120 percent of the published FMR (upper range) if the HUD Field Office determines that approval is justified by either the median rent method or the 40th or 50th percentile rent method as described in paragraph (c)(2)(ii) of this section (and that such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section).

(i) Median rent method. In the median rent method, HUD determines the exception payment standard amount by multiplying the FMR times a fraction of which the numerator is the median gross rent of the exception area and the denominator is the median gross rent of the entire FMR area. In this method, HUD uses median gross rent data from the most recent decennial United States census, and the exception area may be any geographic entity within the FMR area (or any combination of such entities) for which median gross rent data is provided in decennial census products.

(ii) 40th or 50th percentile rent method. In this method, HUD determines that the area exception payment standard amount equals either the 40th or 50th percentile of rents for standard quality rental housing in the exception area. HUD determines whether the 40th or 50th percentile rent applies in accordance with the methodology described in § 888.113 of

this title for determining FMRs. A PHA must present statistically representative rental housing survey data to justify HUD approval.

\* \* \* \* \*

■ 43. Revise § 982.505(d) to read as follows:

§ 982.505 How to calculate housing assistance payment.

\* \* \* \* \*

(d) PHA approval of higher payment standard for the family as a reasonable accommodation. If the family includes a person with disabilities and requires a payment standard above the basic range, as a reasonable accommodation for such person, in accordance with part 8 of this title, the PHA may establish a payment standard for the family of not more than 120 percent of the FMR.

■ 44. In § 982.514, add paragraph (c) to read as follows:

§ 982.514 Distribution of housing assistance payment.

\* \* \* \* \*

(c) The PHA may elect to establish policies regarding the frequency of utility reimbursement payments for payments made to the family.

(1) The PHA will have the option of making utility reimbursement payments not less than once per calendar-year quarter, for reimbursements totaling \$45 or less per quarter. In the event a family leaves the program in advance of its next quarterly reimbursement, the PHA would be required to reimburse the family for a prorated share of the applicable reimbursement. PHAs exercising this option must have a hardship policy in place for tenants.

(2) If the PHA elects to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

■ 45. Amend § 982.516 as follows:

- a. Revise the section heading;
■ b. In paragraph (a), revise the introductory text of paragraph (a)(2) and add paragraph (a)(3);
■ c. Remove paragraph (e);
■ d. Redesignate paragraphs (b), (c), and (d) as paragraphs (c), (d), and (e), respectively;
■ e. Add a new paragraph (b);
■ f. In redesignated paragraph (c), revise the paragraph heading; and
■ g. Revise redesignated paragraph (e)(2).

The revisions and addition read as follows:

§ 982.516 Family income and composition: Annual and interim examinations.

(a) \* \* \*

(2) Except as provided in paragraph (a)(3) of this section, the PHA must



obtain and document in the tenant file third-party verification of the following factors, or must document in the tenant file why third-party verification was not available:

\* \* \* \* \*

(3) For a family with net assets equal to or less than \$5,000, a PHA may accept a family's declaration that it has net assets equal to or less than \$5,000, without taking additional steps to verify the accuracy of the declaration.

(i) The declaration must state the amount of income the family expects to receive from such assets; this amount must be included in the family's income.

(ii) A PHA must obtain third-party verification of all family assets every 3 years.

(b) *Streamlined income determination.* For any family member with a fixed source of income, a PHA may elect to determine that family member's income by means of a streamlined income determination. A streamlined income determination must be conducted by applying, for each fixed-income source, the verified cost of living adjustment (COLA) or current rate of interest to the previously verified or adjusted income amount.

(1) *Family member with a fixed source of income* is defined as a family member whose income includes periodic payments at reasonably predictable levels from one or more of the following sources:

(i) Social Security, Supplemental Security Income, Supplemental Disability Insurance;

(ii) Federal, state, local, or private pension plans;

(iii) Annuities or other retirement benefit programs, insurance policies, disability or death benefits, or other similar types of periodic receipts; or

(iv) Any other source of income subject to adjustment by a verifiable COLA or current rate of interest.

(2) A PHA must use a COLA or current rate of interest specific to the fixed source of income in order to adjust the income amount. The PHA must verify the appropriate COLA or current rate of interest from a public source or through tenant-provided, third party-generated documentation. If no such verification is available, then the PHA must obtain third-party verification of

income amounts in order to calculate the change in income for the source.

(3) For any family member whose income is determined pursuant to a streamlined income determination, a PHA must obtain third-party verification of all income amounts every 3 years.

(c) *Interim reexaminations.* \* \* \*

\* \* \* \* \*

(e) \* \* \*

(2) At the effective date of a regular or interim reexamination, the PHA must make appropriate adjustments in the housing assistance payment in accordance with § 982.505.

\* \* \* \* \*

■ 46. Amend § 982.517 as follows:

■ a. Capitalize the first word in paragraph (b)(2)(i); and

■ b. Revise paragraph (d), to read as follows:

**§ 982.517 Utility allowance schedule.**

\* \* \* \* \*

(d) *Use of utility allowance schedule.* The PHA must use the appropriate utility allowance for the lesser of the size of dwelling unit actually leased by the family or the family unit size as determined under the PHA subsidy standards. In cases where the unit size leased exceeds the family unit size as determined under the PHA subsidy standards as a result of a reasonable accommodation, the PHA must use the appropriate utility allowance for the size of the dwelling unit actually leased by the family.

\* \* \* \* \*

**PART 983—PROJECT-BASED VOUCHER (PBV) PROGRAM**

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

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

**§ 983.2 [Amended]**

■ 48. In § 983.2 amend paragraph (c)(4) by removing the citation “§ 982.406” and adding in its place “§ 982.407”.

■ 49. Amend § 983.103 by revising paragraph (d) and adding paragraph (g) to read as follows:

**§ 983.103 Inspecting units.**

\* \* \* \* \*

(d) *Biennial inspections.* (1) At least biennially during the term of the HAP

contract, the PHA must inspect a random sample, consisting of at least 20 percent of the contract units in each building, to determine if the contract units and the premises are maintained in accordance with the HQS. Turnover inspections pursuant to paragraph (c) of this section are not counted toward meeting this inspection requirement.

(2) If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, then the PHA must reinspect 100 percent of the contract units in the building.

(3) A PHA may also use the procedures applicable to HCV units in 24 CFR 982.406.

\* \* \* \* \*

(g) *Mixed-finance properties.* In the case of a property assisted with project-based vouchers (authorized at 42 U.S.C. 1437f(o)(13)) that is subject to an alternative inspection, the PHA may rely upon inspections conducted at least triennially to demonstrate compliance with the inspection requirement of 24 CFR 982.405(a).

**PART 990—THE PUBLIC HOUSING OPERATING FUND PROGRAM**

■ 50. The authority citation for part 990 continues to read as follows:

**Authority:** 42 U.S.C. 1437g; 42 U.S.C. 3535(d).

■ 51. In § 990.150, revise paragraph (a) to read as follows:

**§ 990.150 Limited vacancies.**

(a) *Operating subsidy for a limited number of vacancies.* HUD will pay operating subsidy for a limited number of vacant units under an ACC. The limited number of vacant units must be equal to or less than 3 percent of the unit months on a project-by-project basis based on the definition of a project under § 990.265 (provided that the number of eligible unit months does not exceed 100 percent of the unit months for a project).

\* \* \* \* \*

Dated: February 29, 2016.

**Nani Coloretti,**  
Deputy Secretary.

[FR Doc. 2016-04901 Filed 3-7-16; 8:45 am]

**BILLING CODE 4210-67-P**