

**List of Subjects**

*In 21 CFR Part 2*

Administrative practice and procedure, Cosmetics, Drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, we propose that 21 CFR part 2 be amended as follows:

**PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS**

- 1. The authority citation for part 2 continues to read as follows:

**Authority:** 15 U.S.C. 402, 409; 21 U.S.C. 321, 331, 335, 342, 343, 346a, 348, 351, 352, 355, 360b, 361, 362, 371, 372, 374; 42 U.S.C. 7671 *et seq.*

**§ 2.125 [Amended]**

- 2. In § 2.125, remove and reserve paragraph (e)(4)(iii).

Dated: October 20, 2016.

Leslie Kux,

*Associate Commissioner for Policy.*

[FR Doc. 2016-25852 Filed 10-25-16; 8:45 am]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 982**

[Docket No. FR-5585-P-01]

RIN 2577-AD00

**Tenant-Based Assistance: Enhanced Vouchers**

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

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes to codify HUD’s policy regarding enhanced vouchers, a type of tenant-based voucher provided for under section 8 of the U.S. Housing Act of 1937 in the following four scenarios, which are prescribed and limited by statute: The prepayment of certain mortgages, the voluntary termination of the insurance contract for the mortgage, the termination or the expiration of a project-based section 8 rental assistance contract, and the transaction under which a project that receives or has received assistance under the Flexible Subsidy Program is preserved as affordable housing. Specifically, this rule would codify existing policy concerning the eligibility criteria for enhanced vouchers, as well as provide rental payment standards and subsidy standards applicable to enhanced

vouchers, the right of enhanced voucher holders to remain in their units, procedures for addressing over-housed families, and the calculation of the enhanced voucher housing assistance payment.

**DATES:** *Comment Due Date:* December 27, 2016.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410-0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov). HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the [www.regulations.gov](http://www.regulations.gov) Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

**Note:** To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

*No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

*Public Inspection of Public Comments.* All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202-402-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number

via TTY by calling the Federal Relay Service, toll-free, at 800-877-8339. Copies of all comments submitted are available for inspection and downloading at [www.regulations.gov](http://www.regulations.gov).

**FOR FURTHER INFORMATION CONTACT:** For information about HUD’s Public Housing and Voucher programs, contact Rebecca Primeaux, Director, Housing Voucher Management and Operations Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, Room 4226, Washington, DC 20140, telephone number 202-708-0477. The listed telephone number is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*General.* Section 8(t) of the U.S. Housing Act of 1937 (1937 Act) (42 U.S.C. 1437f(t)) provides unified authority for families to be offered enhanced vouchers upon the occurrence of an “eligibility event,” which is defined in section 8(t)(2) as one of four categories of events that results in families in the project being eligible for enhanced voucher assistance under one of three statutes: (1) The Low-Income Housing Preservation and Resident Homeownership Act of 1990, 12 U.S.C. 4101 *et seq.* (LIHPRHA), (2) the Multifamily Assisted Housing Reform and Affordability Act of 1997, 42 U.S.C. 1437f note (MAHRA), or (3) of the Housing and Community Development Amendments of 1978, 42 U.S.C. 5301 note (HCDA). The four categories of events are: (1) The prepayment of a mortgage that results in families residing in the project being eligible under section 223(f) of LIHPRHA for an enhanced voucher; (2) the voluntary termination of the insurance contract that results in families residing in the project being eligible under section 223(f) of LIHPRHA for an enhanced voucher; (3) the termination or expiration of a project-based section 8 rental assistance contract that results in assisted families residing in the project being eligible under section 515(c)(3) or section 524(d) of MAHRA for an enhanced voucher;<sup>1</sup> and (4) a

<sup>1</sup> Section 515(c)(3) pertains to a determination by the Department to renew an expiring project-based section 8 contract with tenant-based assistance, whereas section 524(d) applies when a rental assistance contract to which a covered project is subject expires and is not renewed, whether the owner opts out by giving the notice required under 42 U.S.C. 1437f(c)(8)(A) or the HAP contract simply expires. If the HAP contract expires without the

transaction under which a project that receives or has received assistance under the Flexible Subsidy program is preserved as affordable housing, which results in families residing in the project being eligible under section 201(p) of the HCDA for an enhanced voucher.

Section 8(t) states that enhanced vouchers provided under previous authorities are, regardless of date that the funds were made available, treated and subject to the same requirements as enhanced vouchers under 8(t). Section 8(t) was enacted as section 538, title V, Departments of Veterans Affairs and Housing and Urban Development, Independent Agencies Appropriations Act, 2000 (Pub. L. 106–74) (FY 2000 Appropriation), and the heading of section 538 of the FY 2000 Appropriation was “Unified Enhanced Voucher Authority” (see 113 Stat. 1122). This section heading emphasizes the fact that 8(t) brings current and prior enhanced voucher authority under a single statute and unifies their legal requirements.<sup>2</sup>

Under the statute, eligibility events are: Owner decisions to opt out of or not renew certain Section 8 project-based contracts; owner prepayment of certain mortgages on the project; voluntary termination of mortgage insurance; the termination or expiration of the contract for rental assistance under section 8 of the 1937 Act (Section 8) for such housing project; or a transaction for preservation of a project that, under certain sections of the MAHRA, results in the tenants of the project being eligible for enhanced vouchers.

*Enhanced voucher assistance.* Enhanced voucher assistance differs from regular housing choice voucher

required notice, the owner may not evict tenants or increase their rent payment until notice has been given and one year elapses per 42 U.S.C. 1437f(c)(8)(B). Families remaining during this period would not get enhanced vouchers because these families are already protected from eviction or rent increase under section 1437f(c)(8)(B). Once the notice has been given and the required year has elapsed, HUD issues enhanced vouchers to any eligible family.

<sup>2</sup> The previous voucher authorities included in 8(t) as currently codified are: The 10th, 11th, and 12th provisos under the “Preserving Existing Housing Investment” account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104–204; 110 Stat. 2884); the first proviso under the “Housing Certificate Fund” account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65; 111 Stat. 1351), or the first proviso under the “Housing Certificate Fund” account in title II of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276; 112 Stat. 2469); and section 515(c)(3) and (4) of MAHRA, as in effect before October 20, 1999.

assistance under section 8(o) of the 1937 Act (42 U.S.C. 1437f(o)) in two major respects. First, a family eligible to receive an enhanced voucher may elect to remain in the project, and, if the family does so, a higher “enhanced” payment standard is used to determine the amount of subsidy when the gross rent exceeds the normally applicable public housing agency (PHA) payment standard. Second, the family must continue to contribute towards rent at an amount that is at least the amount the family was paying for rent at the time of the eligibility event.

Section 8(t)(1)(B) of the 1937 Act (42 U.S.C. 1437f(t)(1)(B)) provides that for enhanced vouchers, if the gross rent for the dwelling unit exceeds the Section 8 payment standard under the regular voucher program, the amount of rental assistance provided on behalf of the family using the enhanced voucher shall be determined using a payment standard that is equal to the gross rent for the dwelling unit (as such rent may be increased from time-to-time). The gross rent for a unit leased by an enhanced voucher holder is subject to the limitation in section 8(o)(10)(A) of the 1937 Act (42 U.S.C. 1437f(o)(10)(A)) that rents shall be reasonable in comparison to rents charged for comparable, unassisted units in the private market, and any other reasonable limits prescribed by the Secretary, such as a use agreement that restricts the rent to an amount below the PHA-determined rent reasonableness cap, State rent controls, or any other similar legally binding, reasonable limitation.

*Preservation prepayments.* A preservation prepayment occurs when an owner prepays a qualifying mortgage or voluntarily terminates the mortgage insurance on a project that meets the definition of eligible low-income housing under LIHPRHA, 12 U.S.C. 4119 and in such cases, tenant-based assistance is offered to eligible residents of projects. The term “eligible low-income housing” means any housing financed by a loan or mortgage—

(A) That is—

(i) Insured or held by the Secretary under section 221(d)(3) of the National Housing Act and receiving loan management assistance under section 8 of the United States Housing Act of 1937 due to a conversion from section 101 of the Housing and Urban Development Act of 1965;

(ii) Insured or held by the Secretary and bears interest at a rate determined under the proviso of section 221(d)(5) of the National Housing Act;

(iii) Insured, assisted, or held by the Secretary or a State or State agency

under section 236 of the National Housing Act; or

(iv) Held by the Secretary and formerly insured under a program referred to in clause (i), (ii), or (iii); and

(B) That, under regulation or contract in effect before February 5, 1988, is or will within 24 months become eligible for prepayment without prior approval of the Secretary. (12 U.S.C. 4119(1)).

*Flexible subsidy project.* This is any project that receives or has received assistance under Section 201 of the HCDA (the flexible subsidy program) and which project, in accordance with section 201(p), is the subject of a transaction under which the project is preserved as affordable Housing (as determined by HUD). Such a project shall be considered eligible low income housing under section 229 of LIHPRHA for purposes of eligibility of residents for enhanced tenant-based assistance. HUD will determine on a case-by-case basis if a flexible subsidy project meets the requirements of section 201(p) concerning the applicability of enhanced vouchers.

Eligible low-income housing and flexible subsidy projects qualifying under section 201(p) are commonly referred to in PIH guidance as “preservation eligible projects.” A family is eligible for enhanced voucher assistance in preservation eligible projects only if the resident family is residing in the preservation eligible project on the effective date of prepayment or voluntary termination of mortgage insurance (or the effective date of the transaction in the case of a covered flexible subsidy project), and must be income-eligible on that effective date. Both unassisted and assisted residents may be eligible for enhanced voucher assistance as the result of a preservation prepayment.

*Eligibility requirements.* In preservation-eligible projects, in order to be eligible for enhanced voucher assistance, the resident family must be either:

A low-income family (including a very low-income family);

A moderate-income elderly or disabled family; or

A moderate-income family residing in a low-vacancy area.

HUD determines whether the project where the owner is prepaying or voluntarily terminating the mortgage insurance is located in a low-vacancy area. A low-income family is a family whose annual income does not exceed 80 percent of the median income for the area as determined by HUD. A moderate-income family is a family whose annual income is above 80 percent but does not exceed 95 percent

of the area median income as determined by HUD. A resident family who does not fall into one of those categories on the effective date of the prepayment or voluntary termination is not eligible for enhanced voucher assistance. (See notice PIH 2001–41 at p. 22).

By agreeing to administer enhanced vouchers for families affected by conversion actions, the PHA does not relinquish its responsibility for screening potentially eligible families or its ability to deny assistance for any grounds allowed or provided by 24 CFR 982.552<sup>3</sup> and 982.553.<sup>4</sup> The screening of families and decisions to deny admission to the program must be consistent with the PHA policy for screening regular admissions of families from the PHA waiting list. The PHA must provide a family with an opportunity for an informal review if it denies the family admission to the voucher program in accordance with the housing choice voucher regulations.

*Voluntary termination of mortgage insurance or prepayment of mortgage on Section 236 projects where Section 236 rent rules remain applicable (decoupling actions).* Where an owner voluntarily terminates the mortgage insurance or prepays the Section 236 mortgage in a preservation eligible Section 236 project and the rent setting requirements of the Section 236 program are still applicable to the project by the terms of a use agreement, the enhanced voucher rent would be no greater than the Section 236 Basic Rent established in accordance with HUD guidance. (See notice PIH 2001–41 at pp. 23–24.)

*Project Based Opt-Outs.* An “opt-out” refers to the case of a contract for project-based assistance where the owner opts out of, or elects not to renew, an expiring contract. In such a case, enhanced voucher assistance, subject to appropriations, will be offered to income eligible families covered by the expiring contract. The project must consist of 4 or more dwelling units and be covered in whole or part by a contract for project-based assistance. For the family to be eligible in the event of an owner opt-out, the family must be low-income and must be residing in a unit covered by the expiring Section 8 project-based contract on the date the contract expires. The project-based

assistance contract must be for one of the following programs:

The new construction or substantial rehabilitation program under section 8(b)(2) of the 1937 Act (as in effect before October 1, 1983);

The property disposition program under Section 8(b) of the 1937 Act;

The loan management assistance program under Section 8(b) of the 1937 Act;

The rent supplement program under section 101 of the Housing and Urban Development Act of 1965, provided that at the same time there is also a Section 8 project-based contract at the same project that is expiring or terminating on the same day and will not be renewed;

Section 8 of the 1937 Act, following conversion from assistance under section 101 of the Housing and Urban Development Act of 1965; or

The moderate rehabilitation program under section 8(e)(2) of the 1937 Act (as in effect before October 1, 1991).

*Sections 515 and 524 of MAHRA.* Section 515 of MAHRA addresses section 8 renewals and long-term affordability commitments by owners. Sections 515(c)(3) and (4) of MAHRA address expiring project-based section 8 contracts that are renewed with tenant-based assistance. Covered project-based contracts are those listed above. Families living in units covered by the expiring project-based assistance contract where the project is being renewed with tenant-based assistance are eligible for enhanced voucher assistance. In the case of the expiration of a covered Section 8 project-based contract under 515(c) of MAHRA only, all families assisted under the expiring contract are considered income eligible for enhanced voucher assistance.

Section 524(d) of MAHRA, which applies in the case of a contract for project-based assistance under section 8 for a covered project that is not renewed under section 524(a) or (b) of MAHRA (or any other authority), thereby resulting in the expiration of assistance, provides that enhanced vouchers are to be provided to families residing in the project on the date of the expiration of assistance.

*Other situations.* If the opt-out of the Section 8 project-based contract by an owner occurs after the owner has prepaid the mortgage or voluntarily terminated the mortgage insurance of a preservation-eligible property, families who do not meet the definition of a low-income family may still be eligible to receive an enhanced voucher. In addition to meeting the usual requirement of residing in a project covered by the expiring contract on the date of expiration, the family must have

also resided there on the effective date of prepayment and meet the income requirements for enhanced voucher eligibility for residents affected by a preservation prepayment (see the discussion under the heading “Preservation prepayments” in this preamble). (See notice PIH 2001–41 at p. 20.)

In a case where the owner has materially violated HUD’s program regulations or the condition of the project is not decent, safe, and sanitary, resulting in termination of the assistance to the project, the tenants would not remain in the project and would receive regular Section 8 tenant-based assistance. (See notice PIH 2001–41 at p. 4.)

*Questions for public comment.* In addition to other relevant issues, HUD is interested in receiving public comments on three specific issues. Responses should reference *specific data to be utilized in the determination and explain the reasoning to support recommendations.*

1. *Low-income area.* How should the vacancy rate for a “low-vacancy area” be defined? The low-vacancy area designation, because it can result in assistance being provided to families and individuals that are at the moderate income level, which is higher than the program generally is intended to serve, should be a narrow exception. In addition, the following should be considered:

- Whether the low-vacancy area should be based on a constant vacancy percentage applied universally, or whether it should vary with differing factors, such as area population growth, demand for rental, or any other relevant factors;
- Whether the low-vacancy area definition should be unique to this enhanced voucher program, or should be constant across all HUD programs that use the concept of a low-vacancy area.

2. *Separate enhanced voucher tenant screening.* As proposed, this rule would not revise the regulations concerning discretionary or required tenant screening at §§ 982.307, 982.552 and 982.553. As noted in this preamble, “The screening of families and decisions to deny admission to the program must be consistent with the PHA policy for screening regular admissions of families from the PHA waiting list.” HUD requests comment on whether this result is appropriate, or whether, to the contrary, this constitutes an unnecessary “rescreening” of tenants.

3. *Right to remain.* Proposed § 982.309(d)(2) states, “[t]he owner may

<sup>3</sup> Title III, section 327 of the Transportation, Treasury, Housing and Urban Development, The Judiciary, The District of Columbia, and Independent Agencies Appropriations Act, Public Law 109–115; 42 U.S.C. 1437f(d)(1)(B)(iii); 42 U.S.C. 1437f(o)(7)(D)); 42 U.S.C. 13662; and 42 U.S.C. 3535(o).

<sup>4</sup> 42 U.S.C. 13661–13664; 42 U.S.C. 3535(o).

not terminate the tenancy of a family that exercises its right to remain except as provided in § 982.310.” Section 982.310 includes a variety of provisions under which the owner may terminate tenancy. HUD seeks public comment on whether, in consideration of the right to remain under section 8(t) of the 1937 Act (42 U.S.C. 1437f(t)), the exception to the right to remain under § 982.310 (including any specific paragraphs under that section), should be removed, qualified or modified in some way, or made final as stated in this proposed rule.

## II. This Proposed Rule

This proposed rule would amend HUD’s regulations in 24 CFR part 982 that govern Section 8 Tenant-Based Assistance: Housing Choice Vouchers to codify HUD’s policy on enhanced vouchers. Currently, HUD’s policy is based on the statutory requirements, and summarized in guidance provided in PIH notices.<sup>5</sup>

**Definitions.** The proposed rule would add definitions for “enhanced voucher assistance,” “enhanced voucher housing assistance payment” and “Eligibility event” to the definitions in § 982.4. The definitions for “enhanced voucher assistance” and “eligibility event” essentially reflect the statutory requirements under section 8(t) of the 1937 Act (42 U.S.C. 1437f(t)), including the basic characteristics of an enhanced voucher, along with some explanation of what constitutes an eligibility event. The definition of “enhanced voucher housing assistance payment” refers to the term as used in § 982.505. Because the rule proposes to revise and reorganize § 982.515, the proposed rule would make technical amendments to the definitions of “Family rent to owner” and “Family share” to remove the references to specific paragraphs of currently codified § 982.515.

Section 982.4 of this rule cross-references the definition of “extremely low-income family” in 24 CFR part 5, subpart F. A general provision of the Consolidated Appropriations Act, 2014, Public Law 113–76, added a statutory definition of “extremely low-income families” at 42 U.S.C. 1437a(b)(2), and required that this new definition, which would amend HUD’s current regulatory

definition, be implemented by HUD via **Federal Register** notice followed by rulemaking with public comment (see Pub. L. 113–76, Division L, Title IV, sections 238 and 243). The implementing notice was published at 79 FR 35940 (June 25, 2014). A rule for public comment including this revision, entitled “Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs,” was published at 80 FR 423 (January 6, 2015).

**Determining adjusted per-unit cost.** Section 982.102 governs HUD’s determination of costs in allocating budget authority for renewals of expiring funding increments. Under § 982.102(e), as currently codified, HUD determines the adjusted per-unit cost based on data from the PHA’s most recent HUD-approved year-end statement. This proposed rule would update § 982.102(e)(1)(i) and (e)(3)(iii) to provide that HUD will use data from the PHA’s most recent validated Voucher Management System submission.

**Eligibility and Targeting Requirements.** The proposed rule would revise § 982.201, which addresses eligibility and targeting requirements, to include additional eligibility criteria (but not targeting requirements, which do not apply to enhanced voucher holders) in § 982.201(b)(1) for enhanced vouchers. As proposed to be amended, § 982.201(b)(1) would provide that eligible families include: Families, regardless of income, residing in projects with a project-based Section 8 contract that has expired and is renewed under section 515(c) of MAHRA and its implementing regulations, which may include families residing in projects under section 515(c)(3) of MAHRA (tenant-based assistance based on a rental assistance assessment plan as provided in section 515(c)(2) of MAHRA) and section 515(c)(4) of MAHRA (enhanced voucher assistance) (See notice PIH 2001–41 at pp. 19–20); low-income families residing in a project where the project-based assistance contract has expired and is not renewed (see section 524(d) of MAHRA, 42 U.S.C. 1437f note); certain low and moderate income families, as well as moderate income elderly or disabled families, where the mortgage insurance is voluntarily terminated or prepaid under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4113(f)), or where the project is preserved as affordable housing under 12 U.S.C. 1715z–1a(p), which addresses assistance for troubled multifamily housing projects and provides that “any

project that receives or has received assistance under this section and which is the subject of a transaction under which the project is preserved as affordable housing, as determined by the Secretary, shall be considered eligible low-income housing under section 229 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (12 U.S.C. 4119) for purposes of eligibility of residents of such project for enhanced voucher assistance provided under section 8(t) of the United States Housing Act of 1937 . . .”.

**PHA Approval of Assisted Tenancy.** The proposed rule would revise § 982.305(a)(5) to provide for an exception to the 40 percent of monthly adjusted income limit at the time the family initially receives HCV assistance, in the case of enhanced voucher assistance. (See notice PIH 2001–41 at p. 8.)

**Term of Assisted Tenancy.** The proposed rule would amend § 982.309 to add a new paragraph (d) that would provide that, absent repeated lease violation or other good cause, a family that receives an enhanced voucher has a right to remain in the project in which the family qualified for the voucher at the time of the eligibility event. This new paragraph (d) would implement the statutory requirement at section 8(t)(1)(B) of the 1937 Act (42 U.S.C. 1437f(t)(1)(B)), which provides that the assisted family may elect to remain in the same project in which the family was residing at the time of the eligibility event, which has been HUD’s policy to date. HUD plans to issue a tenancy addendum to be incorporated into the owner’s lease to reflect this right to remain under this new paragraph.

**Subsidy Standards.** The proposed rule would revise §§ 982.402(c) and (d) to incorporate cross-references to the proposed new enhanced voucher rules, particularly references to oversized units and the payment standard.

**Voucher Tenancy: Payment Standard in Restructured Multifamily Housing or in Housing Converted Under Certain Conversion Actions.** The proposed rule would revise § 982.504, concerning the payment standard for a family in a restructured subsidized multifamily project where tenant-based assistance is provided to the family pursuant to 24 CFR 402.421 when HUD has approved a restructuring plan and the participating administrative entity has approved the use of tenant-based assistance to provide continued assistance for such family. This section would also apply to conversion actions under other circumstances. Specifically, these would be owner opt-outs or non-

<sup>5</sup> PIH 2001–41 on Enhanced and Regular Housing Choice Vouchers for Housing Conversion Actions; PIH 2010–18 on PHA Determinations of Rent Reasonableness in the Housing Choice Voucher (HCV) Program—Comparable Unassisted Units; PIH 2011–46 on Determination of Rent Reasonableness in the Housing Choice Voucher Program; and PIH 2016–02 on Enhanced Voucher Requirements for Over-housed Families, all at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/public\\_indian\\_housing/publications/notices](http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/publications/notices).

renewals of Section 8 project-based contracts; owner prepayments of mortgages or voluntary termination of mortgage insurance on preservation-eligible properties; or where HUD takes an enforcement action against the owner, which in some cases may result in the family being eligible for the enhanced voucher payment standard. (See notice PIH 2001–41 at p. 1.) The payment standard as proposed in § 982.504(b)(2) is the gross rent for the family's unit, that is, the rent to owner plus the applicable PHA utility allowance for any tenant-supplied utilities. The rent must be reasonable as determined by the PHA under § 982.507.

The proposed changes would comply with MAHRA regarding projects that have a project-based assistance contract where the project is eligible for restructuring, the assistance is terminated, the contract is renewed as tenant based assistance, and the tenants who remain are eligible for enhanced vouchers (see section 515(c) of MAHRA) and, through reorganization of § 982.504, address housing converted under certain conversion actions, which result in families receiving enhanced vouchers. The proposed rule would revise paragraphs (a) and (b) of this section to comply with MAHRA. The payment standard for a family living in housing that has undergone certain other conversion actions would largely be addressed in a new paragraph (c). The heading of this section is also revised to clarify that it also addresses housing converted under certain conversion actions.

Section 982.504(a) would establish the events as a result of which families are eligible for enhanced voucher assistance.

New paragraph (b)(2) would establish the enhanced voucher payment standard, which would be the gross rent which must be reasonable, as determined by the PHA, based on comparable rents of private, unassisted units in the local area (comparability would be further defined in § 982.507(b) as proposed to be revised by this rule).

New paragraph (b)(3) would provide that if the rent is increased for an enhanced voucher family, the new gross rent shall be the payment standard for the unit provided such rent is determined reasonable.

New paragraph (b)(4) would codify HUD's policy regarding enhanced voucher families in oversized units (that is, a family living in a unit of a bedroom size greater than what the family qualifies for, as determined by the PHA under current § 982.402, which addresses subsidy standards).

Essentially, if the family is over-housed and wishes to remain at the project with enhanced voucher assistance, and an appropriate-sized unit becomes available, the family must move to the appropriate sized unit within 30 days. If the family wishes to stay in the larger unit, their assistance payment will be based on a regular voucher for the appropriate-sized unit and the family will have to pay the remainder of the gross rent. If there is no appropriate-sized unit, the family may remain in the larger unit at the enhanced voucher payment standard for the larger unit size until an appropriate-sized unit or smaller unit that is not smaller than the size unit for which the family qualifies under the PHA's subsidy standards becomes available, in which case the family must move to such unit. Similarly, if a family becomes over-housed due to a change in family size during the enhanced voucher tenancy, the family may remain in the unit at the enhanced voucher payment standard for the larger unit size until an appropriate-sized or smaller sized unit, as stated in the previous sentence becomes available, in which case the family must move within 30 days.

This proposed rule would add § 982.504(b)(4)(vi), which requires the owner of an assisted project to immediately inform the PHA and the over-housed family when an appropriate size unit or smaller size unit as stated in the previous paragraph becomes available in the project. If the owner does not do so, the owner can be subject to an enforcement action (see notice PIH 2016–02). The rent to owner can be reduced to the reasonable rent for the appropriate or smaller size unit.

*Rent to Owner: Reasonable Rent.* The proposed rule would amend paragraph (b) of § 982.507 to clarify what is meant by assisted units for comparability purposes. The proposed rule would provide that assisted units are units that are assisted under a Federal, State, or local government program, including Low-Income Housing Tax Credit assistance, and rent-controlled or restricted units except where the restricting law or court order applies to voucher participants. In these cases, the units are not used in the comparability analysis, because they are “assisted” units (§ 982.507(b)(1)).

Proposed § 982.507(b)(2) would also clarify what is meant by assisted units for comparability purposes for projects that undergo a housing conversion action. The proposed rule provides that assisted units include units in a property undergoing a housing conversion action occupied by tenants who, on the date of the eligibility event,

do not receive vouchers and where the owner chooses to continue charging below market rents to those families by offering lower rents, rent concessions, or other assistance to those families. (See notice PIH 2010–18 at pp. 2–3, 2011–46 at pp. 1–2.) The comparability analysis performed by the PHA must include the location, quality, size, type, and age of the unit and any amenities.

Proposed § 982.507(b)(3) would apply to unassisted units, that is, those not receiving any form of Federal, State, or local government assistance, but not to projects where the owner simply decides to charge below market rents. Rents for unassisted units must be considered when determining comparability under (b)(4).

Proposed § 982.507(b)(4) provides for comparability analysis, and is similar to currently codified § 982.507(b). The PHA must consider the location, quality, size, unit type, and age of the contract unit; and any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

*Decoupling transactions.* Section 982.511 of this proposed rule would add specificity regarding decoupling transactions. Section 236 of the National Housing Act, 12 U.S.C 1715z–1, authorizes decoupling transactions, where, although the mortgage under section 236 (mortgage insurance for rental or cooperative housing for low income families) is prepaid or refinanced, interest reduction payments (which reduce debt service) are retained and continued “if the project owner enters into such binding commitments as the Secretary may require” to continue to operate the project as low-income housing. In these decoupling transactions the 236 rent rules remain in effect by the terms of a use agreement. As such, where an owner voluntarily terminates the mortgage insurance on a Section 236 project or prepays the Section 236 mortgage in a preservation eligible Section 236 project, and the rent setting requirements of the Section 236 program are still applicable to the project, the enhanced voucher rent would be no greater than the HUD-approved basic rent for the 236 program.

*Family Share: Family Responsibility.* The proposed rule would amend § 982.515 to add a new paragraph specifying that the current prohibition in § 982.515 against the PHA using housing assistance payments or other program funds, including any administrative fee reserve, to pay the family share applies. The enhanced voucher housing assistance payment would be discussed in new § 982.505(e). As provided in section 8(t) of the 1937

Act (42 U.S.C. 1437f(t)), a family that was previously assisted under a project-based Section 8 contract on the date of the eligibility event, shall, under the enhanced voucher, pay no less than the dollar amount of the total tenant payment on that date. Similarly, a family living in the project that was assisted under the regular voucher program, and not living in a unit assisted under the project based contract, shall, with an enhanced voucher, pay no less than the dollar amount of the family share of rent and utilities on the date of the eligibility event.

A family residing in the project, but living in an unassisted unit (*i.e.*, not receiving assistance under either the Section 8 project based contract nor receiving assistance under the regular voucher program), if eligible for enhanced voucher assistance, shall pay no less than the dollar amount of the gross rent on the date of the eligibility event (minimum rent). A family assisted under the enhanced voucher program shall pay the enhanced voucher minimum rent, notwithstanding any other requirement of the voucher program, even if it means the family pays more than 40 percent of their adjusted income for rent, an amount which is prohibited for initial tenancy under the housing choice voucher program (see §§ 982.305(a)(5); 982.508, which would be revised to clarify this point in this proposed rule). This can occur, for example, if a family was paying for rent more than 40 percent of their adjusted income on the date of the eligibility event.

The proposed rule would provide under § 982.518(d) that if the gross income of the family declines significantly, the enhanced voucher minimum rent shall be revised to an amount calculated based on a percentage of current monthly adjusted income, which is the greater of 30 percent or the percentage of monthly adjusted income the family was paying on the date of the eligibility event. Once the minimum rent is changed to a percentage of income, it remains that way unless and until the family's income increases to an amount that the family's enhanced voucher minimum rent established using a percentage of income calculation would require the assisted family to pay an amount that is more than the greater of the family's original enhanced voucher minimum rent payment (established as of the date of the eligibility event) or 30 percent of the family's adjusted income. At such time, the family's enhanced voucher minimum rent shall be determined by the PHA in accordance with

§ 982.515(b)(1) using the dollar amount of the family's original enhanced voucher minimum rent. In no circumstance shall the family's enhanced voucher minimum rent be less than the amount established as of the date of the eligibility event.

Section 982.518 is revised to include provisions regarding the enhanced voucher minimum rent. The minimum rent under the enhanced voucher would be the amount of rent the family was paying on the date of the eligibility event even if it is more than the 40 percent statutory limitation on the amount of adjusted income a family can initially pay under the voucher program. A family that was residing in a project that has undergone a preservation prepayment on the date of the eligibility event, shall, under the enhanced voucher, pay no less than the dollar amount of the gross rent on the date of the eligibility event (minimum rent). Similarly, a family living in the preservation eligible project on the date of the eligibility event with assistance under the regular voucher program may receive enhanced voucher assistance and shall pay no less than the enhanced voucher minimum rent

*Regular Tenancy: How to Calculate Housing Assistance Payment.* The proposed rule would address the calculation of the enhanced voucher housing assistance payment in proposed new § 982.505(e), and would add a new § 982.518 to address the enhanced voucher minimum rent. By codifying existing policy and procedures concerning enhanced vouchers, HUD provides PHAs, eligible families, and interested members of the public with a more convenient location to find these requirements.

Through this proposed rule, HUD is not making significant changes to the treatment of enhanced vouchers as has been carried out to date. Much of what is discussed in this preamble is based on statutory requirements and current HUD policy, but HUD welcomes comment on where such requirements may need further clarification or elaboration.

### III. Findings and Certifications

#### *Unfunded Mandates Reform Act*

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

private sector within the meaning of UMRA.

#### *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 proposed rule codifies HUD's existing policy on eligibility for and requirements pertaining to enhanced vouchers, which are largely based on statutory requirements, and with which public housing agencies area already familiar. As noted in the preamble, this proposed rule is not significantly revising treatment to date of enhanced vouchers. Therefore, the undersigned certifies that this rule will not have a significant impact on a substantial number of small entities.

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

#### *Environmental Impact*

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern, or regulate, real property acquisition, disposition, leasing (other than tenant-based assistance), rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

#### *Executive Order 13132, Federalism*

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

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for 24 CFR part 982 is 14.871.

List of Subjects in 24 CFR 982

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

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR part 982 as follows:

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

1. The authority statement for part 982 continues to read as follows:

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

2. Revise § 982.1 to read as follows:

§ 982.1 Programs: purpose and structure.

(a) General description. In the HUD Housing Choice Voucher Program (HCV Program), HUD pays rental subsidies so eligible families can afford decent, safe and sanitary housing. The HCV Program is generally administered by State or local governmental entities called public housing agencies (PHAs). HUD provides housing assistance funds to the PHA. HUD also provides funds for PHA administration of the program.

(b) Tenant-based and project-based assistance. HCV Program assistance may be “tenant-based” or “project-based.” In the project-based program, rental assistance is paid for families who live in specific housing developments or units (see 24 CFR part 983). With tenant-based assistance, the assisted unit is selected by the family. The family may rent a unit anywhere in the United States in the jurisdiction of a PHA that runs an HCV Program.

(c) Tenant-based assistance. (1) To receive tenant-based assistance, the family selects a suitable unit. A PHA may not approve a tenancy unless the unit meets program housing quality standards, and the rent is reasonable.

(2) After approving the tenancy, the PHA enters into a contract to make rental subsidy payments to the owner to subsidize occupancy by the family. The PHA contract with the owner only covers a single unit and a specific assisted family. If the family moves out of the leased unit, the contract with the owner terminates. The family may move to another unit with continued

assistance so long as the family is complying with program requirements.

(3) The rental subsidy is determined by a formula. The subsidy is based on a local “payment standard” that reflects the cost to lease a unit in the local housing market. If the rent is less than the payment standard, the family generally pays 30 percent of adjusted monthly income for rent. If the rent is more than the payment standard, the family pays a larger share of the rent.

3. Revise § 982.2 to read as follows:

§ 982.2 Applicability.

Part 982 is a unified statement of program requirements for the tenant-based HCV Program under Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f).

4. Amend § 982.4 to:

- (a) Revise paragraph (a)(2);
(b) In paragraph (b), to add the definitions of “Eligibility event,” “Enhanced voucher assistance,” and “Enhanced voucher housing assistance payment” in alphabetical order; to remove the definition of “Merger date,” and to revise the definitions of “Family rent to owner” and “Family share,” to read as follows:

§ 982.4 Definitions.

(a) \* \* \*
(2) Definitions concerning family income and rent. The terms “adjusted income,” “annual income,” “extremely low income family,” “total tenant payment,” “utility allowance,” and “welfare assistance” are defined in part 5, subpart F of this title.

(b) \* \* \*
\* \* \* \* \*
Eligibility event. A housing conversion action as to which Federal law requires the provision of enhanced voucher assistance to affected tenants who are eligible for such assistance, subject to the availability of appropriations. Eligibility events include the prepayment of the mortgage or the voluntary termination of the mortgage insurance contract by the owner (such as a preservation prepayment under the Low-Income Housing Preservation and Resident Homeownership Act, 12 U.S.C. 4101 et seq. (LIHPRA)); the termination or expiration of the Section 8 project-based HAP contract (owner opt-out) (other than Project Based Vouchers, and Section 8 Moderate Rehabilitation SRO HAP contracts as authorized by title IV of the McKinney-Vento Homeless Assistance Act); or a transaction that preserves the project as affordable housing under sections 515(c)(3) and (4) and 524(d) of the Multifamily Assisted Housing Reform and Affordability Act

of 1997 (42 U.S.C. 1437f note) (MAHRA), and section 201(p) of the Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z-1a(p)(Flexible Subsidy Program)). In some cases, enforcement actions by HUD may be eligibility events.

Enhanced voucher assistance. Rental assistance that is authorized under section 8(t) of the 1937 Act (42 U.S.C. 1437f(t)) and provided to families residing in certain projects on the date of an eligibility event who elect to remain in the project. The characteristics of enhanced voucher assistance are:

(1) The family pays as their family share no less than the amount the family was paying for rent on the date of the eligibility event; and

(2) If, while the family continues to reside in the project, the rent for the project exceeds the regular Section 8 tenant-based payment standard, the amount of rental assistance provided on behalf of the family shall be determined using a payment standard that is equal to the gross rent for the dwelling unit, subject to the limitation of reasonableness in relation to rents of comparable unassisted units in the local private market (section 8(o)(10)(A) of the 1937 Act (42 U.S.C. 1437f(o)(10)(A))) and other limits imposed by HUD. Families who receive enhanced vouchers are entitled to this potentially higher payment standard only as long as they remain in the unit.

Enhanced voucher housing assistance payment. The gross rent for a unit occupied by a family receiving enhanced voucher assistance minus the higher of the enhanced voucher minimum rent or the total tenant payment.

Family rent to owner. In the HCV Program, the portion of rent to owner paid by the family. For calculation of family rent to owner, see § 982.515.

Family share. The portion of rent and utilities paid by the family. For calculation of family share, see § 982.515.

- 5. Amend § 982.102 to:
(a) Revise paragraph (e)(1)(i) to read as follows;
(b) Revise paragraph (e)(3)(iii) to read as follows:

§ 982.102 Allocation of budget authority for renewal of expiring consolidated ACC funding increments.

- (e) \* \* \*
(1) Step 1: Determining monthly program expenditure – (i) Use of most

recent validated data submitted to the Voucher Management System. HUD will determine the PHA's monthly per unit program expenditure for the HCV Program (including project-based assistance) under the consolidated ACC with HUD using data from the PHA's most recent validated Voucher Management System submission.

\* \* \*

(3) \* \* \*

(iii) *Use of annual adjustment factors in effect subsequent to most recent validated data submitted to the Voucher Management System.* HUD will use the Annual Adjustment Factors in effect during the time period subsequent to the time covered by the most recent validated data submitted to the Voucher Management System and the time of the processing of the contract funding increment to be renewed.

\* \* \* \* \*

\* \* \*

■ 6. Amend § 982.152 to remove paragraph (c) and redesignate paragraph (d) as (c).

■ 7. Amend § 982.201 to:

■ (a) Revise paragraph (b)(1)(ii) to read as follows; and

■ (b) Add paragraphs (b)(1)(vii) and (viii).

The revision and addition read as follows:

**§ 982.201 Eligibility and Targeting.**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(ii) A low-income family that is "continuously assisted" under the 1937 Housing Act (which includes a low-income family residing in an assisted unit that qualifies for enhanced voucher assistance due to the expiration of a section 8 project-based HAP contract pursuant to section 524(d) of MAHRA);

\* \* \* \* \*

(vii) A family (regardless of income) residing in an assisted unit who qualifies for enhanced voucher assistance due to the expiration of the Section 8 project-based HAP contract and its renewal pursuant to section 515(c) of MAHRA and the implementing regulation; and

(viii) A low-income family, or a moderate-income family residing in a low-vacancy area, or a moderate-income elderly or disabled family who qualifies for enhanced voucher assistance due to the prepayment of the mortgage or the voluntary termination of the mortgage insurance contract pursuant to sections 223(f) and 229 of the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) ((12 U.S.C. 4113(f) and 12 U.S.C. 4119,

respectively, or a transaction under which the project is preserved as affordable housing pursuant to section 201(p) of the Housing and Community Development Amendments of 1978, (12 U.S.C. 1715z-1a(p)).

\* \* \* \* \*

■ 8. Amend § 982.305 to revise paragraph (a)(5) to read as follows:

**§ 982.305 PHA approval of assisted tenancy.**

(a) \* \* \*

(5) At the time a family initially receives tenant-based assistance for occupancy of a dwelling unit, and where the gross rent of the unit exceeds the applicable payment standard for the family, the family share does not exceed 40 percent of the family's monthly adjusted income, except in the case where the family is eligible for, and is receiving, enhanced voucher assistance.

\* \* \* \* \*

■ 9. Amend § 982.309 to add paragraph (d) to read as follows:

**§ 982.309 Term of assisted tenancy.**

\* \* \* \* \*

(d) *Right to remain for enhanced voucher tenancy.* (1) A family that receives an enhanced voucher has the right to remain in the project in which the family qualified for enhanced voucher assistance at the time of the eligibility event for as long as the units are used for rental housing and are otherwise eligible for voucher assistance.

(2) The owner may not terminate the tenancy of a family that exercises its right to remain except as provided in § 982.310.

■ 10. Amend § 982.402 to revise paragraphs (c) and (d) to read as follows:

**§ 982.402 Subsidy standards.**

\* \* \* \* \*

(c) *Effect of family unit size on maximum subsidy in HCV Program.* The family unit size as determined for a family under the PHA subsidy standard is used to determine the maximum subsidy for a family assisted in the HCV Program. The PHA establishes payment standards by number of bedrooms. Except for an enhanced voucher family (see § 982.504(b)), the payment standard amount for a family shall be the lower of:

(1) The payment standard amount for the family unit size; or

(2) The payment standard amount for the unit size of the unit leased by the family.

(3) HCV Program. For a voucher tenancy, the PHA establishes payment standards by number of bedrooms. The payment standard for the family must be the lower of:

(i) The payment standard for the family unit size; or

(ii) The payment standard for the unit size leased by the family.

(d) *Size of unit occupied by family.* (1) The family may lease an otherwise acceptable dwelling unit with fewer bedrooms than the family unit size. However, the dwelling unit shall meet the applicable HQS space requirements.

(2) Except for an enhanced voucher family (see § 982.504), the family may lease an otherwise acceptable dwelling unit with more bedrooms than the family unit size, provided the family would not be required to initially pay more than 40 percent of adjusted monthly income as the family share. However, utility allowances must follow § 982.517(d).

■ 11. Revise § 982.504 to read as follows:

**§ 982.504 Payment standard for family in restructured subsidized multifamily project, or in housing converted under certain conversion actions.**

(a) *Restructured projects.* This section applies to restructured subsidized multifamily projects where HCV assistance is provided to a family pursuant to 24 CFR 401.421 when HUD has approved a restructuring plan, and the participating administrative entity has approved the use of tenant-based assistance to provide continued assistance for such family. This section also applies to conversion actions involving:

(1) Owner opt-outs or owner non-renewal of a section 8 project-based contract;

(2) Prepayments of the owner's mortgage;

(3) Voluntary terminations of mortgage insurance for a preservation-eligible property; and

(4) Certain HUD actions against the owner, in cases where such actions result in a family being eligible for the enhanced voucher payment standard.

(b) *Payment standard for family in restructured subsidized multifamily project and in housing converted under certain housing conversion actions.* (1) *Enhanced voucher assistance.* This paragraph (b) of this section applies to families receiving enhanced voucher assistance under the HCV Program.

(i) Enhanced voucher assistance is provided to an eligible family as a result of an eligibility event.

(ii) In order to receive enhanced voucher assistance, an eligible family must remain in the project in which the family qualified for enhanced voucher assistance and lease a unit for which the family qualifies in accordance with HUD guidance;

(iii) If the family chooses to move from the project in which the family qualified for enhanced voucher assistance, the payment standard is determined in accordance with § 982.503. If the family moves from the project at any time, this § 982.504 does not apply.

(2) *Enhanced voucher payment standard.* The payment standard for a family that remains in the project in which they qualified for enhanced voucher assistance at the time of the eligibility event is the gross rent (rent to owner plus the applicable PHA utility allowance for any tenant-supplied utilities) for the family's unit. The rent must be reasonable as determined by the PHA in accordance with § 982.507.

(3) *Subsequent rent increases.* If an owner subsequently raises the rent for an enhanced voucher family in accordance with the lease, State and local law, and HCV Program regulations (including rent reasonableness requirements under § 982.507), the new gross rent shall be the payment standard for the unit.

(4) *Enhanced voucher family residing in an oversized unit.* (i) If the bedroom size of the family's unit exceeds the number of bedrooms for which the family qualifies in accordance with § 982.402, the family is residing in an oversized unit, and the family is an over-housed family.

(ii) If the family wishes to remain at the project with enhanced voucher assistance, the over-housed family must move to an appropriate size unit in the project (the unit size is the same size as the number of bedrooms for which the family qualifies under the PHA subsidy standards) if one is available and the unit must meet all HCV Program requirements. If the family moves to the appropriate size unit, the payment standard for that unit is determined in accordance with paragraph (b)(2) of this section.

(iii) If there are no appropriate size units available at the project at the time of the housing conversion action, the family may continue to reside in the oversized unit and the payment standard shall be determined based on the gross rent for the oversized unit in accordance with paragraph (b)(2) of this section except that if an appropriate size unit is not available or does not physically exist at the project, but a unit is available that is smaller than the family's current unit but not smaller than the appropriate size unit for which the family qualifies under the PHA subsidy standards, the family must move to the smaller bedroom size unit within 30 days, and the payment standard shall be determined based on

the gross rent for the smaller bedroom size unit in accordance with paragraph (b)(2) of this section.

(iv) If an appropriate size unit or smaller bedroom size unit as described in paragraph (b)(4)(iii) subsequently becomes available, the family residing in the oversized unit must move to the appropriate size unit or the smaller bedroom size unit as described in paragraph (b)(4)(iii), within 30 days, and the payment standard shall be determined based on the gross rent for the appropriate bedroom size or the smaller bedroom size unit in accordance with paragraph (b)(2) of this section.

(v) If the family refuses to move to an appropriate size unit or a smaller bedroom size unit as described in paragraph (b)(4)(iii) of this section and one becomes available at the project, the payment standard is determined in accordance with § 982.402(c)(1), that is, the payment standard amount for the family unit size for a regular voucher holder under § 982.503.

(vi) When an appropriate size unit or a smaller size unit as described in paragraph (b)(4)(iii) of this section becomes available in the project, the owner must immediately inform the PHA and the family. If the owner leases an appropriate size unit or a smaller bedroom size unit as described in paragraph (b)(4)(iii) without notifying the PHA and the over-housed family, an enforcement action may be taken against the owner and the PHA shall calculate the housing assistance payment on behalf of the over-housed family in accordance with 982.505(b) and the rent to owner shall not exceed the reasonable rent for the appropriate unit size or the smaller bedroom size unit as described in paragraph (b)(4)(iii). The family share is determined in accordance with § 982.515.

(vii) If a decrease in family size subsequently occurs during an enhanced voucher tenancy, causing the family to occupy an oversized unit, the payment standard for the unit is calculated based on the gross rent for the oversized unit and in accordance with paragraph (b)(2) of this section until such time an appropriate size unit, or a smaller size unit as described in paragraph (b)(4)(iii) of this section, becomes available.

■ 12. Amend § 982.505 to:

- (a) Revise paragraph (b);
- (b) Revise paragraphs (c)(1) introductory text and (c)(2) to read as follows; and
- (c) Add paragraph (e).

The revisions and addition read as follows:

**§ 982.505 How to calculate housing assistance payment.**

\* \* \* \* \*

(b) *Amount of monthly housing assistance payment.* (1) *Regular voucher tenancy.* The PHA shall pay a monthly housing assistance payment on behalf of the family that is equal to the lower of:

- (i) The payment standard for the family minus the total tenant payment; or
- (ii) The gross rent minus the total tenant payment.

(2) *Enhanced voucher tenancy.* The PHA shall pay a monthly housing assistance payment on behalf of the family that is equal to the enhanced voucher payment standard (see § 982.504(b)(2)) minus the higher of:

- (i) The total tenant payment; or
- (ii) The enhanced voucher minimum rent as determined in accordance with § 982.518.

(c) *Payment standard for family.* (1) Except as provided in § 982.504(b), the payment standard for the family is the lower of:

\* \* \* \* \*

(2) If the PHA has established a separate payment standard amount for a designated part of an FMR area in accordance with § 982.503 (including an exception payment standard amount as determined in accordance with § 982.503(b)(2) and § 982.503(c)), and the dwelling unit is located in such designated part, the PHA must use the appropriate payment standard amount for such designated part to calculate the payment standard for the family. Where § 982.504(b) does not apply, the payment standard for the family shall be calculated in accordance with this paragraph and paragraph (c)(1) of this section.

\* \* \* \* \*

(e) *Enhanced voucher housing assistance payment.* Regardless of whether the owner's gross rent after the eligibility event exceeds the normally applicable PHA voucher payment standard amount, the housing assistance payment for a family receiving enhanced voucher assistance is equal to the gross rent for the unit (provided such rent is reasonable) minus the higher of total tenant payment or the enhanced voucher minimum rent (see § 982.518).

■ 13. Amend § 982.507 to revise paragraph (b), to read as follows:

**§ 982.507 Rent to owner: Reasonable rent.**

\* \* \* \* \*

(b) *Comparability*—(1) *Assisted units.* Assisted units include units that are assisted under a Federal, State, or local government program, including Low-

Income Housing Tax Credit assistance. Units where rents and/or rent increases are controlled or restricted by law or a court order are assisted units for purposes of determining rent comparability except in the case where such law or court order applies to HCV Program participants. With the exception of units described in paragraph (b)(2) of this section, assisted units do not include units for which the owner has simply decided to charge rents that are below what other tenants are charged and below what the market could actually bear. Rents for assisted units must not be considered when determining comparability.

(2) *Assisted units in projects that undergo a housing conversion action.* Units in a property undergoing a housing conversion action occupied by tenants who, on the date of the eligibility event, do not receive vouchers are considered assisted if the owner of the project continues to offer and accept below market rent or offers other rent concessions to the impacted families. Owners, who choose to charge such lower rents to impacted families, must provide written notification to the PHA and other required documentation in accordance with HUD guidance.

(3) *Unassisted units.* Unassisted units do not receive any form of Federal, State, or local government assistance including units where rents and/or rent increases are controlled or restricted by law or a court order. Units for which the owner has simply decided to charge rents that are below what other tenants are charged and below what the market could actually bear are unassisted for purposes of determining comparability. Rents for unassisted units must be considered when determining comparability in accordance with paragraph (b)(4) of this section.

(4) *Comparability analysis.* The PHA must determine whether the rent to owner is a reasonable rent in comparison to rent for other comparable unassisted units. To make this determination, the PHA must consider factors such as:

- (i) The location, quality, size, unit type, and age of the contract unit; and
- (ii) Any amenities, housing services, maintenance and utilities to be provided by the owner in accordance with the lease.

\* \* \* \* \*

■ 14. Revise § 982.508 to read as follows:

**§ 982.508 Maximum family share at initial occupancy.**

At the time the PHA approves a tenancy for initial occupancy of a dwelling unit by a family with tenant-

based assistance under the program, and where the gross rent of the unit exceeds the applicable payment standard for the family, except in a case where the family is eligible for and receives enhanced voucher assistance, the family share must not exceed 40 percent of the family's adjusted monthly income. The determination of adjusted monthly income must be based on verification information received by the PHA no earlier than 60 days before the date that a PHA issues a voucher to the family.

- 15. Add § 982.511 to read as follows:

**§ 982.511 Rent to Owner: Decoupling Transactions.**

(a) In decoupling transactions in the section 236 program, authorized under section 236 of the National Housing Act, 12 U.S.C. 1715z-1, the rent to owner shall be no greater than the HUD-approved basic rent for the section 236 program.

(b) The rent to owner shall be determined in accordance with section 236 program requirements. This determination is not subject to the prohibition against increasing the rent to owner during the initial lease term (see § 982.309).

- 16. Revise § 982.515 to read as follows:

**§ 982.515 Family share: Family responsibility.**

(a) *Regular and enhanced voucher tenancy.* (1) The family share is calculated by subtracting the amount of the housing assistance payment from the gross rent.

(2) The family rent to owner is calculated by subtracting the amount of the housing assistance payment to the owner from the rent to owner.

(3) The PHA may not use housing assistance payments or other program funds (including any administrative fee reserve) to pay any part of the family share, including the family rent to owner. Payment of the whole family share is the responsibility of the family.

(b) *Enhanced voucher tenancy and family responsibility.* The prohibition in § 982.515(a)(3) also applies to enhanced vouchers.

- 17. Add § 982.518 to read as follows:

**§ 982.518 Enhanced voucher minimum rent.**

(a) A family receiving enhanced voucher assistance shall pay for rent no less than the rent the family was paying on the date of the eligibility event, as follows:

(1) A family previously assisted under a Section 8 project-based HAP contract shall pay no less than the dollar amount of the total tenant payment on the date of the eligibility event;

(2) A family previously assisted under the HCV Program shall pay no less than the dollar amount of the family share of rent and utilities on the date of the eligibility event. The voucher family may choose not to accept the enhanced voucher assistance, in which case all the regular voucher rules apply, regardless of whether the family chooses to remain at the property;

(3) A family not previously assisted under a Section 8 project-based or tenant-based HAP contract shall pay no less than the dollar amount of the gross rent the family was paying on the date of the eligibility event. The PHA utility allowance is used to calculate the gross rent on the date of the eligibility event if all utilities were not included in the rent.

(b) A family receiving enhanced voucher assistance shall pay the enhanced voucher minimum rent, notwithstanding any other requirement of the HCV Program. For example, if the enhanced voucher minimum rent exceeds 40 percent of the family's monthly adjusted income, a family shall still pay at least the enhanced voucher minimum rent, and the restriction on the initial family contribution under § 982.508 is not applicable.

(c) The enhanced voucher minimum rent requirement remains in effect for a family as long as the family remains at the property in which they qualified for enhanced voucher assistance, but may be revised in accordance with paragraph (d) of this section.

(d) If the gross income of the family receiving enhanced voucher assistance subsequently declines to a significant extent, in accordance with HUD guidance, the enhanced voucher minimum rent shall be revised to an amount calculated based on a percentage of current monthly adjusted income, provided that:

(1) The percentage used in this calculation is the greatest of: 30 percent of monthly adjusted income; or the percentage of monthly adjusted income paid by the family for rent (including the utility allowance for any tenant-paid utilities) on the date of the eligibility event;

(2) After the minimum rent is changed from a dollar amount to a percentage of income calculation, the enhanced voucher minimum rent for the family remains that specific percentage of income and will not revert to a dollar amount, unless and until the family's income increases to an amount whereby the family's enhanced voucher minimum rent established by a percentage of income calculation would require the assisted family to pay an amount equaling more than the greater

of the family's original enhanced voucher minimum rent payment (established as of the date of the eligibility event) or 30 percent of the family's adjusted income based on such increase. At such time, the family's enhanced voucher minimum rent shall be determined by the PHA using the dollar amount of the family's original enhanced voucher minimum rent. The enhanced voucher holder's family share shall be determined in accordance with § 982.515(a). In no circumstance shall the family's enhanced voucher minimum rent be less than the amount established as of the date of the eligibility event.

Dated: August 29, 2016.

**Lourdes Castro Ramírez,**

*Principal Deputy Assistant Secretary, Office of Public and Indian Housing.*

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 36

RIN 2900-AP32

#### Loan Guaranty Vendee Loan Fees

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to amend the Department of Veterans Affairs (VA) Loan Guaranty Service (LGY) regulations to establish reasonable fees that VA may charge in connection with the origination and servicing of vendee loans made by VA. Fees proposed in this rulemaking are consistent with those charged in the private mortgage industry, and such fees would help VA to ensure the sustainability of this vendee loan program. The loans that would be subject to the fees are not veterans' benefits. This rule would also ensure that all direct and vendee loans made by the Secretary are safe harbor qualified mortgages.

**DATES:** Comments must be received by VA on or before December 27, 2016.

**ADDRESSES:** Written comments may be submitted through [www.Regulations.gov](http://www.Regulations.gov); by mail or hand-delivery to Director, Regulation Policy and Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in response to "RIN 2900-AP32—Loan Guaranty Vendee Loan Fees." Copies of comments received

will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov).

**FOR FURTHER INFORMATION CONTACT:**

Andrew Trevaayne, Assistant Director for Loan and Property Management (261), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632-8795. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** This document proposes to amend VA regulations to establish reasonable fees in connection with loans made by VA, commonly referred to as vendee loans. The proposed fees associated with vendee loans are standard in the mortgage industry. The vendee loans that would be subject to the fees are not veterans' benefits and are available to any purchasers, including investors, who qualify for the loan.

Specifically, this rulemaking would permit VA to establish a fee to help cover costs associated with loan origination. The proposed rule would also permit certain reasonable fees to be charged following loan origination, during loan servicing. Fees permitted would be those charged for ad hoc services performed at the borrower's request or for the borrower's benefit, as well as standard fees specified in loan instruments. Lastly, third-party fees, those not charged by VA, would be included in this proposed rule solely to clarify for borrowers the various costs that a borrower may incur when obtaining a vendee loan.

#### Vendee Loans

When a holder forecloses a VA-guaranteed loan, the holder has the option, pursuant to 38 U.S.C. 3732 and 3720, of conveying the foreclosed property to the Secretary of Veterans Affairs (the Secretary). For properties VA acquires this way, VA sells them as a salvage operation and deposits the sales proceeds into the Veterans Housing Benefit Program Fund (VHBPF), as required by 38 U.S.C. 3722, to help offset the housing operation costs of the Home Loan Guaranty Program.

In addition to selling properties as part of the salvage operation, the Secretary has authority under 38 U.S.C.

3720 and 3733 to finance the sales upon such terms as the Secretary determines reasonable. VA refers to loans made pursuant to these provisions as vendee loans. The loans are not classified as veterans' benefits and are available to any purchaser VA determines creditworthy and whose bid is awarded a sales contract. Purchasers can be individuals or corporations, and the properties can be purchased as owner-occupied residences or as investments. Additionally, the Secretary may make vendee loans to certain entities pursuant to 38 U.S.C. 2041 for the purpose of assisting homeless veterans and their families acquire shelter.

Under 38 U.S.C. 3733(a)(4), vendee loans may generally be made for up to 95 percent of the purchase price of the property. A vendee loan may exceed 95 percent of the purchase price to the extent the Secretary determines necessary to competitively market the property. A vendee loan may also exceed 95 percent of the purchase price in instances where the Secretary includes, as part of the vendee loan, an amount to be used for the purpose of rehabilitating such property. Additionally, 38 U.S.C. 3733(a)(6) provides that the Secretary shall make a vendee loan at an interest rate that is lower than the prevailing mortgage market interest rate in areas where, and to the extent the Secretary determines, in light of prevailing conditions in the real estate market involved, that such lower interest rate is necessary in order to market the property competitively and is in the interest of the long-term stability and solvency of the VHBPF. These provisions demonstrate that this program is to be competitively marketed to borrowers so long as it is financially sustainable. In fiscal years (FYs) 2011 and 2012, the most recent period when VA made direct loans, VA sold, on average, 175 real-estate owned (REO) properties per month with vendee financing, with an average loan amount of \$114,925.

Vendee financing is not a veterans' benefit; rather, it is a competitive lending program with the primary goal of providing financing to help VA dispose of its REO properties. Vendee loans enable VA to sell more of its properties and to sell them quicker. Nevertheless, this program helps veterans by contributing to the long-term viability of the VHBPF, as the principal and interest resulting from repayment of vendee loans are deposited into the VHBPF to help offset the housing operation costs of the Home Loan Guaranty Program.