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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 943

[Docket No. FR-5578-P-01]

RIN 2577-AC89

Streamlining Requirements Applicable to Formation of Consortia by Public Housing Agencies

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

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise HUD's public housing agency (PHA) consortium regulations. These regulations provide the procedures by which PHAs may choose to administer their public housing and Section 8 programs. The changes proposed are intended to increase administrative efficiencies associated with forming a consortium and to help ensure maximum family choice in locating suitable housing. The proposed rule focuses mainly on establishing a new category of consortia for administration of the Section 8 Housing Choice Voucher (HCV) program. This type of consortium would be comprised of multiple PHAs that would become a single PHA, with a single jurisdiction and a single set of reporting and audit requirements, for purposes of administering the Section 8 HCV program. This type of consortium would be in addition to the consortium structure established in current consortium regulations which the Department is referring to as multiple-ACC consortium in this proposed rule. The proposed rule would also revise the categories of Section 8 programs eligible to be administered under a consortium, and establish new requirements regarding the timeframes for the establishment and dissolution of a consortium. Further, HUD has taken the opportunity

afforded by this proposed rule to make several technical, nonsubstantive changes to improve the clarity and organization of the consortia regulations. HUD has also taken the opportunity afforded by this proposed rule to amend the definition of “public housing agency” to be consistent with amendments to the United States Housing Act of 1937 (1937 Act), as provided for in the Consolidated Appropriations Act of 2014.

DATES: Comments Due Date: **[INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, 451 7th Street, SW, Room 10276, Department of Housing and Urban Development, 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 the General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276, Washington, DC 20410-0001.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at 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 website 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 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number). Copies of all comments submitted are available for inspection and download at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Michael Dennis, Director, Office of Housing Voucher Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW, Room 4228, Washington, DC 20410-5000; telephone number 202-402-3882 (this is not a toll-free number). Persons with hearing or speech impairments may access these numbers through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of Regulatory Action

HUD's current public housing consortium regulation poses hurdles to forming consortia. Through this proposed rulemaking, HUD is modifying its regulations to encourage PHAs to form

consortia, as doing so enables PHAs to combine administrative functions to increase efficiency and effectiveness, may benefit smaller PHAs with economies-of-scale, and improves opportunities for housing choices. In particular, this rule seeks to increase administrative efficiencies associated with forming a consortium by improving the process for how consortia are formed, structured and dissolved. In addition, this rule supports PHAs mission to provide more suitable housing options for participants by allowing PHAs to operate as one entity throughout a region, as an incentive to PHAs to form consortia.

B. Summary of the Major Provisions of the Regulatory Action in Question

This rule would establish a new category of consortia for administration of the Section 8 HCV program, called the single-Annual Contributions Contract (ACC) consortium. The proposed rule clarifies that PHAs are not precluded from joining a consortium solely because the PHA is the owner of a unit or project receiving rental assistance under section 8(o) of the 1937 Act (42 U.S.C. 1437f). The proposed rule describes how and when consortia can be formed and dissolved, the requirement that a single 5-Year Plan and Annual Plan must be submitted as a condition for formation of the consortium, and fiscal year end requirements that would be applicable to single-ACC and multiple-ACC consortia.

Although the proposed rule is designed to encourage formation of consortia, the proposed rule would impose certain limitations. For example, Moving-to-Work (MTW) agencies may not form or join single-ACC or multiple-ACC consortia because MTW agencies operate under a different set of statutory and regulatory requirements.

II. Background

The 1937 Act (42 U.S.C. 1437 et seq.) authorizes HUD's public housing and assisted housing programs, including the Section 8 HCV program. Section 13 of the 1937 Act (42 U.S.C.

1437k)¹ authorizes “any 2 or more” public housing agencies (PHAs) to form consortia “for the purpose of administering any or all of the housing programs” of those PHAs. HUD’s regulations implementing section 13 of the 1937 Act are codified at 24 CFR part 943.² The part 943 regulations describe the programs—specifically, public housing and the Section 8 programs—for which the housing providers participating in those programs are eligible to form consortia. The regulations also establish the minimum requirements relating to the formation and operation of a consortium and the minimum requirements of consortium agreements.

A consortium enables PHAs to combine administrative functions to increase efficiency and effectiveness, may benefit smaller PHAs with economies-of-scale, and improves opportunities for greater resident housing choice in the same region.

Through this proposed rule, HUD is seeking to improve the process on how consortia are formed, structured, and dissolved. This proposed rule is also intended to encourage more PHAs to form consortia, which allows ultimately HUD and PHAs to provide more effective and efficient housing assistance to low-income families. This proposed rule has two primary goals: (1) increase administrative efficiencies associated with forming a consortium; and (2) facilitate maximum resident choice in locating suitable housing within a region through consortia, without the administrative burden associated with the portability process and other policies.

III. Summary of Proposed Changes to the Consortia of Public Housing Agencies

This section of the preamble highlights key features of the proposed revisions to the consortium regulations.

¹ As amended by section 515 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276, 112 Stat. 2549, approved January 27, 1998).

² HUD’s final rule establishing 24 CFR part 943 was published on November 29, 2000 (65 FR 71204).

1. Change in definition of “public housing agency.” Section 212 of the Consolidated Appropriations Act of 2014 (Pub. L. 113-76, 128 Stat. 5, approved January 17, 2014) amends the definition of “public housing agency” at subparagraph (A) of section 3(b)(6) of the 1937 Act (42 U.S.C. 1437a(b)(6)(A)) to include in its general definition “a consortium of such entities or bodies as approved by the Secretary.”³ As a result, HUD is taking the opportunity afforded by this proposed rule to amend the definition of “public housing agency” in its regulations at 24 CFR 5.100 to be consistent with the statutory definition of “public housing agency.”

2. Single-Annual Contributions Contract consortium for the Section 8 HCV program. Section 3(b)(6)(B) of the 1937 Act (42 U.S.C. 1437a(b)(6)) defines the term “public housing agency” to include a consortium of PHAs that HUD “determines has the capacity and capability to administer” the Section 8 HCV program (including project-based vouchers and project-based certificates). Under the statutory language, such a consortium is a separate legal entity and a single PHA for purposes of administering the Section 8 HCV program. HUD is proposing to implement the statutory authority granted under section 3(b)(6)(B) of the 1937 Act by establishing a new category of consortium for the administration of the Section 8 HCV program, to be known as a single-ACC consortium.

While enactment of Section 212 of the Consolidated Appropriations Act of 2014 (as described in Section III.1 above) affords the opportunity to extend single-ACC consortia beyond the Section 8 HCV program, the Department has determined to move forward with publication of this proposed rule, which applies single-ACC consortia formation only to the Section 8 HCV

³ Section 3(b)(6)(B)(i) of the 1937 Act already included “a consortia of public housing agencies that the Secretary determines has the capacity and capability to administer a program for assistance under such section in an efficient manner” in the definition of “public housing agency” for the Section 8 program. As a result of section 212 of the Consolidated Appropriations Act of 2014, inclusion of consortia in the definition of a public housing agency will no longer be limited solely to the Section 8 program.

program, so as to not further delay the opportunity for PHAs that desire to enter into this consortia type for their Section 8 HCV programs. However, in the future, the Department plans to further revise consortia regulations to allow single-ACC consortia formations, where applicable, beyond the section 8 HCV program. The decision on whether to form a single-ACC consortium is voluntary and PHAs may elect to form a multiple-ACC or a single-ACC consortium for administration of their Section 8 HCV programs.

The jurisdiction for the single-ACC consortium includes all member PHA jurisdictions. For purposes of Section 8 HCV program administration, jurisdictional boundaries between individual consortium members will cease to exist during the term of the single-ACC consortium. Accordingly, the state and local law of each of the participating PHAs must authorize the operation of the HCV program across established jurisdictional boundaries.

HUD anticipates that PHAs that form a single-ACC consortium for the purposes of voucher administration will see increased administrative efficiencies through one set of reporting and audit requirements, consolidated operations, a centralized waiting list, and a single set of policies and procedures. Families are also better served through the pooling of assets that occurs when forming a single-ACC consortium. Specifically, when resources are consolidated, the combined Section 8 HCV program resources of all member agencies may assist in serving more families in the community.

While the benefits of a single-ACC consortium are realized through an actual consolidation of different PHA Section 8 HCV programs, the single-ACC consortium could allow greater autonomy for consortium members that may still want to retain their own public housing or other housing assistance programs. Additionally, PHAs may choose to form a consortium advisory board or other mechanisms for retaining a greater level of local control in

the consortium. Consortium members may also subsequently withdraw from a consortium and return to operating as a single PHA (within regulations and any contractual obligations to the consortium) for purposes of Section 8 HCV program administration.

3. Eligibility of PHA owners of units or projects receiving rental assistance under section 8(o) of the 1937 Act. Under the proposed rule, PHAs that are owners of units receiving tenant-based rental assistance, or projects receiving project-based rental assistance, under section 8(o) of the 1937 Act (42 U.S.C. 1437f(o)) would not be precluded from joining either a single-ACC or multiple-ACC consortium, provided that such Section 8 projects and units are administered in accordance with applicable regulations. Section 943.115(b)(3) of the current consortia regulations provides that formation of consortia does not apply to “a PHA in its capacity as owner of a Section 8 project.” The proposed rule would clarify that PHAs are not precluded from joining a consortium solely because the PHA is the owner of a unit or project receiving rental assistance under section 8(o) of the 1937 Act. Instead, the consortium would be required to administer such units or projects in accordance with applicable regulations.

4. Consortium effective date and advance written notice to HUD. The proposed rule specifies that formation of a consortium will be effective as of January 1 of the following year, and that HUD must be notified of the intent to form a consortium at least 120 days in advance, in writing. HUD may approve an exception to this requirement.

5. Consortia must exist for 5 years before they may dissolve. The proposed rule would require a consortium to exist for 5 years before any withdrawal from, or dissolution of, the consortium is allowed. HUD may (based upon a showing of good cause from the consortium) allow dissolution of, or withdrawal from, a consortium prior to completion of the 5-year term. The 5-year term represents the minimum amount of time a consortium must exist before it may

dissolve or before members may withdraw from the consortium; however, the consortium may continue to exist beyond the 5-year term, unless dissolved. HUD proposes requirement of an initial 5-year term to prevent premature dissolutions or withdrawals from a consortium, to encourage consortium formations that are carefully planned and executed, and in consideration of the time and resources involved in the PHAs' and HUD's processing of a consortium. Moreover, the dissolution of a consortium must be consistent with any actions to resolve outstanding civil rights actions of the consortium.

6. Submission of a single PHA Plan. The proposed rule specifies that a single 5-Year Plan and Annual Plan must be submitted for the consortium. The PHA Plan for the consortium shall establish a single set of policies for the consortium as a whole; therefore, consortium members will be bound by the single PHA Plan and will not need to submit individual PHA Plans to HUD for the duration of their inclusion in the consortium. In establishing a single PHA Plan for the consortium, PHAs must evaluate the different set of policies in the existing PHA Plan for each individual PHA wishing to join the consortium and agree on a single set of policies most appropriate for the administration of the consortium.

7. Fiscal Year End Requirement. The proposed rule specifies that, upon formation, PHAs joining a single-ACC consortium must adopt a new fiscal year end for the consortium. PHAs forming a multiple-ACC consortium must all adopt the same fiscal year end. Although the rule requires consortium formation to become effective on January 1, a consortium's fiscal year end does not necessarily have to coincide with that date.

8. MTW PHAs not eligible to join a consortium. The proposed rule specifies that MTW agencies may not form or join single-ACC or multiple-ACC consortia. MTW agencies are not eligible to form or join a consortium because MTW agencies operate under a different set of

statutory and regulatory requirements. MTW flexibilities accrue to an individual PHA; therefore, an MTW agency could not transfer its unique flexibilities to other PHAs by way of forming a consortium. Also, an MTW PHA's ability to use program funds interchangeably ("fungibility") would create an administrative burden to other consortium members in terms of tracking, monitoring, and reporting the use of program funds and would directly conflict with the nature of the single-ACC consortium (which is considered a single PHA, and applies only for administration of the Section 8 HCV program). Lastly, the establishment of a single-ACC consortium by MTW PHAs would require execution of a new MTW agreement with the new single-ACC consortium entity, which is not allowed under current law.

9. Other nonsubstantive changes. In addition to the changes proposed above, HUD would take the opportunity afforded by this proposed rule to make several technical, nonsubstantive, revisions to the part 943 regulations. These proposed amendments do not alter existing regulatory requirements; rather, they are intended to improve the organization and clarity of the regulations. For example, HUD proposes to remove the existing "question and answer" format of the section headings, and to renumber the sections comprising part 943.

IV. Specific Issues for Comment

Although HUD invites comment on all aspects of this proposed rule, HUD specifically seeks comment on the following issues. All public comments received on the proposed rule will be considered in the development of the final rule.

1. Organizational costs for a consortium. HUD is interested in addressing the costs that PHAs may incur in forming a consortium and ensuring a fair and equitable administrative fee structure for a consortium. For instance, there may be organizational costs associated with negotiating a consortium agreement and consolidating PHA operations, databases, and

documents. HUD is seeking comment on whether the proposed rule addresses these costs effectively.

2. Administrative fees for single- and multiple-ACC consortia. HUD proposes to calculate administrative fees for a single-ACC consortium using the same criteria that is now used for calculating administrative fees for any other PHA that covers more than one Fair Market Rent (FMR) area. Administrative fees for the single-ACC consortium will be calculated based on the published administrative fee rates covering the FMR area in which the single-ACC consortium has the greatest proportion of its participants on a date in time, as per PIH Information Center data, and the total number of vouchers under lease for the single-ACC consortium as of the first of each month, up to the baseline number of vouchers under the consortium's ACC. However, a consortium may apply to HUD for blended rates, based proportionately on all FMR areas in which program participants are located within the single-ACC consortium instead of only the FMR area where the preponderance of participants are located.

To determine blended rates, HUD considers the published administrative fee rates for all single-ACC consortium FMR areas and all participants under lease in each of the areas on a date in time to calculate weighted averages. If the weighted averages result in higher administrative fee rates for the consortium, then the blended rates will be applied. If the result is lower, then the original administrative fee rates will be used. The blended rates will be based on the published administrative fee rate for each consortium member effective for the year in which the blended rate is requested. Blended rates apply only to the year for which requested. All consortium members are subject to the same proration regardless of a single-ACC consortium's approval for a blended rate. HUD seeks comment on whether use of a blended rate at the onset for

calculating administrative fees is a preferable alternative. Also, the proposed rule allows a single-ACC consortium to request higher administrative fees if it operates over a large geographic area. HUD defines “large geographic area” as an area covering multiple counties. Is HUD’s definition of a large geographic area appropriate?

Administrative fees for a multiple-ACC consortium’s Section 8 HCV program will be calculated individually for each consortium member. The administrative fee calculation under a multiple-ACC consortium differs from that under a single-ACC consortium because the multiple-ACC consortium is structured differently than the single-ACC consortium. Under a multiple-ACC consortium each PHA retains its own ACC and program payments are made to the lead agency, on behalf of other consortium members, and then distributed by the lead agency based on the consortium agreement and HUD regulations.

3. January 1 consortium effective date and consortium fiscal year end. HUD proposes to restrict the formation of a consortium to January 1 of any given year and to require PHAs forming a single-ACC consortium to adopt a new fiscal year end for the consortium. In addition, PHAs forming a multiple-ACC consortium must all adopt the same fiscal year end. However, HUD recognizes that these requirements may delay or discourage potential consortium formations and invites comment specifically on this issue.

4. 5-year consortium term. HUD also proposes to require a consortium to exist for 5 years before any withdrawal or dissolution from a consortium can take place, with the possibility for withdrawals or dissolutions prior to completion of the 5-year term with a showing of good cause. HUD recognizes that this requirement may discourage potential consortium formations, and invites comment specifically on whether the requirement is overly restrictive.

5. Withdrawals from or additions to a consortium. The proposed rule provides that the withdrawal from single-ACC and multiple-ACC consortia by member PHAs must take place on the last day of the consortium's fiscal year. In addition, HUD proposes that all additions of PHAs to single-ACC and multiple-ACC consortia must take place on the first day of the consortium's fiscal year. However, HUD recognizes that these requirements may place undue burden on member PHAs and consortia, and invites comment specifically on these requirements.

6. Voucher and funding distribution in the case of withdrawals from or dissolution of a single-ACC consortium. The proposed rule specifies how vouchers and funding would be distributed upon withdrawal from or dissolution of a single-ACC consortium. Upon dissolution or withdrawal, consortium members would leave the consortium with at least the same number of authorized baseline units they had under their ACC prior to joining the consortium (that is, the number of baseline units contributed by each member to the consortium upon its formation). HUD would therefore calculate the contract renewal funding allocation based on the number of leased vouchers located within their original jurisdiction at the time of withdrawal or dissolution, up to their original baseline number. HUD may, for good cause, allow for an alternative distribution of baseline units and leased vouchers. Funding is proposed to be distributed as follows: budget authority for the year would be divided proportionately, based on the percentage of all leased units in the consortium that each consortium member would receive upon dissolution or withdrawal. Administrative fees would be paid to the withdrawing PHA and the remaining consortium per the current appropriations requirements. Net Restricted Assets and Unrestricted Net Assets would be distributed based on the percentage of the initial balance that was contributed by each PHA.

The proposed rule also specifies how new incremental vouchers under a tenant protection action and under a special purpose voucher program would be distributed upon dissolution or withdrawal of a single-ACC consortium. New incremental vouchers under a special purpose voucher program (such as the Family Unification Program, HUD's Veterans Affairs Supportive Housing program, and the Non-elderly Disabled voucher program) would be distributed upon dissolution or withdrawal as specified by consortium members in the consortium agreement, provided that such voucher distribution is made in accordance with program requirements under each respective special purpose voucher. Tenant protection vouchers allocated to cover a public housing demolition, disposition, or conversion action would remain with the PHA that has ownership over the property upon dissolution or withdrawal. Tenant protection vouchers allocated to cover a multifamily housing conversion action would remain with the PHA that has jurisdiction over the converted project upon dissolution or withdrawal. If a converted project has overlapping jurisdictions, the consortium agreement would be required to specify which PHA will have jurisdiction over the converted project and therefore retain administration of the tenant protection vouchers associated with such project upon dissolution or withdrawal.

With this background, HUD seeks comment specifically on whether the method of voucher and funding distribution as proposed in this rule equitably divides vouchers and funding among consortium members upon dissolution or withdrawal. Are there alternate methods of voucher and funding distribution that more equitably divide vouchers and funding when a consortium member withdraws or the single-ACC consortium dissolves? Should PHAs be given more discretion to set terms and conditions on dissolution or withdrawal?

7. Partial coverage of a program. In the proposed rule, as in current part 943 of the regulations, a PHA is not authorized to enter a consortium for only part of its eligible program.

For example, a PHA may not enter only part of its Section 8 HCV program into a single-ACC consortium or part of its public housing program into a multiple-ACC consortium. This provision is designed to increase administrative efficiencies. Allowing a PHA to enter a consortium for only part of its Section 8 or public housing program would result in as many or more PHA plans and reporting submissions, rather than fewer, and overlapping PHA plans and reports for the same program. On the other hand, allowing a PHA to enter a consortium for only part of its program may allow greater PHA choice in formation of a consortium, and may result in more PHAs choosing to form consortia. HUD invites comments specifically on whether the proposed rule's provision on partial coverage of a program is overly restrictive and whether PHAs will be less inclined to form consortia as a result of this provision.

8. Single-ACC consortium. This proposed rule would authorize the formation of a single-ACC consortium for the administration of the Section 8 HCV program. As more fully described above in this preamble, such a consortium would be a single PHA, with a single jurisdiction, for purposes of administering the Section 8 HCV program. HUD anticipates that PHAs that form a single-ACC consortium for the purposes of voucher administration will see increased administrative efficiencies through one set of reporting and audit requirements, consolidated operations, a centralized waiting list, and a single set of policies and procedures. Moreover, HUD believes that families are also better served through the pooling of assets that occurs when forming a single-ACC consortium.

HUD seeks comments from PHAs, tenant organizations, and other interested members of the public on the benefits of, and the potential administrative and statutory barriers to, forming a single-ACC consortium as provided for in this proposed rule. In particular, HUD is interested in comments regarding the following:

(1) Because the state and local law of each participating PHA in a single-ACC consortium must authorize the operation of the HCV program across established jurisdictional boundaries, to what extent would current state and local laws limit a PHA from joining, or allow a PHA to join, a single-ACC consortia? If allowed by current state and local law, to what extent would PHAs use such authority to form single-jurisdiction consortia?

(2) What changes to the proposed regulatory requirements for single-ACC consortia may be needed to make the formation of such consortia a more valuable and attractive option, in terms of cost-reduction benefits, administrative efficiencies, and housing choices for participants?

(3) How should individual PHAs converting into a single-ACC consortium be held accountable for taking corrective action to resolve prior violations of civil rights, environmental, labor, or other requirements?

V. Findings and Certifications

Regulatory Review - Executive Order 13563

Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.” Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

The broader purpose of the reform to HUD’s PHA consortia regulations is to create a regulatory environment in which more PHAs are able to form consortia, without undue or

unnecessary regulatory burden. This rule proposes to improve the process on how consortia are formed, structured, and dissolved, by increasing administrative efficiencies associated with forming a consortium and facilitating resident choice in locating suitable housing within a region. Today, there are at least 8 formal consortia encompassing a total of 35 PHAs in states including Alabama, Arizona, Ohio, Georgia, Illinois, Kansas, Kentucky, Texas, Oregon, and Washington. Current consortia typically are small PHAs that form consortia in order to spread the administrative costs of interacting with HUD. HUD anticipates that more consortia will form under the proposed regulations, which remove hurdles experienced by PHAs, thus amplifying the benefits of consortia.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Number 2577-0235. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

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 will enable PHAs to establish cross-jurisdictional consortia that would be treated as a single PHA, with a single jurisdiction and a single set of reporting and audit requirements, for purposes of administering

the HCV program in a more streamlined and less burdensome fashion. The regulatory streamlining provided by this rule should make it easier for PHAs, including small PHAs, to form consortia and achieve greater benefits. Although there may be some costs associated with the formation and operation of consortia, these are expected to be more than offset by the operational flexibilities afforded by the rule. Moreover, the formation of consortia is a voluntary action and, therefore, to the extent that the proposed rule would result in PHAs incurring any costs, it would be as a result of their own discretion. Accordingly, the undersigned certifies that this rule would not have a significant economic impact on a substantial number of small entities.

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

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 *et seq.*). The FONSI is available for public inspection between the hours of 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street, SW, Room 10276 Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the FONSI by calling the Regulations Division at 202-708-3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

Federalism

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

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (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 proposed rule would not impose any Federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number for the Housing Choice Voucher Program is 14.871.

Lists of Subjects:

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Crime, Government contracts, Grant programs-housing and community development, Individuals with disabilities, Intergovernmental relations, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies,

Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 943

Public housing, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 5 and 943 as follows:

PART 5 – GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437f, 1437n, 3535(d), Sec. 327, Pub.L. 109-115, 119 Stat. 2936, and Sec. 607, Pub.L. 109-162, 119 Stat. 3051.

2. Amend § 5.100 by revising the definition of “Public Housing Agency (PHA)” to read as follows:

§ 5.100 Definitions.

* * * * *

Public Housing Agency (PHA) means any state, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act, or a consortium of such entities or bodies as approved by the Secretary.

* * * * *

3. Revise part 943 to read as follows:

PART 943 – PUBLIC HOUSING AGENCY CONSORTIA AND JOINT VENTURES

Subpart A – General

Sec.

- 943.101 Purpose of this part.
 943.103 Consortium.
 943.105 Joint ventures and other business arrangements.

Subpart B – Single-ACC Consortium

- 943.201 Programs covered under this subpart.
 943.203 Organization of a single-ACC consortium.
 943.205 Jurisdiction of a single-ACC consortium.
 943.207 Elements of a single-ACC consortium agreement.
 943.209 Withdrawals from or additions to a single-ACC consortium.
 943.211 Dissolution of a single-ACC consortium.
 943.213 Voucher and funding distribution upon dissolution or withdrawal.
 943.215 The relationship between HUD and a single-ACC consortium.
 943.217 Organizational costs and administrative fees.
 943.219 Planning, reporting, and financial accountability.
 943.221 Responsibilities of a single-ACC consortium.

Subpart C – Multiple-ACC Consortium

- 943.301 Programs covered under this subpart.
 943.303 Organization of a multiple-ACC consortium.
 943.305 Jurisdiction of a multiple-ACC consortium.
 943.307 Elements of a multiple-ACC consortium agreement.
 943.309 Withdrawals from or additions to a multiple-ACC consortium.
 943.311 Dissolution of a multiple-ACC consortium.
 943.313 The relationship between HUD and a multiple-ACC consortium.
 943.315 Organizational costs and administrative fees.
 943.317 Planning, reporting, and financial accountability.
 943.319 Responsibilities of member PHAs.

Subpart D – Subsidiaries, Affiliates, Joint Ventures in Public Housing

- 943.401 Programs and activities covered under this subpart.
 943.403 Types of operating organizations for a participating PHA.
 943.405 Financial impact of a subsidiary, affiliate, or joint venture on a PHA.
 943.407 Financial accountability of a subsidiary, affiliate, or joint venture to HUD and the Federal Government.
 943.409 Procurement standards for PHAs selecting partners for a joint venture.

943.411 Procurement standards apply for a PHA's joint venture partner.

943.413 Procurement standards for a joint venture.

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

Subpart A – General

§ 943.101 Purpose of this part.

This part authorizes public housing agencies (PHAs), consistent with state and local law, to form consortia, joint ventures, affiliates, subsidiaries, partnerships, and other business arrangements under section 13 of the United States Housing Act of 1937 (42 U.S.C. 1437k) (1937 Act). This part does not preclude a PHA from entering cooperative arrangements to operate its programs under other authority, as long as they are consistent with other program regulations and requirements.

§ 943.103 Consortium.

(a) Consortium. Under the authority of section 13 of the 1937 Act, a PHA participating in a consortium shall enter into a consortium agreement under one of two forms: single-Annual Contributions Contract (ACC) consortium or multiple-ACC consortium.

(b) Single-ACC consortium. A single-ACC consortium consists of two or more PHAs that join together to perform planning, reporting, and other administrative and management functions of the Section 8 Housing Choice Voucher (HCV) program, as specified in a consortium agreement. Under a single-ACC consortium, the consortium becomes a separate legal entity and is considered a single PHA for purposes of the Section 8 HCV program. A single-ACC consortium must operate the Section 8 HCV program in accordance with all applicable program regulations. HUD funds the consortium as one PHA, and applies all

reporting and audit requirements accordingly. The requirements for single-ACC consortia are contained in subpart B of this part.

(c) Multiple-ACC Consortium. A multiple-ACC consortium consists of two or more PHAs that join together to perform planning, reporting, and other administrative functions for member PHAs, as specified in a consortium agreement. A multiple-ACC consortium submits a joint PHA plan, as applicable, and designates a lead PHA. The lead agency collects the assistance funds from HUD that would be paid to the member PHAs for the elements of their operations that are administered by the consortium and allocates them according to the consortium agreement. The lead agency also maintains the consortium's records and submits reports to HUD. Each member PHA in a multiple-ACC consortium retains its own ACC with HUD. The requirements for a multiple-ACC consortium are contained in subpart C of this part.

§ 943.105 Joint ventures and other business arrangements.

Under section 13 of the 1937 Act, PHAs may form joint ventures, affiliates, subsidiaries, partnerships, and other business arrangements. The requirements for such arrangements are contained in subpart D of this part.

Subpart B – Single-ACC Consortium

§ 943.201 Programs covered under this subpart.

(a) A PHA may enter a single-ACC consortium under this subpart solely for administration of the following programs:

(1) The Section 8 HCV program (including project-based vouchers; project-based certificates; the Family Self-Sufficiency program; and special voucher housing types, including the HCV Homeownership Option);

(2) Mainstream 5 vouchers, except that entities which are only authorized to administer Mainstream 5 vouchers may not join or form single-ACC consortia; and

(3) Grants to consortium members in connection with the Section 8 HCV program, to the extent not inconsistent with the terms of the governing documents for the grant program's funding source.

(b) A PHA that is the owner of units receiving tenant-based rental assistance, or a project receiving project-based rental assistance, under section 8(o) of the 1937 Act, is not precluded from joining a single-ACC consortium, provided that such units or Section 8 projects are administered in accordance with 24 CFR 982.352(b) (for tenant-based vouchers) and 24 CFR 983.59 (for project-based vouchers). A PHA participating in the consortium may not serve as an independent entity for units or projects owned by a PHA within the consortium for purposes of 24 CFR 982.352(b) or 24 CFR 983.59.

(c) Moving-To-Work (MTW) PHAs may not form or join a single-ACC consortium.

(d) The single-ACC consortium must cover the PHA's whole HCV program under the ACC with HUD, including all authorized unit months and all funding.

§ 943.203 Organization of a single-ACC consortium.

(a) A PHA that elects to form a single-ACC consortium may do so upon HUD approval, and in accordance with HUD established guidelines and instructions. HUD approval of a single-ACC consortium will be based on the following:

(1) That advance written notice of at least 120 days of the intent to form a single-ACC consortium has been given to HUD. HUD may, upon a showing of good cause, provide an exception to this requirement;

(2) That all required documentation has been submitted including:

(i) The Consortium Agreement;

(ii) The 5-Year Plan and the Annual Plan, as applicable, in accordance with 24 CFR part 903 and any other statutory or HUD requirements (See § 943.219, Planning, reporting, and financial accountability);

(iii) A letter of intent signed by the executive director of every PHA wishing to join the single-ACC consortium, with an accompanying board resolution of each PHA;

(iv) Supporting legal opinions satisfactory to HUD that the single-ACC consortium's jurisdiction is consistent with the state and local laws of each consortium member;

(v) Financial documentation for each PHA wishing to join the single-ACC consortium, including a final close-out audit for every PHA joining the single-ACC consortium, up to the effective date of the consortium;

(vi) Certification that no PHA wishing to join the single-ACC consortium fails the civil rights compliance threshold for new funding, or, if applicable, that joining the consortium is consistent with the action(s) to resolve outstanding civil rights matters. HUD will not approve a PHA's conversion into a single-ACC consortium until either:

(A) The PHA wishing to join takes corrective action to the satisfaction of HUD or another entity with authority to enforce a corrective action agreement or order; or

(B) The single-ACC consortium demonstrates to HUD's satisfaction that it has assumed liability for taking the corrective action; and

(vii) Any other form of documentation that HUD deems necessary and appropriate for approval of the single-ACC consortium;

(3) The PHA's performance rating under the Section 8 Management and Assessment Program (SEMAP), and whether there are any open findings from an Office of Inspector General (OIG) audit, HUD Field Office (FO) monitoring review, financial audit, and/or any other HUD or HUD-required review;

(4) That the financial documentation submitted by each PHA in support of single-ACC consortium formation demonstrates that the single-ACC consortium will have the financial capability, as determined by HUD, to administer the programs and activities of the single-ACC consortium;

(5) Any other factors that may indicate appropriateness of single-ACC consortium formation, such as the PHA's capacity to administer its Section 8 HCV program, and the existing market conditions in the jurisdiction of each PHA joining the single-ACC consortium; and

(6) That all other consortium requirements are met.

(b) Upon HUD approval, the single-ACC consortium will become effective as of January 1 of the following year. HUD may, upon showing of good cause, provide an exception to this requirement.

(c) A PHA that elects to form a single-ACC consortium must enter into a consortium agreement, which shall meet the minimum requirements established in § 943.207 (Elements of a single-ACC consortium agreement) of this subpart. The executed consortium agreement must be submitted to HUD, and HUD may require modification to the consortium agreement before approving the formation of the single-ACC consortium.

(d) PHAs joining a single-ACC consortium must adopt a new fiscal year end for the consortium.

(e) The single-ACC consortium must be administered in accordance with the applicable provisions of this part; the consortium agreement; the PHA Plan, as applicable; other applicable HUD regulations and requirements; and state and local law.

§ 943.205 Jurisdiction of a single-ACC consortium.

(a) A single-ACC consortium shall operate in a single consortium-wide jurisdiction composed of the combined jurisdictions of all consortium members. Jurisdictional boundaries between individual consortium members will cease to exist for purposes of HCV program administration during the term of the consortium.

(b) The single-ACC consortium jurisdiction must be consistent with the state and local law of each consortium member.

§ 943.207 Elements of a single-ACC consortium agreement.

(a) The single-ACC consortium agreement governs the formation and operation of the consortium and must specify the following:

- (1) The name of each consortium member under the consortium agreement;
- (2) The functions to be performed by each consortium member during the term of the consortium;
- (3) The structure of the single-ACC consortium, which shall address, at a minimum, the establishment of a board of directors or similar governing body and designated officials;

(4) The process for merging the consortium members' waiting lists upon formation of the single-ACC consortium, including the adoption of waiting list preferences (e.g., homeless) by the single-ACC consortium. This process must not have the purpose or effect of delaying or otherwise denying admission to the program based on race, color, national origin, sex, religion, disability, or familial status of any member of the applicant family;

(5) The terms under which a PHA may join or withdraw from the single-ACC consortium. The consortium agreement shall conform to § 943.209 (Withdrawals from or additions to a single-ACC consortium) of this subpart;

(6) How new incremental vouchers under a special purpose voucher program will be distributed among consortium members upon dissolution or withdrawal from the consortium; and

(7) Which consortium member, upon dissolution or withdrawal, shall have jurisdiction over converted projects with overlapping jurisdictions under a multifamily housing tenant protection action.

(b) The agreement must acknowledge that all consortium members are subject to the single-ACC PHA Plan.

(c) The agreement must be signed by an authorized representative of each consortium member.

§ 943.209 Withdrawals from or additions to a single-ACC consortium.

(a) Withdrawal refers to one or more consortium members leaving the single-ACC consortium without resulting in dissolution of the single-ACC consortium.

(b) Withdrawals from a single-ACC consortium may not occur until the initial 5-year consortium term has expired. HUD may, upon showing of good cause, allow withdrawals from a single-ACC consortium before completion of the initial 5-year term.

(c) If the consortium has any outstanding civil rights matters, withdrawals from a single-ACC consortium may not occur unless the withdrawal is consistent with the action(s) to resolve such matters.

(d) To provide for orderly transition, withdrawal of a PHA must take effect on the last day of the consortium's fiscal year, and addition of a PHA must take effect on the first day of the consortium's fiscal year. The single-ACC consortium must notify HUD in writing of any additions or withdrawals at least 120 days in advance. This notification must include submission of the withdrawing member's replacement 5-Year Plan and Annual Plan, as applicable, in accordance with 24 CFR part 903 and any other statutory or HUD requirements.

(e) Upon withdrawal from the single-ACC consortium, the withdrawing member must offer to each applicant currently on the single-ACC consortium's waiting list the opportunity to be placed on the withdrawing member's waiting list, with the date and time of their original application to the single-ACC consortium's waiting list. These applicants must not be considered nonresident applicants (for the purposes of restriction of portability under 982.353(c)) if the applicant was a resident applicant at the time of application to the single-ACC consortium's waiting list.

(f) Upon a member's withdrawal from the single-ACC consortium, vouchers and funding, including net restricted assets and unrestricted net assets, will be distributed to the withdrawing member as specified in § 943.213 (Voucher and funding distribution upon dissolution or withdrawal) of this subpart.

§ 943.211 Dissolution of a single-ACC consortium.

(a) A single-ACC consortium may not be dissolved prior to the expiration of the initial 5-year consortium term. HUD may, upon showing of good cause, allow dissolution of a consortium prior to completion of the initial 5-year term. A single-ACC consortium will continue to exist beyond the initial 5-year consortium term, unless dissolved.

(b) If the consortium has any outstanding civil rights matters, dissolution of a single-ACC consortium may not occur unless the dissolution is consistent with the action(s) to resolve such matters.

(c) To provide for orderly transition, dissolution of the single-ACC consortium must take effect on the last day of the consortium's fiscal year. The single-ACC consortium must notify HUD in writing of dissolution at least 120 days in advance of the dissolution effective date. This notification must include submission of all members' replacement 5-Year Plans and Annual Plans, as applicable, in accordance with 24 CFR part 903 and any other statutory or HUD requirements.

(d) Upon dissolution, all withdrawing members must offer to each applicant currently on the single-ACC consortium's waiting list the opportunity to be placed on all of the withdrawing members' waiting lists, with the date and time of their original application to the single-ACC consortium's waiting list. These applicants must not be considered nonresident applicants (for the purposes of restriction of portability under § 982.353(c)) if the applicant was a resident applicant at the time of application to the single-ACC consortium's waiting list.

(e) Upon dissolution, vouchers and funding, including net restricted assets and unrestricted net assets, will be distributed among consortium members as specified in § 943.213 (Voucher and funding distribution upon dissolution or withdrawal) of this subpart.

§ 943.213 Voucher and funding distribution upon dissolution or withdrawal.

(a) Vouchers will be distributed in the following manner upon dissolution or withdrawal:

(1) Each consortium member will leave the consortium upon dissolution or withdrawal with at least the same number of authorized baseline units that the consortium member brought into the consortium at the time of its formation. HUD may, for good cause, allow for an alternative distribution of baseline units.

(2) Each consortium member shall receive contract renewal funding allocations based on the number of leased vouchers located within their original jurisdiction at the time of withdrawal or dissolution, up to their original baseline number. HUD may, for good cause, allow for an alternative distribution of leased vouchers.

(3) Tenant protection vouchers allocated to cover a public housing demolition, disposition, or conversion action will remain with the PHA that has ownership over the property. Tenant protection vouchers allocated to cover a multifamily housing conversion action shall remain with the PHA that has jurisdiction over the converted project. Administration of tenant protection vouchers under converted projects with overlapping jurisdictions shall remain with the PHA that has jurisdiction over the converted project as specified in the consortium agreement.

(4) New incremental vouchers under a special purpose voucher program will be distributed as specified in the consortium agreement, provided that such voucher distribution is

made in accordance with program requirements under each respective special purpose voucher program.

(b) Funding will be distributed in the following manner upon dissolution or withdrawal:

(1) Budget authority will be divided proportionately, based on the percentage of all leased units in the consortium that each consortium member will receive.

(2) Administrative fees will be paid to the withdrawing PHA and the remaining consortium per the current appropriations requirements.

(3) Net Restricted Assets and Unrestricted Net Assets will be distributed based upon the percentage of the initial balance that was contributed by each consortium member.

§ 943.215 The relationship between HUD and a single-ACC consortium.

(a) HUD has a direct relationship with the single-ACC consortium, the same as it would have with any other PHA. Program funds will be disbursed to the single-ACC consortium in accordance with the consortium's ACC. Funding must be used in accordance with the consortium agreement, the PHA Plan, and HUD regulations and requirements.

(b) HUD may take any of the remedies described in the ACC against an individual member in a single-ACC consortium, or against the single-ACC consortium as a whole, if it determines that either has substantially violated—or is improperly administering—the requirements of the HCV program.

§ 943.217 Organizational costs and administrative fees.

(a) The administrative fee for a single-ACC consortium will be determined based on the published administrative fee rates for the area in which the single-ACC consortium has the

greatest proportion of its participants on a date in time and the total number of vouchers under lease for the single-ACC consortium as of the first of the month, up to the baseline number of vouchers under the single-ACC consortium's ACC.

(b) A single-ACC consortium may apply to HUD for blended rates, which are determined based on a weighted average of the published administrative fee rates for all areas in which program participants are located within the single-ACC consortium and all participants under lease in each of the areas on a date in time. The blended rates will be based on the published administrative fee rate for each consortium member, effective for the year for which the blended rate is requested. Blended rates will only be applied if they result in a higher administrative fee rate for the single-ACC consortium. Blended rates apply only to the year for which requested.

(c) If appropriations are available, a single-ACC consortium may be eligible for a higher administrative fee in accordance with 24 CFR 982.152(b)(2) if it operates over a large geographic area.

(d) If appropriations are available, a single-ACC consortium may be eligible for administrative fees to cover extraordinary costs determined necessary by HUD, in accordance with 24 CFR 982.152(a)(1)(iii)(C), during the initial year of operation of the consortium to provide for the organization and implementation of the single-ACC consortium.

§ 943.219 Planning, reporting, and financial accountability.

(a) A single-ACC consortium is considered one PHA for purposes of Section 8 HCV program administration, including but not limited to, program accounts and records, audit requirements, and all PHA responsibilities under the ACC, the PHA administrative plan, and HUD regulations and other requirements.

(b) Planning, reporting, and financial accountability apply to a single-ACC consortium as follows:

(1) Upon creation of the single-ACC consortium, each member's assets, liabilities, and equity accounts, as related to the HCV program, are consolidated and reported on a consolidated balance sheet for purposes of single reporting in the Financial Assessment Subsystem for Public Housing Agencies (FASS-PH) and the Voucher Management System (VMS).

(2) Prior to entering a single-ACC consortium, each PHA must agree to the completion of a final audit to close-out program accounts for all HCV programs, up to the effective date of the consortium. The final audit must be completed in accordance with 24 CFR 982.159. Once the audit is completed, remaining funds from all the PHAs' accounts must be transferred to the consortium.

(3) During the term of the consortium agreement, the single-ACC consortium must submit a 5-Year Plan and Annual Plan, as applicable, for the consortium, in accordance with 24 CFR part 903 and any other statutory or HUD requirements. For any programs not covered by the single-ACC consortium (e.g., a consortium member administers a public housing program separately from the single-ACC consortium), consortium members must submit a separate 5-Year Plan and Annual Plan to HUD for those programs, as applicable, in accordance with 24 CFR part 903 and any other statutory or HUD requirements.

(4) During the term of the consortium agreement, the single-ACC consortium must have a single Section 8 HCV administrative plan for the consortium, in accordance with 24 CFR 982.54 (Administrative plan).

(5) The single-ACC consortium must maintain records and submit reports to HUD as a single PHA for purposes of Section 8 HCV program administration, in accordance with HUD

regulations and requirements that account for all activities of the consortium. All consortium members will be bound by the 5-Year and Annual Plans and reports submitted to HUD by the single-ACC consortium for programs covered by the consortium.

(6) Financial accountability rests with the single-ACC consortium and, thus, HUD will apply independent audit and performance assessment requirements on a consortium-wide basis.

(7) A single-ACC consortium must keep a copy of the consortium agreement on file for inspection. The consortium agreement must also be a supporting statement to the PHA plan.

§ 943.221 Responsibilities of a single-ACC consortium.

Each consortium member is responsible for the performance of the consortium and has an obligation to assure that all program funds are used in accordance with HUD regulations and requirements, and that the programs under the consortium are administered in accordance with HUD regulations and requirements. Any breach of program requirements is a breach of the consortium ACC, so each consortium member is responsible for the performance of the consortium as a whole.

Subpart C – Multiple-ACC Consortium

§ 943.301 Programs covered under this subpart.

(a) PHAs may enter a multiple-ACC consortium under this subpart for administration of:

(1) The public housing program;

(2) The Section 8 HCV (including project-based vouchers; project-based certificates; the Family Self-Sufficiency program; and special voucher housing types, including the HCV Homeownership Option);

(3) The Section 8 Moderate Rehabilitation program, including the Single Room Occupancy program; and

(4) Grants to consortium members in connection with Section 8 and public housing programs, to the extent not inconsistent with the terms of the governing documents for the grant program's funding source.

(b) A PHA that is the owner of units receiving tenant-based rental assistance, or a project receiving project-based rental assistance, under section 8(o) of the 1937 Act, is not precluded from joining a multiple-ACC consortium, provided that such units or Section 8 projects are administered in accordance with 24 CFR 982.352(b) (for tenant-based vouchers) and 24 CFR 983.59 (for project-based vouchers). A PHA participating in the consortium may not serve as an independent entity for units or projects owned by PHAs within the consortium for purposes of 24 CFR 982.352(b) or 24 CFR 983.59.

(c) MTW agencies may not form or join a multiple-ACC consortium.

(d) If a PHA elects to enter a multiple-ACC consortium with respect to a category specified in paragraph (a) of this section, the consortium must cover the PHA's whole program under the ACC with HUD for that category, including all dwelling units and all funding.

§ 943.303 Organization of a multiple-ACC consortium.

(a) A PHA that elects to form a multiple-ACC consortium may do so upon HUD approval, and in accordance with HUD established guidelines and instructions. HUD approval of a multiple-ACC consortium will be based on the following:

(1) That written notice of the intent to form a multiple-ACC consortium has been given to HUD at least 20 days in advance. HUD may, upon a showing of good cause, provide an exception to this requirement;

(2) That all required documentation has been submitted including:

(i) The Consortium Agreement;

(ii) The 5-Year Plan and the Annual Plan, as applicable, in accordance with 24 CFR part 903 and any other statutory or HUD requirements (see § 943.317, Planning, reporting, and financial accountability);

(iii) A letter of intent signed by the executive director of every PHA wishing to join the multiple-ACC consortium, with the accompanying board resolution of each PHA;

(iv) Any memoranda of understanding (MOUs) and/or other agreements to operate within the jurisdiction of other consortium members, including supporting legal opinions, satisfactory to HUD, that such agreements are in compliance with the applicable state and local laws of each consortium member;

(v) Financial documentation for each PHA wishing to join the multiple-ACC consortium, including a final close-out audit for every PHA joining the multiple-ACC consortium, up to the effective date of the consortium; and

(vi) Any other form of documentation that HUD deems necessary and appropriate for approval of the multiple-ACC consortium;

(3) That the lead agency is not designated as a “troubled PHA” by HUD under the Public Housing Assessment System (PHAS) or by the PHA’s performance rating under Section 8 Management Assessment Program (SEMAP), and whether there are any open findings from an

OIG audit, HUD FO monitoring review, financial audit, or any other HUD or HUD-required review;

(4) That the financial documentation submitted by each PHA in support of multiple-ACC consortium formation demonstrates that the multiple-ACC consortium will have the financial capability to administer the programs and activities of the multiple-ACC consortium;

(5) Any other factors that may indicate the appropriateness of a multiple-ACC consortium formation, such as the PHA's capacity to administer its programs, and the existing market conditions in the jurisdiction of each PHA joining the multiple-ACC consortium; and

(6) That all other consortium requirements are met.

(b) Upon HUD approval, the multiple-ACC consortium will become effective as of January 1 of the following year. HUD may, upon showing of good cause, provide an exception to this requirement.

(c) A PHA that elects to form a multiple-ACC consortium must enter into a consortium agreement among the member PHAs, specifying a lead agency (see § 943.307, Elements of a multiple-ACC consortium agreement). The executed consortium agreement must be submitted to HUD, and HUD may require modification to the consortium agreement before approving the formation of the multiple-ACC consortium. HUD enters into any necessary payment agreements with the lead agency and the other member PHAs (see § 943.313, The relationship between HUD and a multiple-ACC consortium) to provide that HUD funding to the member PHAs for program categories covered by the consortium will be paid to the lead agency.

(d) The lead agency must not be:

(i) Designated as a "troubled PHA" by HUD under PHAS or by the PHA's performance rating under SEMAP, or

(ii) Determined by HUD to fail the civil rights compliance threshold for new funding, or an agency that has had a PHAS designation withheld for civil rights or other reasons.

(e) The lead agency is designated to receive HUD program payments on behalf of member PHAs, to administer HUD requirements for administration of the funds, and to apply the funds in accordance with the consortium agreement and HUD regulations and requirements.

(f) The multiple-ACC consortium must submit a joint PHA Plan, as applicable, to HUD (see § 943.317, Planning, reporting, and financial accountability).

(g) The member PHAs must adopt the same fiscal year end so that the applicable periods for submission and review of the joint PHA plan, reporting, and audits are the same.

(h) The multiple-ACC consortium must be administered in accordance with the applicable provisions of this part, the consortium agreement, the joint PHA Plan, as applicable, and other applicable HUD regulations and requirements.

§ 943.305 Jurisdiction of a multiple-ACC consortium.

Each member PHA has its own jurisdiction, and will continue to operate in that jurisdiction. However, member PHAs may enter into memoranda of understanding (MOUs) and/or other agreements, in accordance with applicable state law, to operate within the jurisdictions of other member PHAs in order to further the goals of the consortium and to expand housing opportunities for assisted families.

§ 943.307 Elements of a multiple-ACC consortium agreement.

(a) The multiple-ACC consortium agreement governs the formation and operation of the consortium. The consortium agreement must be consistent with any payment agreements between the member PHAs and HUD and must specify the following:

(1) The names of the member PHAs and the program categories each PHA is including under the consortium agreement;

(2) The name of the lead agency;

(3) The functions to be performed by the lead agency and the other member PHAs during the term of the consortium;

(4) The allocation of funds among member PHAs, including funding awards made following formation of the multiple-ACC consortium, and responsibility for administration of funds paid to the consortium;

(5) The structure of the multiple-ACC consortium; and

(6) The terms under which a PHA may join or withdraw from the multiple-ACC consortium. The consortium agreement shall conform to § 943.309 (Withdrawals from or additions to a multiple-ACC consortium) of this subpart.

(b) The agreement must acknowledge that the member PHAs are subject to the joint PHA Plan submitted by the lead agency.

(c) The agreement must be signed by an authorized representative of each member PHA.

§ 943.309 Withdrawals from or additions to a multiple-ACC consortium.

(a) Withdrawal refers to one or more consortium member leaving the multiple-ACC consortium without resulting in dissolution of the multiple-ACC consortium.

(b) Withdrawals from a multiple-ACC consortium may not occur until the initial 5-year consortium term has expired. HUD may, upon showing of good cause, allow withdrawals from a multiple-ACC consortium before completion of the initial 5-year term.

(c) If the consortium has any outstanding civil rights matters, withdrawals from a multiple-ACC consortium may not occur unless the withdrawal is consistent with the action(s) to resolve such matters.

(d) To provide for orderly transition, withdrawal of a PHA must take effect on the last day of the consortium's fiscal year, and addition of a PHA must take effect on the first day of the consortium's fiscal year. The multiple-ACC consortium must notify HUD, in writing, of any additions or withdrawals at least 120 days in advance. This notification must include submission of the withdrawing member PHA's replacement 5-Year Plan and Annual Plan, as applicable, in accordance with 24 CFR part 903 and any other statutory or HUD requirements.

(e) Because each member PHA retains its own ACC with HUD, upon withdrawal from the multiple-ACC consortium, the withdrawing PHA begins to operate in accordance with its own ACC with HUD.

§ 943.311 Dissolution of a multiple-ACC consortium.

(a) A multiple-ACC consortium may not be dissolved prior to the expiration of the initial 5-year consortium term. HUD may, upon showing of good cause, allow dissolution of a consortium prior to completion of the initial 5-year term. A multiple-ACC consortium will continue to exist beyond the initial 5-year consortium term, unless dissolved.

(b) If the consortium has any outstanding civil rights matters, dissolution of a multiple-ACC consortium may not occur unless the dissolution is consistent with the action(s) to resolve such matters.

(c) Dissolution of the multiple-ACC consortium must take effect on the last day of the consortium's fiscal year. The multiple-ACC consortium must notify HUD of the dissolution, in writing, at least 120 days in advance. This notification must include submission of all member PHA's replacement 5-Year Plans and Annual Plans, as applicable, in accordance with 24 CFR part 903 and any other statutory or HUD requirements.

(d) Because each member PHA retains its own ACC with HUD, upon dissolution of the consortium, each member PHA begins to operate as it did prior to the formation of the consortium.

§ 943.313 The relationship between HUD and a multiple-ACC consortium.

(a) HUD has a direct relationship with the consortium through the joint PHA Plan, as applicable, and through one or more payment agreements, executed in a form prescribed by HUD, under which HUD and the member PHAs agree that program funds will be paid to the lead agency on behalf of the member PHAs. Such funds must be used in accordance with the consortium agreement, the joint PHA Plan, and HUD regulations and requirements.

(b) HUD may take any of the remedies described in the ACC against an individual member in a multiple-ACC consortium or against the multiple-ACC consortium as a whole, if it determines that either has substantially violated—or is improperly administering—the requirements of any of its programs.

§ 943.315 Organizational costs and administrative fees.

(a) The administrative fee for the Section 8 HCV program for each member PHA in a multiple-ACC consortium will be based on the published administrative fee for each member PHA prior to formation of the consortium.

(b) If appropriations are available, a multiple-ACC consortium may be eligible, during the first year of operation of the consortium, for administrative fees to cover extraordinary costs determined necessary by HUD in accordance with 24 CFR 982.152(a)(1)(iii)(C) for the organization and implementation of the multiple-ACC consortium.

§ 943.317 Planning, reporting, and financial accountability.

(a) During the term of the consortium agreement, the consortium must submit joint 5-Year Plans and joint Annual Plans, as applicable, for all member PHAs, in accordance with 24 CFR part 903 and any other statutory or HUD requirements. For any programs not covered by the multiple-ACC consortium (e.g., a member PHA administers a public housing or Section 8 HCV program separately from the multiple-ACC consortium), member PHAs must submit a separate 5-Year Plan and Annual Plan to HUD for those programs, as applicable, in accordance with 24 CFR part 903 and any other statutory or HUD requirements.

(b) The lead agency must maintain records and submit reports to HUD, in accordance with HUD regulations and requirements, for all of the member PHAs. All PHAs will be bound by the 5-Year and Annual Plans and reports submitted to HUD by the multiple-ACC consortium for programs covered by the consortium.

(c) Each member PHA must keep a copy of the consortium agreement on file for inspection. The consortium agreement must also be a supporting document to the joint PHA Plan.

(d) Prior to entering a multiple-ACC consortium, each PHA must agree to the completion of a final audit to close-out program accounts for all programs covered by the multiple-ACC consortium, up to the effective date of the consortium.

(e) Independent audits and performance assessment requirements will be applied in the following way:

(1) Where the lead agency will manage substantially all programs and activities of the consortium, HUD interprets financial accountability to rest with the consortium and, thus, HUD will apply independent audit and performance assessment requirements on a consortium-wide basis.

(2) Where the lead agency will not manage substantially all programs and activities of a consortium, the consortium shall indicate in its PHA Plan submission which PHAs have financial accountability for the programs. The determination of financial accountability shall be made in accordance with generally accepted accounting principles, as determined in consultation with an independent public accountant. In such situations, HUD will apply independent audit and performance assessment requirements consistent with that determination. With respect to any consortium, however, HUD may determine (based on a request from the multiple-ACC consortium or other circumstances) to apply independent audit and performance requirements on a different basis where this would promote sound management.

§ 943.319 Responsibilities of member PHAs.

Despite participation in a consortium, each member PHA remains responsible for its own obligations under its ACC with HUD. This means that each member PHA has an obligation to assure that all program funds, including funds paid to the lead agency for administration by the consortium, are used in accordance with HUD regulations and requirements, and that the PHA's program is administered in accordance with HUD regulations and requirements. Any breach of program requirements with respect to a program covered by the consortium agreement is a breach of the ACC with each of the member PHAs, so each PHA is responsible for the performance of the consortium.

Subpart D – Subsidiaries, Affiliates, Joint Ventures in Public Housing

§ 943.401 Programs and activities covered under this subpart.

(a) This subpart applies to the provision of a PHA's public housing administrative and management functions, and to the provision (or arranging for the provision) of supportive and social services in connection with public housing. This subpart does not apply to activities of a PHA that are subject to the requirements of 24 CFR part 905, subpart F.

(b) For purposes of this subpart, the term "joint venture partner" means a member (other than a PHA) in a joint venture, partnership, or other business arrangement or contract for services with a PHA.

(c) This part does not affect a PHA's authority to use joint ventures, as may be permitted under state law, when using funds that are not 1937 Act funds.

§ 943.403 Types of operating organizations for a participating PHA.

(a) A PHA may create and operate a wholly owned or controlled subsidiary or other affiliate; and may enter into joint ventures, partnerships, or other business arrangements with individuals, organizations, entities, or governmental units. A subsidiary or affiliate may be a nonprofit corporation. A subsidiary or affiliate may be an organization controlled by the same persons who serve on the governing board of the PHA or who are employees of the PHA.

(b) The purpose of any of these operating organizations would be to administer programs of the PHA.

§ 943.405 Financial impact of a subsidiary, affiliate, or joint venture on a PHA.

Income generated by subsidiaries, affiliates, or joint ventures formed under the authority of this subpart is to be used for low-income housing or to benefit the residents assisted by the PHA. This income will not cause a decrease in funding provided under the public housing program, except as otherwise provided under the Operating Fund and Capital Fund formulas.

§ 943.407 Financial accountability of a subsidiary, affiliate, or joint venture to HUD and the Federal Government.

The subsidiary, affiliate, or joint venture is subject to the same authority of HUD, HUD's Inspector General, and the Comptroller General to audit its conduct.

§ 943.409 Procurement standards for PHAs selecting partners for a joint venture.

(a) The requirements of 24 CFR part 85 are applicable to this part, subject to paragraph (b) of this section, in connection with the PHA's public housing program.

(b) A PHA may use competitive proposal procedures for qualifications-based procurement (Request for Qualifications), or may solicit a proposal from only one source (“sole source”) to select a joint venture partner to perform an administrative or management function of its public housing program or to provide, or arrange to provide, supportive or social services covered under this part, under the following circumstances:

(1) The proposed joint venture partner has under its control and will make available to the partnership substantial, unique, and tangible resources or other benefits that would not otherwise be available to the PHA on the open market (e.g., planning expertise, program experience, or financial or other resources). In this case, the PHA must maintain documentation to substantiate both the cost reasonableness of its selection of the proposed partner and the unique qualifications of the partner; or

(2) A resident group or a PHA subsidiary is willing and able to act as the PHA’s partner in performing administrative and management functions or to provide supportive or social services. This entity must comply with the requirements of 24 CFR part 84 (if the entity is a nonprofit) or 24 CFR part 85 (if the entity is a state or local government) with respect to its selection of the members of the team, and the members must be paid on a cost-reimbursement basis only. The PHA must maintain documentation that indicates both the cost reasonableness of its selection of a resident group or PHA subsidiary and the ability of that group or subsidiary to act as the PHA’s partner under this provision.

§ 943.411 Procurement standards apply for a PHA’s joint venture partner.

(a) General. A joint venture partner is not a grantee or subgrantee and, accordingly, is not required to comply with 24 CFR part 84 or 24 CFR part 85 in its procurement of goods and

services under this part. The partner must comply with all applicable state and local procurement and conflict of interest requirements with respect to its selection of entities to assist in PHA program administration.

(b) Exception. If the joint venture partner is a subsidiary, affiliate, instrumentality, or identity of interest party of the PHA, it is subject to the requirements of 24 CFR part 85. HUD may, on a case-by-case basis, exempt such a joint venture partner from the need to comply with requirements under 24 CFR part 85 if HUD determines that the joint venture has developed an acceptable alternative procurement plan.

(c) Contracting with identity-of-interest parties. A joint venture partner may contract with an identity-of-interest party for goods or services, or a party specified in the selected bidder's response to a Request for Proposal or Request for Qualifications (as applicable), without the need for further procurement if:

(1) The PHA can demonstrate that its original competitive selection of the partner clearly anticipated the later provision of such goods or services;

(2) Compensation of all identity-of-interest parties is structured to ensure there is no duplication of profit or expenses; and

(3) The PHA can demonstrate that its selection is reasonable based upon prevailing market costs and standards, and that the quality and timeliness of the goods or services is comparable to that available in the open market. For purposes of this paragraph (c), an "identity-of-interest party" means a party that is wholly owned or controlled by, or that is otherwise affiliated with, the partner or the PHA. The PHA may use an independent organization experienced in cost valuation to determine the cost reasonableness of the proposed contracts.

§ 943.413 Procurement standards for a joint venture.

(a) When the joint venture as a whole is controlled by the PHA or an identity-of-interest party of the PHA, the joint venture is subject to the requirements of 24 CFR part 85.

(b) If a joint venture is not controlled by the PHA or an identity-of-interest party of the PHA, then the rules that apply to the other partners apply. (See § 943.411, Procurement standards apply for a PHA's joint venture partner).

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