

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT****24 CFR Part 883**

[Docket No. FR-6378-F-02]

RIN 2502-AJ68

**Updated Terminology for State Housing Agency Housing Assistance Payments Contracts**

**AGENCY:** Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

**ACTION:** Final rule.

**SUMMARY:** This final rule revises HUD's regulations for Housing Assistance Payments contracts that were initially issued and administered by a State Housing Finance Agency. This final rule clarifies the meaning of the terms "HFA (Housing Finance Agency)" and "State Agency (Agency)" when HUD either assumes contract administration responsibilities or assigns the contract administration responsibilities to a Performance-Based Contract Administrator. This final rule also clarifies how reserve accounts may be transferred following assumption of contract administration duties by a new party. These regulatory changes conform with longstanding HUD policy and practice. This final rule adopts HUD's July 17, 2024, proposed rule without change.

**DATES:** Effective January 3, 2025.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Larson, Director, Office of Asset Management and Portfolio Oversight, U.S. Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone number 202-402-3823 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

**SUPPLEMENTARY INFORMATION:****I. Background***A. Section 8 Project-Based Rental Assistance Program*

The Section 8 Project-Based Rental Assistance (Section 8 PBRA) program was enacted as part of the Housing and Community Development Act of 1974,<sup>1</sup> which amended the United States

Housing Act of 1937.<sup>2</sup> Under the Section 8 PBRA program, either HUD or a public housing agency (PHA) acting pursuant to an annual contributions contract (ACC) with HUD provides rental assistance payments via a Housing Assistance Payments (HAP) Contract to project owners who, in turn, rent units covered by the HAP Contract to families who meet program eligibility rules. Either HUD or a PHA acting pursuant to an ACC serves as the contract administrator, which is responsible for performing multiple functions, from maintaining a reserve for replacement account and a residual receipts account to processing annual rent adjustments and periodic contract renewals. Pursuant to the United States Housing Act of 1937 and HUD regulations, a housing finance agency (HFA) meets the definition of a PHA and, as such, may serve as a Performance-Based Contract Administrator (PBCA).

*B. Regulatory and Operational History of the 24 CFR Part 883 Section 8 PBRA Program*

On April 15, 1975, HUD published 24 CFR part 883, establishing policies and procedures under which HFAs could select proposals for funding under the Section 8 New Construction and Substantial Rehabilitation Programs.<sup>3</sup> Pursuant to 24 CFR part 883, HFAs provided permanent financing and assumed the risk of default and foreclosure on selected project proposals. In selecting a project for permanent financing, HFAs and project owners could enter into HAP Contracts with initial mortgage terms of up to 40 years,<sup>4</sup> with the HFA serving as the HAP Contract administrator. Significantly for purposes of this rulemaking, in January of 1980, HUD issued a new regulation under 24 CFR part 883 that introduced a limit on annual distributions of project surplus cash for some project owners, a requirement for such owners to establish a residual receipts account, and a requirement to maintain a reserve for replacement account to address physical condition issues.<sup>5</sup> As HAP Contract administrators, the HFAs controlled the residual receipts and reserve for replacement accounts required by 24 CFR part 883.

In the 1990s, HAP Contracts between HFAs and project owners began to reach the end of the contracted term and expire. Where a HAP Contract expires

and is not renewed, families eligible for Section 8 PBRA are at risk of displacement from their housing because there is no longer an agreement in place that allows project owners to receive Section 8 PBRA rental assistance for the applicable units. To authorize the renewal of expiring HAP Contracts, including HAP Contracts issued pursuant to 24 CFR part 883 (Part 883 HAP Contracts), Congress enacted the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA).<sup>6</sup> As implemented by HUD, MAHRA allows the issuance of HAP Contracts that incorporate and renew nearly all provisions of an expired, original HAP Contract. Relevant to the purposes of this final rule, the provisions incorporated into renewed Part 883 HAP Contracts include references to the terms "HFA" and "State Agency."

Beginning in May of 1999, HUD began using PBCAs to streamline the renewal and administration of expiring HAP Contracts, including Part 883 HAP Contracts, by assigning administration and servicing tasks to PBCAs, which qualify as PHAs under the United States Housing Act of 1937 and act in accordance with an ACC that sets forth requirements and performance-based incentive standards. As Part 883 HAP Contracts expired, HUD began terminating ACCs with the HFAs of the expiring Part 883 HAP Contracts, with HUD then either taking over administration of the Part 883 HAP Contracts itself or assigning administration of the contracts to PBCAs. Relevant to the purpose of this final rule, references to the terms "HFA" and "State Agency" remained in both 24 CFR part 883 and the renewed Part 883 HAP Contracts that were now administered by either HUD or a PBCA.

As of the second quarter of 2023, there were approximately 2,690 Part 883 HAP Contracts in effect throughout the country. Of these contracts, the vast majority are now administered either by a PBCA or HUD, with only sixty-five (65) Part 883 HAP Contracts still being administered by an HFA. For the Part 883 HAP Contracts that were previously administered by an HFA but that are now administered by a PBCA or HUD, the terms "HFA" and "State Agency" still appear in the Part 883 HAP Contracts, along with references to the same terms in 24 CFR part 883. The references to these terms in the contracts and part 883 create confusion because HUD or a PBCA now administers these Part 883 HAP Contracts rather than an HFA or State

<sup>2</sup> 42 U.S.C. 1437f.<sup>3</sup> 40 FR 16934.<sup>4</sup> The terms "HFA" and "State Agency" appear in both part 883 and corresponding HAP Contracts.<sup>5</sup> 45 FR 6889 (Jan. 30, 1980).<sup>6</sup> 42 U.S.C. 1437f.<sup>1</sup> Public Law 93-383, 88 Stat. 633 (1974).

Agency. This confusion is especially problematic with regard to the administration of project owners' restricted financial accounts (*i.e.*, the residual receipts and reserve for replacement accounts) because of unclear expectations regarding which entity must issue approvals to withdraw funds. HUD issues this final rule to eliminate this confusion.

### *C. Residual Receipts and Reserve for Replacement Project Accounts*

Both the residual receipts account and the reserve for replacement account are project accounts. The project owner must make deposits to the residual receipts account and the reserve for replacement accounts, consistent with HUD requirements, and must receive prior approval before withdrawing funds from either account. When a HAP Contract associated with the project is administered by an HFA, the project owner requests fund withdrawal approval from the HFA. Once an ACC between the HFA and HUD expires, HUD must review such fund withdrawal requests; therefore, the HFA must release the funds in the accounts upon the request of the project owner. The project owner, in turn, must ensure that the residual receipts and reserve for replacement accounts funds are placed in accounts that meet HUD requirements, after which time any fund withdrawals will be made only with HUD approval.

## **II. The Proposed Rule**

On July 17, 2024, HUD published for public comment a proposed rule entitled "Updated Terminology for State Housing Agency Housing Assistance Payments Contracts."<sup>7</sup> The proposed rule proposed to amend the definitions of two terms defined in 24 CFR 883.302: "HFA (Housing Finance Agency)" and "State Agency (Agency)." In the proposed rule, HUD proposed that the definitions found in 24 CFR 883.302 for these terms continue to apply while an ACC between HUD and an HFA is in effect. When an ACC between HUD and the HFA expires and is not renewed, HUD proposed that the definitions of the terms "HFA (Housing Finance Agency)" and "State Agency (Agency)" then be defined the same as "Contract Administrator" is defined at 24 CFR 880.201. In addition to the proposed definition changes to 24 CFR 883.302, HUD also proposed to make a conforming change to 24 CFR 883.701. In the proposed rule, HUD also proposed to amend 24 CFR 883.306 and add a new § 883.702 to make clear that

project owners are required to request the withdrawal of funds from residual receipts and reserve for replacement accounts administered by HFAs when the ACC between HUD and the HFA is terminated or expires.

## **III. This Final Rule**

HUD is publishing this final rule without change from the proposed rule. HUD received a single public comment in response to the proposed rule that noted that the commenter has had no problem with PHFA. HUD appreciates the comment. As noted, HUD is revising the referenced terminology for clarity and accuracy.

HUD believes that the revision in 24 CFR 883.302 to the definitions of "HFA (Housing Finance Agency)" and "State Agency (Agency)" is necessary to eliminate the confusion that results when a renewed Part 883 HAP Contract is administered by HUD or a PBCA, rather than the former HFA. In addition, the conforming change to 24 CFR 883.701 makes clear that, for the purposes of 24 CFR part 883, subpart G, all references to "contract administrator" in 24 CFR part 880, subpart F, shall be construed to refer to "Agency" only while the ACC between the State Agency and HUD is in effect. The changes to 24 CFR 883.306 and the addition of a new § 883.702 are necessary to clarify that project owners are required to request the withdrawal of funds from residual receipts and reserve for replacement accounts administered by HFAs when the ACC between HUD and the HFA is terminated or expires.

## **V. Findings and Certifications**

### *Regulatory Review—Executive Orders 12866, 13563, and 14094*

Pursuant to 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 Regulations and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The order also 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 further 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. Executive Order 14094 (Modernizing Regulatory Review) amends section 3(f) of Executive Order 12866, among other things.

This final rule clarifies that HUD or a PBCA may assume the HAP Contract administrator responsibilities when the ACC between HUD and an HFA expires. This final rule also clarifies how residual receipts and reserve for replacement accounts may be transferred following assumption of contract administration duties by a new party. These regulatory changes conform with longstanding HUD policy and practice. This rulemaking was determined to not be a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, as amended by Executive Order 14094, and is not an economically significant regulatory action and therefore was not subject to OMB review.

### *Unfunded Mandates Reform Act*

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

### *Environmental Impact*

A Finding of No Significant Impact (FONSI) with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available through the Federal eRulemaking Portal at <http://www.regulations.gov>. The FONSI is also 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, you must schedule an appointment in advance to review the FONSI by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech or communication

<sup>7</sup> 89 FR 58092.

disabilities. To learn more about how to make an accessible telephone call, please visit <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

*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. As discussed above, the changes in this final rule are limited to clarifying that HUD or a PBCA may assume the HAP Contract administrator responsibilities when the ACC between HUD or an HFA expires. The rulemaking also clarifies how residual receipts and reserve for replacement accounts may be transferred following assumption of contract administration duties by a new party. These regulatory changes conform with longstanding HUD policy and practice. Accordingly, the undersigned certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

*Executive Order 13132, Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

**List of Subjects in 24 CFR Part 883**

Accounting, Administrative practice and procedure, Government contracts, Grant programs-housing and community development, Low and moderate income housing, Public assistance programs, Public housing, Rent subsidies, Reporting and recordkeeping requirements, State and local governments.

For the reasons stated in the preamble, HUD amends 24 CFR part 883 as follows:

**PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES**

■ 1. The authority citation for part 883 continues to read as follows:

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

■ 2. In § 883.302, redesignate the definition of “HFA (Housing Finance Agency)” in alphabetical order and revise it, and revise the definition of “State Agency (Agency)”.

The revisions read as follows:

**§ 883.302 Definitions.**

\* \* \* \* \*

*HFA (Housing Finance Agency).* While the Annual Contributions Contract between the State Agency and HUD is in effect, “Housing Finance Agency” and “HFA” means a State Agency that provided permanent financing for newly constructed or substantially rehabilitated housing processed under this part and financed without Federal mortgage insurance or a Federal guarantee except coinsurance under section 244 of the National Housing Act. When the Annual Contributions Contract between the State Agency and HUD is no longer in effect, “Housing Finance Agency” and “HFA,” as used in this part and in the Housing Assistance Payments Contract, means “Contract Administrator,” as defined in 24 CFR 880.201.

\* \* \* \* \*

*State Agency (Agency).* While the Annual Contributions Contract between the State Agency and HUD is in effect, “State Agency” and “Agency” means an agency that has been notified by HUD that it is authorized to apply for a set-aside and/or to use the Fast Track Procedures of this part. When the Annual Contributions Contract between the State Agency and HUD is no longer in effect, “State Agency” and “Agency,” as used in this part and in the Housing Assistance Payments Contract, mean “Contract Administrator,” as defined in 24 CFR 880.201.

\* \* \* \* \*

■ 3. In § 883.306, add a sentence to the end of paragraph (e) to read as follows:

**§ 883.306 Limitation on distributions.**

\* \* \* \* \*

(e) \* \* \* Upon termination of the Annual Contributions Contract between HUD and the HFA, the Owner must request withdrawal of any funds that were placed in such an account at the direction of the HFA and immediately deposit such funds into an interest-bearing residual receipts account that

complies with the requirements of 24 CFR 880.601(e)(2)(i).

\* \* \* \* \*

**§ 883.701 [Amended]**

■ 4. In § 883.701, add the words “while the Annual Contributions Contract between the State Agency and HUD is in effect” to the end of the second sentence following “Agency”.

■ 5. Add § 883.702 to read as follows:

**§ 883.702 Replacement reserve.**

For projects that are required to maintain a replacement reserve account to fund capital repairs and building system replacements, while the Annual Contributions Contract (ACC) between the State Agency and HUD is in effect, funds in that replacement reserve account may be drawn and used only in accordance with State Agency guidelines and with the approval of, or as directed by, the State Agency. Upon termination of the ACC, the Owner must request withdrawal of any funds in the replacement reserve account and immediately deposit such funds into an interest-bearing replacement reserve account that complies with the requirements of 24 CFR 880.602(a)(1)(iv).

**Julia R. Gordon,**

*Assistant Secretary for Housing—Federal Housing Commissioner.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 100**

[Docket No. USCG–2024–0962]

**Special Local Regulations; Marine Events Within the Captain of the Port Charleston Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the special local regulation to provide for the safety and security of certain navigable waterways of Charleston Harbor during the Charleston Parade of Boats. Our regulation for marine events within the Captain of the Port Charleston identifies the regulated area for this event in Charleston Harbor, SC. During the enforcement periods, no person or vessel may enter, transit through, anchor in, or remain within the designated area unless authorized by the