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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR-5453-F-02]
RIN 2577-AC86

Housing Choice Voucher Program: Streamlining the Portability Process

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

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing portability in the Housing Choice Voucher (HCV) program. Portability is a feature of the HCV program that allows an eligible family with a housing choice voucher to use that voucher to lease a unit anywhere in the United States where there is a public housing agency (PHA) operating an HCV program. The purpose of HUD's changes to the portability regulations is to enable PHAs to better serve families and expand housing opportunities by improving portability processes.

DATES: Effective: **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].**

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SUPPLEMENTARY INFORMATION:**I. Executive Summary****A. Purpose of the Regulatory Action**

The purpose of this final rule is to improve the portability process of the HCV program. Under the HCV program, the participating family is free to choose any housing that meets the requirements of the program. As a means to enable housing choice and mobility to encourage social and economic integration, the HCV program offers voucher portability; that is, the ability of a voucher holder to use the voucher assistance outside the jurisdiction of the PHA that initially issues the family its voucher. While portability offers an important mechanism to increase housing choice, this feature has not been maximized by PHAs and participating families because the current process for allowing a family to move from one jurisdiction to another is time consuming and burdensome. HUD recognizes that for the HCV program's goals to support mobility and housing choice to be realized, the regulations governing the portability process must be clarified so that the burden on families and the PHA is reduced. This final rule completes the rulemaking process, which commenced in 2012, to revise the existing portability regulations to streamline the portability process and facilitate the ability of participating families to move to the jurisdiction of their choice.

B. Summary of the Major Provisions of the Regulatory Action

The key regulatory changes by this final rule include:

- Removing the mandatory absorption requirement discussed in the proposed rule and clarifying the notification requirement for mandatory voucher suspension;
- Requiring an initial PHA to notify the local HUD office within 10 business days of a determination to deny a portability move based on insufficient funding;

- Providing that the voucher issued by the receiving PHA to the family may not expire before 30 calendar days has passed from the expiration date of the initial PHA's voucher;
- Requiring briefings for all participating on how portability works and the benefits of living in low-poverty census tracts; and
- Allowing a family to choose the receiving PHA to administer their voucher should they choose to use portability.

Please see Section III of this preamble, entitled “Changes at the Final Rule Stage” for a more detailed discussion of all the changes proposed by this rule.

C. Costs and Benefits

The changes made by this final rule are designed to minimize burden for PHAs and participating HCV families and thereby increase the ability of participating families to live in areas of their choice or relocate to a new area for employment opportunities or to gain access to preferred schools for their children. In addition, the improved portability process contributes to helping victims of domestic violence, dating violence, sexual assault, and stalking have access to the resources necessary to relocate to a safe, stable home away from an abuser. Further, moves to areas with relatively low concentrations of neighborhood poverty have shown to relay important benefits to housing choice voucher families, in particular mental and physical health for adults and long-term educational and earning gains for young children. HUD recognizes that some policies may increase burden for some PHAs; however, the added clarity to the portability process afforded by this final rule is expected to improve the portability process and reduce the burden on families and PHAs.

The streamlining changes do not add any substantial cost to the HCV program.

II. Background—the March 28, 2012, Proposed Rule

On March 28, 2012, at 77 FR 18731, HUD published a rule in the Federal Register that proposed to amend HUD's regulations governing portability in the HCV program. The HCV program is the Federal Government's largest program for assisting very low-income families, the elderly, and persons with disabilities to afford decent, safe, and sanitary housing in the private market. The HCV program is authorized by section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1473f(o)) (1937 Act), and the HCV program regulations are found in 24 CFR part 982.

Housing choice vouchers are administered locally by PHAs. PHAs receive Federal funds from HUD to administer the HCV program. Under the HCV program, housing assistance is provided on behalf of the participating family who is responsible for finding a suitable housing unit of their choice where the owner agrees to rent under the program. The participant is free to choose any rental housing, including single family homes, townhouses, and apartments, that meets the requirements of the program and is not limited to units located in subsidized housing projects. Under certain circumstances, if authorized by the PHA, a family may use its voucher to purchase a modest home.

A housing subsidy is paid to the landlord directly by the PHA on behalf of the participating family. The family then pays the difference between the actual rent charged by the landlord and the amount subsidized by the program. The PHA determines the amount that the family will contribute toward rent, which is generally 30 percent of its adjusted annual income. A key feature of the HCV program is the mobility of the voucher assistance. Section 8(r) of the 1937 Act provides that HCV participants may choose a unit that meets program requirements anywhere in the United States, provided that a PHA administering the tenant-based program has jurisdiction over the area in which the unit is located.

The term “portability” refers to the process of leasing a dwelling unit with tenant-based housing voucher assistance outside of the jurisdiction of the PHA that initially issued the family its voucher (the initial PHA). The HCV regulations, found at 24 CFR 982.353 through 982.355, detail where a family may move and the responsibilities of the initial PHA and the receiving PHA (the PHA with jurisdiction over the area to which the family desires to move). Situations have arisen over time that caused HUD to identify several issues that may delay or impede the ability of families to relocate with their voucher.

This final rule takes into consideration public comment received on the March 28, 2012, proposed rule and: (1) more clearly delineates the roles of initial and receiving PHAs; (2) improves accountability in portability billing arrangements between PHAs; and (3) allows families to more easily search for and lease a rental unit in their desired location.

III. Changes at the Final Rule Stage

In response to public comment and following further consideration of portability issues by HUD, this final rule makes certain changes to the regulations proposed in the March 28, 2012, rule. Changes made in response to public comment, issues raised by commenters, and HUD’s responses to the comments are further addressed in Section III of this preamble.

The following highlights the more substantive changes made to the proposed rule at this final rule stage:

1. Definition of Absorption (§ 982.4(b)). To be consistent with HUD’s portability regulations at § 982.355(d), which allows a PHA to absorb the family instead of billing the initial PHA, HUD revises the definition of absorption under the HCV program to mean the point at which a receiving PHA starts making assistance payments with funding under its consolidated Annual Contributions Contract (ACC), rather than billing, the initial PHA. The current

definition implies that, in order to absorb a family, the receiving PHA has to first bill the initial PHA. The definition in this final rule also amends the recently revised definition in HUD's "Removal of Obsolete Section 8 Rental Assistance Certificate Program Regulations,"¹ which was effective on March 19, 2015, to be consistent with this final portability final rule.

2. Mandatory voucher suspension (§ 982.4 and § 982.303(c)). HUD revises the notification requirement and definition pertaining to mandatory voucher suspension to provide clarity and avoid the possibility of disputes between families and PHAs.

3. Notification requirement before denying moves for insufficient funding (§ 982.354). HUD revises the written notification requirement to require an initial PHA to notify the local HUD office within 10 business days of a determination to deny a portability move based on insufficient funding.

4. Portability processing procedures (§ 982.355(g)). HUD revises § 982.355(g), which pertains to special purpose vouchers (SPVs), to clarify that PHAs must administer SPVs in accordance with HUD-established policy, including any alternative program requirements established by HUD for SPVs.

5. Term of receiving PHA voucher (§ 982.355(c)(13)). HUD revises § 982.355(c)(13) to provide that the voucher, issued by the receiving PHA to the family, may not expire before 30 calendar days have passed from the expiration date of the initial PHA's voucher. However, if the initial PHA's voucher has expired before the family arrives in the jurisdiction of the receiving PHA, the PHA must contact the initial PHA to determine if the initial PHA will extend the voucher. Unless the initial PHA is willing to extend its voucher under these circumstances, the receiving PHA may not issue the family a voucher.

¹ See <http://www.gpo.gov/fdsys/pkg/FR-2015-02-17/pdf/2015-03037.pdf>.

6. Administrative fee (§ 982.355(e)(3)). HUD revises § 982.355(e)(3) to clarify that if the ongoing administrative fees for the program have been prorated due to insufficient administrative fee funding, the administrative fee that the receiving PHA may bill the initial PHA is also subject to the same proration.

7. Mandatory absorption of portability vouchers (§ 982.355(d)(2)). HUD removes the mandatory voucher absorption requirement and instead states that if HUD should choose to require mandatory absorption, HUD must publish a notice in the Federal Register and provide PHAs or affected PHAs (if not applicable to all PHAs) with the opportunity for public comment under § 982.355(d)(2)).

8. Family briefings (§ 982.301(a)(2), (a)(3), (b)(1), (b)(4), and (b)(9)). HUD revises § 982.301(a)(2), (a)(3), (b)(4), and (b)(9) to require briefings for all families with a HCV on the benefits of living in low-poverty census tracts.

9. Providing list of landlords to moving families (§ 982.301(b)(11)). HUD revises § 982.301(b)(11) to replace the current reference to “other parties known to the PHA” for “other resources (such as newspapers, organizations, and online search tools) known to the PHA” that may assist the family in locating a unit, and to provide that the list of landlords or other resources covers areas outside of poverty or minority concentration.

10. Allow a family to choose the receiving PHA (§ 982.355(b)). HUD revises § 982.355(b) to allow a family to choose the receiving PHA to administer its voucher, if there is more than one PHA for the jurisdiction where the family seeks to lease a unit.

11. Portability and Project-Based Vouchers (PBV) (§982.355). HUD did not adopt the change to § 982.355(g) in the proposed rule, which stated that the provisions on portability do not apply to the PBV program. HUD is concerned that the provision as proposed could be

misinterpreted to preclude any potential touchpoints between the two regulations. To address such issues, HUD plans to issue separate guidance on this subject.

12. Other technical changes. In addition to the changes discussed above, HUD makes additional technical changes in this final rule. HUD revises § 982.355(d)(1), which addresses HCV absorption by the receiving PHA and the availability of funding under the consolidated ACC for the receiving PHA's HCV program. HUD revises this section to remove the reference to the effective date of the Housing Assistance Payment (HAP) contract as the date that the receiving PHA must know if it has funding to absorb the voucher. Since the receiving PHA may choose to subsequently end a billing arrangement and absorb the family after the effective date of the HAP contract, the reference was confusing. The change clarifies that if the receiving PHA wishes to absorb the family into the receiving PHA program, the receiving PHA must have funding available under its consolidated ACC to do so.

HUD makes technical revisions to §§ 982.301(b)(1), 982.554(c)(4), and 982.637(c)(1) to conform with the policy changes implemented elsewhere in this final rule. Finally, HUD revises §§ 982.403(c), 982.551(f), and 982.641(b)(11) to correct an incorrect citation.

IV. Discussion of Public Comments Received on March 28, 2012, Proposed Rule

The comment period for the propose rule closed May 29, 2012. HUD received 52 comments on this proposed rule. The commenters included PHAs, organizations representing the public housing industry, tenant advocacy groups, State and local government agencies, and other interested members of the public.

The majority of comments were from PHAs and public housing representative organizations. The PHAs that commented varied in size and geography. In general, the comments from PHAs were mixed. There were several proposals that PHAs supported (e.g.,

allowing an extension beyond 30 days for porting vouchers, and actively providing a list of landlords) and others to which PHAs expressed opposition (e.g., restricting receiving PHAs from rescreening the porting family). Advocacy group commenters opposed the proposal regarding rescreening of porting families by the receiving PHA and expressed concern about the civil rights implications of such proposals. Specific issues raised by commenters and HUD's responses are as follows:

Comment: Concerns that the rule will increase regulatory burden and reduce local PHA discretion. Many commenters, while supportive of portability and HUD's goals to streamline and reduce administrative burdens, expressed concerns that the proposed regulatory changes did not sufficiently meet these goals. The commenters wrote that, rather than streamlining portability administration, the proposed rule would place additional requirements on PHAs (such as notifying the HUD field office before denying moves for insufficient funding, extending the term of the voucher for at least 30 days beyond the initial termination, requiring mandatory absorptions, and capping administrative fees). The commenters wrote that these policies would add to the burden and costs of administering vouchers, and suggested that HUD consider including the proposed new regulatory requirements in HUD's upcoming voucher administrative fee study to determine their real cost on PHAs and families. The commenters also stated that many of the new requirements would reduce local PHA discretion and flexibility.

HUD Responses: HUD understands that some policies may increase burden for some PHAs. However, HUD disagrees that other policies in this rule, such as capping administrative fees, will increase administrative burden. HUD further believes that the added clarity to the portability process afforded by this final rule will improve the portability process and reduce the burden on families and PHAs. To address such concerns, each of these four issues is specifically

addressed below. With respect to HUD's study on voucher administrative fees, the study is complete and, because of the time frame, took into consideration costs associated with portability, before this rulemaking.

Comment: Mandatory voucher suspension (§ 982.4 and § 982.303). Several commenters supported HUD's proposed change to the definition of "suspension." The commenters wrote that the proposed language would increase the likelihood that families will successfully move during their voucher term. Other commenters, however, expressed concerns about the change, writing that the proposed revision would eliminate local discretion and increase administrative complexities and costs. The commenters wrote that the proposed change would require PHAs to monitor the term of the suspension and to notify families of that term and its subsequent expiration. The commenters also wrote that the mandatory suspension could result in two PHAs administering the same voucher, with the voucher remaining outstanding indefinitely and limiting the ability of the PHA to accurately report, budget, and forecast available voucher funding.

HUD Response: The proposed rule provided that the suspension term starts when the family submits a request for tenancy approval and ends when the PHA approves or denies such request. While HUD understands how voucher suspensions may impact a PHA's processes, HUD believes the benefit to the family outweighs the possible increase in administrative burden placed on the PHA. Based on the length of time an inspection takes to be completed, and the possibility that the voucher could expire if it were not suspended, families may be harmed by such delays due to no fault of their own. Furthermore, PHAs should be actively monitoring and managing their process for approving the assisted tenancy so the mandatory suspension rule should not significantly affect a PHAs ability to report, budget, and forecast available funding.

As noted earlier, HUD revised the proposed language on mandatory voucher suspensions to clarify that the suspension lasts until the family is notified in writing by the PHA whether the request for PHA-approval of the tenancy has been approved or denied. Specifying that the family must be notified before the voucher suspension ends provides clarity and avoids potential disputes between families and PHAs. See §§ 982.4 and 982.303(c).

Comment: Notification requirement before denying moves for insufficient funding (§ 982.354). Several commenters expressed support for this provision, but suggested that HUD specify the time period in which a PHA must submit notice to HUD, as well as the date by which HUD will respond to the PHA's written notice. Other commenters expressed opposition to the requirement. They said that the receiving PHA is already required to notify the initial PHA whether the receiving PHA will bill the initial PHA for the family, or will absorb the voucher, and such requirement results in additional delays for the family.

HUD Response: Notification to the local HUD office when a PHA is denying moves due to insufficient funding is not a new requirement. Notice PIH 2012-42 (HA)² provides for this notification requirement, and the inclusion of this provision in the proposed rule was intended to codify it in regulation. HUD understands that requiring the PHA to notify the local HUD office adds to the administrative process. However, this requirement is important to HUD in carrying out its oversight and monitoring function. Through the notification requirement, HUD can better ensure that participants are not unnecessarily prohibited from moving under portability or within the PHA jurisdiction.

HUD agrees that more specificity is needed with respect to the time frames associated with this requirement. The final rule provides that a PHA must notify HUD in writing within 10

² See <http://portal.hud.gov/hudportal/documents/huddoc?id=pih2012-42.pdf>.

business days of the date on which the PHA determines it is necessary to deny moves based on insufficient funding. If HUD determines that the PHA lacks the grounds to deny moves due to insufficient funding, the PHA must immediately inform any affected family and immediately process the family's request to move.

Comment: Require HUD approval to deny incoming families and other portability processing procedures (§ 982.355). Several commenters expressed support for the requirement that a PHA must have written approval from HUD before refusing any incoming families. The commenters also suggested that HUD should clarify the procedures that PHAs must use when allowing portability of special purpose vouchers, referred to in this preamble as SPVs (e.g., Non-Elderly Disabled (NED), Veterans Affairs Supportive Housing (VASH), Family Unification Program (FUP), and 5-Year Mainstream). Commenters suggested that HUD specify limited circumstances in which a PHA may not be required to accept incoming families. Other commenters expressed concern that prohibiting the reversal of a decision to absorb vouchers will keep PHAs from deciding to absorb vouchers, thus increasing the amount of portability billing.

HUD Response: HUD appreciates these comments and has made some clarifying changes in the final rule with respect to SPVs, in § 982.355(g). The proposed rule included an example of a circumstance where a PHA may be allowed to deny an incoming family—a PHA in a declared disaster area. However, HUD cannot predict all limited circumstances that would warrant a denial of incoming families and instead prefers to handle such requests on a case-by-case basis.

In order to specify the procedures related to SPVs, the proposed rule set out requirements relating to portability moves of SPVs that were applicable to all SPVs; however, due to the intricacies of each SPV program, HUD determined that specific portability procedures for each

SPV are better suited for guidance and not regulation.

Finally, some commenters claimed that HUD's policy to prohibit PHAs from reversing a decision to absorb a voucher may cause some PHAs to be more inclined to not absorb a voucher. HUD was unable to find evidence that the requirement will have such an effect, or that the impact on portability billings will be significant. Moreover, HUD determined that it is important to eliminate the potential negative effect such a reversal could have on the family.

Comment: Portability processing procedures and allowing email communications between initial and receiving PHA (§ 982.355). Several commenters expressed support for the requirement that PHAs communicate with other PHAs through email or other confirmed delivery methods. Commenters wrote that email is simpler than other methods, and its use has already been implemented by many PHAs. Some commenters wrote that some PHAs do not have email contacts for other PHAs, so it would be helpful for HUD to add an email field to the HUD-52665 form. Other commenters, however, had concerns about relying on email, and suggested that email supplement, rather than replace, other forms of communication.

HUD Response: While HUD supports email as the preferred method of communication, the final rule allows for the use of other methods of communication that have delivery confirmation. HUD also made a technical change to § 982.355(c)(4) to correct the reference to the "receiving" and not the "initial PHA."

Comment: Voucher term of receiving PHA voucher (§ 982.355). Several commenters expressed support for the requirement that PHAs provide an additional 30 days on the voucher term to accommodate the time a family needs to attend a briefing session and locate a new unit. Some commenters, however, suggested that the extension be provided at the agency's discretion and not be mandatory. Another commenter encouraged HUD to add language to the regulation

making it clear that receiving PHAs may choose to issue vouchers with more than the additional 30 days of search time. Other commenters objected to extending the voucher for 30 days. These commenters wrote that a blanket, national requirement that voucher terms last an additional 30 days would reduce the number of unit months leased nationally.

HUD Response: While requiring a receiving PHA to add an additional 30 calendar days to the term of the voucher may increase a PHA's administrative burden, providing an additional 30 calendar days to the receiving PHA's voucher term accommodates the additional time that the portability process requires, and does not count against the family's search time.

HUD agrees that the language in the proposed rule was too restrictive and has changed the language in the final rule to accommodate extensions of the term of the receiving PHA voucher beyond 30 calendar days if the receiving PHA chooses to allow such extensions. See § 982.355(c)(13).

Comment: Capping administrative fees (§ 982.355). Several commenters supported capping the amount paid to the receiving PHA for administrative fees at 100 percent of the receiving PHA's administrative fee rate. Other commenters were opposed to this proposal stating that it would be unfair for a receiving PHA to receive 100 percent of the fee since they are not doing 100 percent of the work.

Several commenters requested clarification of the administrative fee structure. The commenters wrote the proposed rule does not address the proration issue and that it is unclear if the cap is based on the receiving PHAs' published fee or prorated fee. These commenters stated that they were also unclear which PHA is responsible for determining fees.

Other commenters suggested alternatives or changes to the proposed administrative fee requirements. Commenters suggested that HUD consider prohibiting PHAs from prorating

administrative fees for their outgoing portability vouchers and simply use the 80 percent of the published administrative fee. Other commenters suggested a flat administrative fee to be paid to the receiving PHA. Commenters also suggested that HUD consider reinstatement of the “hard to house” fee for SPVs.

HUD Response: Under the proposed rule, the initial PHA must reimburse the receiving PHA for the lesser of 80 percent of the initial PHA ongoing administrative fee or 100 percent of the receiving PHA’s ongoing administrative fee for each program unit. Under this structure, the initial PHA always gets to keep a percentage of the administrative fee of the voucher, and the receiving PHA does not bill for an amount that is higher than the receiving PHA’s administrative fee. Prior to this final rule provision, if the receiving PHA’s prorated administrative fee was \$45 and the initial PHA’s prorated administrative fee was \$60, for example, the receiving PHA would receive \$48 (or 80 percent of \$60) for the voucher, which is more than the \$45 it would get for administering its own vouchers. In the same scenario under this final rule, the receiving PHA would bill for \$45 for its share of the administrative fee and the initial PHA would keep \$15 of the prorated monthly on-going admin fee for that unit under lease.

HUD also revises § 982.355(e)(3) to mirror, where appropriate, the language concerning ongoing administrative fees under current voucher regulations at § 982.152(b)(1). The paragraph is also revised to clarify that the receiving PHA is not precluded from billing an initial PHA for more than 100 percent of its own administrative fee if both PHAs agree to a different amount of reimbursement that is more than 100 percent of the receiving PHA’s administrative fees. HUD agrees with commenters that, as stated in the proposed rule, HUD does not address whether the administrative fee is based on the initial PHA’s published or prorated fee. Therefore, HUD is adding language to clarify that, if administrative fees are prorated for the HCV program, the

proration will apply to the amount of the administrative fee for which the receiving PHA may bill under this section (i.e., the receiving PHA may bill for the lesser of 80 percent of the initial PHA's prorated ongoing administrative fee or 100 percent of the receiving PHA's prorated ongoing administrative fee).

Comment: Mandatory absorption of portability vouchers (§ 982.355(d)). Several commenters expressed support to require PHAs to absorb porting vouchers. However, several of the commenters requested clarification on the following areas: (1) the time period HUD will use to determine a PHA is below the 95 percent threshold; (2) how much notice a PHA will be provided before being required to absorb vouchers; (3) what data HUD will use to measure utilization of vouchers and budget authority; and (4) whether the receiving PHA will be prohibited from issuing vouchers to new families in their jurisdiction without having first absorbed all billed portability families.

Several other commenters expressed opposition to the proposal, stating that the proposed provision fails to take local circumstances into consideration. Some commenters expressed concern about possible negative consequences for small PHAs. They wrote that mandatory absorption may hurt small PHAs if they have a small allocation of vouchers or some vouchers are canceled or terminated. Therefore, a small PHA may instead prefer to draw from its waiting list, instead of absorbing porting vouchers. Other commenters wrote that imposing requirements on some PHAs to absorb portable vouchers without making absorption the standard solution is problematic. Finally, commenters also expressed concern that the burden would fall disproportionately on SPVs.

HUD Response: In this final rule, HUD removes the mandatory absorption requirement from the proposed rule. In considering the mandatory absorption requirement, HUD weighed

various factors such as: (1) monitoring leasing rates to assess when the requirement should be put in place and when it should be removed; (2) the impact on the utilization rate of initial PHAs (when a receiving PHA absorbs a port-in voucher for which it was previously billing, it frees-up budget authority and reduces the number of unit months leased for the initial PHA, and the initial PHA may not have sufficient time to utilize its increased budget authority or increase its reduced unit months leased); (3) determining the timing of such assessments; (4) the impact on the receiving PHA's waiting list as absorption would reduce the number of families on the waiting list that could be served; (5) the impact such a requirement could have on renewal funding; and (6) the impact requiring the use of Net Restricted Position (NRP) would have on PHAs.

After consideration of such factors, HUD decided not to adopt the mandatory absorption requirement as proposed. This final rule continues to afford HUD the ability to mandate absorptions on a case-by-case basis. Should HUD determine to impose such a requirement in the future for all PHAs that: (1) are utilizing less than 95 percent of their available budget authority, and (2) have a leasing rate of less than 95 percent, it shall do so through a notice in the Federal Register stating such proposed policy and procedures, with an opportunity for public comment for a period of no less than 60 calendar days. After consideration of public comments, HUD will publish a final notice in the Federal Register advising PHAs and the public of HUD's final determination on mandatory absorption.

V. Comments on Specific Issues Raised by HUD

Comment: Transfer of ACC funds between initial and receiving PHA. HUD invited comments on how to redesign portability in a way that would eliminate or minimize the administrative burdens associated with portability billings. In the past, some PHAs suggested that HUD transfer funds from the initial PHA's consolidated ACC to the receiving PHA's

consolidated ACC, in order to transfer the money without direct PHA involvement. Others suggested a sharing of costs by the initial and receiving PHA, whereby the initial PHA would pay to the receiving PHA no more than the family's subsidy at the initial PHA location.

Of those commenters that responded to the request in the proposed rule, a few supported a transfer of funds between the initial and receiving PHAs for portability vouchers, while others were against it. Some commenters wrote that tracking transfers of this type would be an added administrative burden on HUD and PHAs. Commenters noted that PHAs with a high percentage of outgoing portability vouchers would be disproportionately affected by such transfers. A high volume of voucher transfers may jeopardize these PHAs' operations, and make the PHAs' budgets more unstable and less predictable. Commenters favoring the transfers of ACC funds for portability wrote that such transfers would result in numerous efficiencies by eliminating billing arrangements among PHAs.

As for sharing the costs between PHAs, a commenter wrote that it is unfair for the initial PHA to pay no more than the family's subsidy to the receiving PHA because it does not recognize the real cost for the receiving PHA for administering the voucher, but the commenter suggested that an administrative fee should still be paid.

HUD Response: HUD agrees with the commenters that expressed concerns that transfers of ACC funds under portability may have potential negative effect on PHAs, especially those with a high percentage of outgoing portability vouchers. Also the administrative burden of such transfers on HUD and PHAs outweighs eliminating or minimizing portability billings. With respect to limiting the amount the initial PHA pays for HAP under the billing option to no more than it would pay for that voucher if leasing in their jurisdiction, and having the receiving PHA share the cost, HUD concluded that such sharing of the costs would be administratively

burdensome on PHAs, disproportionately affect PHAs with a high percentage of incoming portability vouchers, needlessly complicate the portability process, and would not reduce portability billings. Therefore, HUD did not incorporate this change into this final rule.

Comment: Rescreening of families using portability. HUD solicited comments on how to minimize hardship on families when the receiving PHA's screening criteria is more stringent than the initial PHA's criteria. Several commenters supported a proposed restriction on rescreening of porting families. These commenters wrote that rescreening presents a significant barrier for voucher families trying to relocate to areas that offer greater opportunity. The commenters wrote that, for true mobility, rescreening must not be allowed.

Other commenters, all PHAs, supported rescreening by the receiving PHA. A commenter wrote that PHAs cannot be expected to operate using multiple screening standards. A commenter also wrote that it is unfair to families that are ineligible under the receiving PHA's criteria, while those from another jurisdiction are allowed to participate in the HCV program.

HUD Response: HUD agrees that receiving PHAs should be allowed to apply their own screening standards consistently among families in their program and for families moving into their jurisdiction under portability. However, it is important that moving families be informed that they are subject to screening based on the receiving PHA's criteria, and that the receiving PHA's screening criteria may be different than that of the initial PHA. Any potential hardship on the family may be minimized, to some extent, if families are aware ahead of time if the receiving PHA will be rescreening incoming families. This information should be incorporated into the briefing packet as discussed below.

Comment: Requirement and content of HCV family briefings. HUD solicited comments on whether the briefing should be revised to highlight the factors and trade-offs a family should

consider when leasing a unit with voucher assistance. These factors include, but are not limited to: employment opportunities; safety, health and environmental amenities; public transportation; the quality of schools; access to social services; the quality of housing; and proximity to family and friends. Comments were also solicited on whether information on the benefits of living in low-poverty census tracts should be provided to all families selected to participate in the HCV program, and not just those families living in high-poverty census tracts, as is provided in the codified regulation. The majority of commenters expressed opposition to expanding the briefing requirements, stating that the existing briefing requirements are already complex and any expansion would increase administrative burden. Several commenters wrote that the requirements of the family briefings are already covered under the Section 8 Management Assessment Program indicator on expanding housing opportunities and deconcentration.

HUD Response: HUD has determined that providing information about the factors the family should consider when determining where to lease a unit with voucher assistance will only be required as part of the briefing should HUD make such information available to PHAs for distribution. If required, PHAs are to provide such information as part of the oral briefing and the information packet provided to families selected to participate in the program. HUD therefore revises the regulation at § 982.301 accordingly.

HUD has also determined that an explanation of the benefits of living in low-poverty census tracts should be provided to all families, not just those families living in high-poverty census tracts. This explanation of benefits should also be included in the information packet provided to families selected to participate in the HCV program.

In making this determination HUD considered the effect on both families and PHAs. While families who already live in low-poverty census tracts may be aware of the benefits of

living in such areas, not all families may have such awareness, and HUD does not see any disadvantages in providing all families such information. While there may be some administrative cost to PHAs in providing such information to all families selected to participate in the program, this change will also provide some administrative relief for PHAs. With the change, PHAs will not have to determine which families live in high-poverty census tracts to determine who needs the additional briefing. In this regard, a commenter wrote that most PHAs already provide the same information regardless of where the family lives.

HUD determined that information on how portability works should be provided during the briefing and as part of the information packet to every family, not just those who are eligible to move under portability. Accordingly, HUD revised the regulation at § 982.301(a)(2) and § 982.301(b)(4). HUD is also revising some of the required content of the family briefings related to portability in this final rule. In addition to an explanation of how portability works, the briefing should also include information on how portability may affect the family's assistance through rescreening, changes in subsidy standards and payment standards, and any other elements of the portability process that may affect the family's assistance.

Comment: Providing list of landlords. HUD solicited comments on whether to continue requiring PHAs to provide families with a list of landlords or other parties known to the PHA who may be willing to lease a unit to the family, and whether additional information on areas of opportunity or neighborhoods would be beneficial for families. The majority of commenters responding to this solicitation of comments were PHAs that supported the provision of a list of landlords. These commenters stated that such lists may be extremely helpful to voucher participants who are seeking housing and may not be aware of local housing opportunities. Some commenters suggested that providing the list to voucher participants should be voluntary.

A minority of commenters expressed concern that such lists may result in steering families to high-poverty and racially concentrated areas, and that PHAs should be required to assess such lists to ensure they do not steer such families.

HUD Response: HUD agrees that such written references could be essential to a successful housing search, particularly to families who are moving under portability and may not be familiar with the new jurisdiction. HUD also agrees that PHAs that choose to maintain such lists should be mindful of the need to provide housing opportunities to families in nonracially and nonpoverty concentrated areas. At this final rule stage, HUD retains the requirement to provide a list of landlords known to the PHA that may be willing to lease a unit to the family. Accordingly, HUD modifies § 982.301(b)(11), to replace the current reference to “other parties known to the PHA” for “other resources (such as newspapers, organizations, and online search tools) known to the PHA” that may assist the family in locating a unit, and to provide that the list of landlords or other resources covers areas outside of poverty or minority concentration.

Comment: Allow a family to select the receiving PHA. HUD solicited comments on whether a family should have the option to select the receiving PHA when more than one PHA has jurisdiction over the area to which the family wishes to move. Under the codified HCV program regulations, the initial PHA selects the receiving PHA for the porting family. The majority of commenters responding to this solicitation supported HUD’s proposal to allow families to select the receiving PHA. Other commenters wrote that it would be burdensome for participants to have to review sometimes dozens of PHAs’ information. These commenters suggested that HUD should maintain a national register of HCV program contacts for voucher participants, if the policy were to be implemented.

HUD Response: HUD determined that families should be given the option to select the

receiving PHA when there is more than one PHA that has jurisdiction over the area where the family wishes to lease a unit. As stated in the proposed rule, giving such choice to families allows families to select receiving PHAs that best meet their needs. While HUD understands that in certain cases it may be burdensome for the family to select a receiving PHA, this change does not preclude a family from seeking assistance from the initial PHA in selecting the receiving PHA if the family so chooses. The final rule, therefore, provides that it will be the responsibility of the initial PHA to inform the family of the PHAs that serve the area and provide the family with the contact information for those PHAs. The initial PHA is not required to provide information of the options or services that each PHA may offer.

Accordingly, HUD is revising § 982.355(b) to clarify that the family has the option to select the receiving PHA.

VI. Other Public Comments

Comment: Limit liability for families to move with portability. Several commenters suggested that HUD adopt qualifying criteria (such as families moving for educational or employment opportunities, or families in flight of domestic violence) for moves under portability to ensure that families have a good reason to move. Other commenters suggested limiting the number of times a family may move to one move per year. Another commenter suggested that HUD limit the percentage of portability moves a receiving PHA must handle at a time.

HUD Response: There are provisions already in place that allow PHAs to manage family moves. For example, current regulation at § 982.314(c) provides that the PHA may establish policies that prohibit any move during the initial lease term, and prohibits more than one move by the family during any 1-year period, either within the PHA's jurisdiction or through portability. Moreover, receiving PHAs may always choose to absorb into its voucher program a

participant who has moved under portability, provided that the receiving PHA has funding available to do so.

Comment: PHAs should be required to remind families they may move with portability.

Some commenters suggested that PHAs should be required to actively remind families that they may move using the HCV portability process. Specifically, the commenters suggested that PHAs should be required to remind families at their annual recertification that they may move to other jurisdictions with continued voucher assistance.

HUD Response: HUD's regulation at § 982.301(a) and (b) provides for a family briefing and for an information packet to be given to the family when the family first participates in the voucher program. As provided in this final rule, every family must receive a briefing, and during such briefing, must be given information on how portability works. HUD finds this initial briefing to be sufficient and declines to require PHAs to remind families about portability at other times.

Comment: Provide additional support for victims of domestic violence. Commenters wrote that victims of domestic violence need additional support, beyond briefings. The commenters were supportive of the effectiveness of transitional housing and briefing residents on such services.

HUD Response: PHAs are required to offer victims of domestic violence, dating violence, sexual assault, and stalking the protections afforded under the Violence Against Women Act (VAWA) as reflected in HUD's regulations (24 CFR part 5, subpart L). These requirements include providing the victim with a notification of his or her rights under VAWA (24 CFR 5.2005). PHAs have the option and are encouraged to provide the victim with contact information for supportive services for victims of abuse. At a minimum, PHAs are encouraged

to provide the number for the National Domestic Violence Hotline (1-800-799-SAFE (7233)) or the National Sexual Assault Hotline (1-800-656-HOPE (4673)) to victims. Victims who call these numbers may be able to locate supportive services in their area.

Comment: Exempt small PHAs from portability requirements. Several commenters wrote that portability should not apply to participants in small PHAs' programs. The commenters pointed out that a small PHA often has to pay a significantly higher cost for vouchers that port to higher-cost areas than the small PHA would pay for vouchers in their own jurisdiction. This higher cost limits the small PHA's ability to lease its own vouchers and serve families in its jurisdiction.

HUD Response: Since portability is authorized by statute, small PHAs cannot be exempted from allowing eligible families to move. Furthermore, HUD believes that portability is a key feature of the HCV program and families should not be denied the opportunity to move to other jurisdictions based on the size of the administering PHA. With regard to the cost impact, moves to higher-cost areas can impact the PHAs' ability to serve families from its waiting list. However, it is noted that these higher costs are taken into consideration in determining the PHA's renewal eligibility under the HCV program. Furthermore, the appropriations act typically provides that the higher costs of portability are an eligible category for set-aside funding that is used to adjust a PHA's renewal funding. Finally, as discussed in the preamble of this final rule, HUD has strived to clarify the portability process and thus reduce burden for PHAs.

Comment: Concerns about billing for portability vouchers. Several commenters wrote that the rule encourages billing the initial PHA, but should instead encourage absorption of vouchers by the receiving PHA. The commenters wrote that if a receiving PHA can receive 100

percent of its fee for a billed incoming voucher and only 80 percent of its fee for its own voucher, a PHA would have a strong incentive to bill rather than absorb the voucher. Several commenters also wrote that delays in payment by the initial PHA to a receiving PHA are a burden. They suggested that HUD should impose a firm deadline by which the initial PHA must pay its bills or establish other sanctions or tools for a PHA to use for chronic late-payers. Commenters also suggested that HUD develop a program to be used by all PHAs in tracking portability payments.

HUD Response: Prior to this final rule, a receiving PHA would be paid 80 percent of the initial PHA's administrative fees. The March 28, 2012, rule proposed and this final rule revises the administrative fee amount that can be billed to the initial PHA to the lesser of the amount currently provided in the codified regulation (80 percent of the initial PHA's ongoing administrative fee or 100 percent of the receiving PHA's administrative fee). Under this rule, a receiving PHA cannot bill for more than the administrative fee it would otherwise receive for its own program, regardless of whether the initial PHA's administrative fee is higher than the receiving PHA's administrative fee. Prorations applicable to an initial PHA's administrative fees due to an appropriations act that does not fully fund administrative-fee eligibility will apply to those amounts. Therefore, the receiving PHA cannot bill and receive more in administrative fees for a portability voucher than it would receive for its own vouchers, unless both PHAs have agreed on a different amount of reimbursement.

As noted earlier in this preamble, HUD already imposes a firm deadline on portability billings and provides mechanisms that the receiving PHA may use in cases where the initial PHA fails to comply with the initial and subsequent billing due dates. (See Section 8 of Notice PIH 2012-42, Housing Choice Voucher Family Moves with Continued Assistance.)

Comment: HUD should present data to define portability success for voucher-assisted households. Commenters suggested that the use of data to define portability success would be beneficial for stakeholders to more fully comment on the proposed rule. A commenter suggested that American Community Survey data could be used, in conjunction with HUD data, to provide an overlay of assisted and unassisted households to determine at each income quintile, how many households move and how often they move within their existing city and county, outside of their county, or outside of their State. The commenter further wrote that such an analysis may help show that a high percentage of mobility moves results in voucher-assisted households relocating to neighborhoods of opportunity or deconcentrated neighborhoods.

HUD Response: HUD believes that portability success can be defined in a multitude of ways and is unclear how the analysis described by the commenter would successfully indicate the effects of portability on families. While HUD appreciates the suggestion for additional research into portability success, the intent of this final rule is to simplify the administration of portability issues within the voucher program. HUD believes this analysis is not necessary for successful implementation of the proposed reforms.

VII. Findings and Certifications

Regulatory Review - Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving 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. This rule was determined to be a “significant regulatory action” as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive order).

This final rule amends HUD’s regulations governing portability in the HCV program. These regulatory changes streamline the portability process and enable initial and receiving PHAs to better serve families and expand housing opportunities. HUD’s analysis determined that these regulatory amendments will not have an economic effect of greater than \$100 million but would yield certain nontangible benefits. The findings of HUD’s analysis are summarized below, and addressed in more detail in the accompanying regulatory analysis:

1. Benefits of final rule. The HCV portability policy helps ensure that families have the opportunity to relocate in order to pursue increased or new employment opportunities or to gain access to preferred schools for their children. An efficient portability process also helps ensure that victims of domestic violence and stalking have access to the resources necessary to relocate to a safe, stable home away from an abuser.

Moves to areas with relatively low concentrations of neighborhood poverty have important benefits to housing choice voucher families. Research from HUD’s Moving to Opportunity (MTO) demonstration³ showed that moving from housing developments in high-poverty neighborhoods to private housing in lower-poverty neighborhoods had strong positive effects on girls’ and adults’ mental health, as well as on adults’ physical health. Under the

³ See: http://www.huduser.org/publications/pdf/MTOFHD_fullreport_v2.pdf.

Gautreaux desegregation program in Chicago⁴, children and adults who moved with HCV assistance to middle-income suburbs appear to have experienced educational gains compared to families that remained in urban or higher-poverty neighborhoods. It is expected that the rule will remove potential barriers to mobility and will increase the number of families that may move to areas of opportunities. Some research indicates that families often use their vouchers to move to better opportunities, including employment opportunities.

2. Costs of rule. HUD expects that portability billing arrangements in this rule will place only a slightly additional administrative burden on PHAs. Portability may add to the cost of the HCV program through higher HAP costs, but the fiscal year (FY) 2015 appropriations act provides a set-aside of up to \$120 million from HCV renewal funds to allow HUD to provide PHAs with additional renewal funding under certain circumstances. One of the eligible categories permitted under the appropriations act is for increased costs resulting from unforeseen circumstances and portability. HUD is in the process of receiving the FY 2015 set-aside applications; however, an average of \$23 million has been found eligible in the past for PHAs for portability adjustments.

4. Administrative Fee. Prior to this rule, for a voucher in a portability billing arrangement between the initial PHA and receiving PHA, the initial PHA had to pay the receiving PHA 80 percent of its administrative fee for each month that the family received assistance at the receiving PHA, unless the PHAs mutually agreed to a different billing amount. Removal of potential barriers to mobility is expected to increase the number of portability vouchers and, thus, increase the amount of administrative fee transfers between PHAs.

⁴ The *Gatreaux* desegregation program is a housing desegregation program initiated by court order. In a consent decree, the court ordered the Chicago Housing Authority to provide scattered-site housing for public housing residents residing in poverty concentrated areas.

The final rule would set the maximum amount that the initial PHA is required to pay at 100 percent of the receiving PHA's administrative fee rate. In other words, the initial PHA would reimburse the receiving PHA for the lesser of: (1) 80 percent of the initial PHA's ongoing fee or (2) the full amount of the receiving PHA's administrative fee. This change eliminates the incentive for a receiving PHA with a lower administrative fee to bill an initial PHA with a higher administrative fee in order to receive a higher administrative fee than it would normally earn from HUD. This action should reduce portability billings for those PHAs for whom 80 percent of the initial PHA's fee is more than 100 percent of their own administrative fee. For example, assume that a receiving PHA's administrative fee is \$60. Prior to this rule, if a family moves to the receiving PHA's jurisdiction from an initial PHA that receives \$100 in administrative fees for a housing voucher, the receiving PHA may bill the initial PHA for \$80, which is \$20 more than the PHA would earn if it simply absorbed the voucher. Under the final rule, the receiving PHA will receive \$60 regardless of whether the receiving PHA bills the initial PHA or absorbs the family into its own program.

The full economic analysis is available for review at www.regulations.gov. The docket file for this rule is available for public inspection 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 docket file 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 at 800-877-8339 (this is a toll-free number).

Information Collection Requirements

The information collection requirements in the proposed rule were submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The information collection requirements of this rule was assigned this OMB Control Number 2577-0169.

Unfunded Mandates Reform Act (UMRA)

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 final rule does not impose any federal mandates on any State, local, or tribal government or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

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

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) 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 final rule is solely concerned with the portability feature of the voucher program. There currently are approximately 739 small PHAs (i.e., PHAs with less than 250 public housing units or vouchers)⁵ that will be subject to the rule. Since portability is authorized by statute, small PHAs administering the HCV program cannot be exempt from allowing eligible families to move, and HUD has strived to reduce burden for all PHAs. Therefore, while this final rule will impact these PHAs, the impact will not be significant. As stated previously in this preamble, through the amendments to the HCV regulations provided in this rule, HUD will reduce the administrative burden of portability for both PHAs and families, reduce portability billing arrangements between PHAs, and ensure maximum family choice in locating suitable housing. HUD also removed the proposed requirement for mandatory absorption of portability vouchers by the receiving PHA that was in the proposed rule. Through this final rule, HUD strives to clarify the portability process and reduce administrative burden for all PHAs, large or small. As explained more fully above in the “Executive Order 12866 and 13563” section of this preamble, the benefits of the regulatory changes will largely outweigh the administrative and compliance costs to PHAs. Accordingly, this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for

⁵ The number of 739 PHAs includes HCV-only PHAs and PHAs with combined HCV-public housing portfolios. This number does not include public housing-only PHAs, which is the largest category of small PHAs but which are not affected by this rule.

construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

List of Subjects in 24 CFR Part 982

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

Accordingly, HUD amends 24 CFR part 982, as follows:

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

1. The authority citation for 24 CFR part 982 continues to read as follows:

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

2. In § 982.4, in paragraph (b), revise the definitions of “Absorption” and “Suspension” to read as follows:

§ 982.4 Definitions.

* * * * *

(b) * * *

Absorption. For purposes of subpart H, the point at which a receiving PHA starts making assistance payments with funding under its consolidated ACC, rather than billing, the initial PHA.

* * * * *

Suspension. The term on the family’s voucher stops from the date that the family

submits a request for PHA approval of the tenancy, until the date the PHA notifies the family in writing whether the request has been approved or denied.

* * * * *

3. In § 982.54, revise paragraphs (d)(2) and (19) to read as follows:

§ 982.54 Administrative plan.

* * * * *

(d) * * *

(2) Issuing or denying vouchers, including PHA policy governing the voucher term and any extensions of the voucher term. If the PHA decides to allow extensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions, and how the PHA determines the length of any extension.

* * * * *

(19) Restrictions, if any, on the number of moves by a participant family (see § 982.354(c));

* * * * *

4. In § 982.301, revise paragraphs (a)(2), (a)(3), (b)(1), (b)(4), (b)(9), (b)(11), and (b)(15) to read as follows:

§ 982.301 Information when family is selected.

(a) * * *

(2) An explanation of how portability works. The PHA may not discourage the family from choosing to live anywhere in the PHA jurisdiction, or outside the PHA jurisdiction under

portability procedures, unless otherwise expressly authorized by statute, regulation, PIH Notice, or court order. The family must be informed of how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family's assistance.

(3) The briefing must also explain the advantages of areas that do not have a high concentration of low-income families.

* * * * *

(b) * * *

(1) The term of the voucher, voucher suspensions, and PHA policy on any extensions of the term. If the PHA allows extensions, the packet must explain how the family can request an extension;

* * * * *

(4) Where the family may lease a unit and an explanation of how portability works, including information on how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family's assistance.

* * * * *

(9) Materials (e.g., brochures) on how to select a unit and any additional information on selecting a unit that HUD provides.

* * * * *

(11) A list of landlords known to the PHA who may be willing to lease a unit to the family or other resources (e.g., newspapers, organizations, online search tools) known to the PHA that may assist the family in locating a unit. PHAs must ensure that the list of landlords or

other resources covers areas outside of poverty or minority concentration.

* * * * *

(15) The advantages of areas that do not have a high concentration of low-income families.

* * * * *

5. In § 982.303, revise paragraph (c) to read as follows:

§ 982.303 Term of voucher.

* * * * *

(c) Suspension of term. The PHA must provide for suspension of the initial or any extended term of the voucher from the date that the family submits a request for PHA approval of the tenancy until the date the PHA notifies the family in writing whether the request has been approved or denied.

* * * * *

§ 982.314 [Redesignated as § 982.354]

6. Redesignate § 982.314 as § 982.354.

7. Section 982.353 is amended as follows:

a. Remove the word “or” from paragraph (c)(1) and in its place add the word “nor”;

b. Revise paragraphs (c)(3) and (d)(2);

c. Remove paragraph (d)(3); and

d. Remove paragraph (e), redesignate paragraph (f) as paragraph (e), and revise newly redesignated paragraph (e).

The revisions read as follows:

§ 982.353 Where family can lease a unit with tenant-based assistance.

* * * * *

(c) * * *

(3) If the initial PHA approves, the family may lease a unit outside the PHA jurisdiction under portability procedures.

(d) * * *

(2) If a family is a participant in the initial PHA's voucher program, income eligibility is not redetermined when the family moves to the receiving PHA program under portability procedures.

* * * * *

(e) Freedom of choice. The PHA may not directly or indirectly reduce the family's opportunity to select among available units, except as provided in paragraph (a) of this section, or elsewhere in this part 982 (e.g., prohibition on the use of ineligible housing, housing not meeting HQS, or housing for which the rent to owner exceeds a reasonable rent). However, the PHA must provide families the information required in § 982.301 for both the oral briefing and the information packet to ensure that they have the information they need to make an informed decision on their housing choice.

8. Amend newly designated § 982.354 as follows:

a. Revise paragraphs (c)(1) and (2);

b. Remove paragraphs (c)(3) and (d)(1);

c. Redesignate paragraph (d)(2) as paragraph (d); and

d. Revise paragraph (e)(1).

The revisions read as follows:

§ 982.354 Move with continued tenant-based assistance.

* * * * *

(c) How many moves. (1) A participant family may move with continued assistance under the program, either inside the PHA jurisdiction, or under the portability procedures (See § 982.353) in accordance with the PHA's policies.

(2) Consistent with applicable civil rights laws and regulations, the PHA may establish policies that:

(i) Prohibit any move by the family during the initial lease term; and

(ii) Prohibit more than one move by the family during any one-year period.

* * * * *

(e) When the PHA may deny permission to move. (1) The PHA may deny permission to move if the PHA does not have sufficient funding for continued assistance. The PHA must provide written notification to the local HUD Office within 10 business days of determining it is necessary to deny moves to a higher-cost unit based on insufficient funding.

* * * * *

9. Revise § 982.355 to read as follows:

§ 982.355 Portability: Administration by initial and receiving PHA.

(a) General. When a family moves under portability (in accordance with § 982.353(b)) to an area outside the initial PHA jurisdiction, the receiving PHA must administer assistance for the family if a PHA with a HCV program has jurisdiction in the area where the unit is located.

(b) Requirement to administer assistance. A receiving PHA cannot refuse to assist incoming portable families or direct them to another neighboring PHA for assistance. If there is more than one such PHA, the initial PHA provides the family with the contact information for

the receiving PHAs that serve the area, and the family selects the receiving PHA. The family must inform the initial PHA which PHA it has selected as the receiving PHA. In cases where the family prefers not to select the receiving PHA, the initial PHA selects the receiving PHA on behalf of the family. HUD may determine in certain instances that a PHA is not required to accept incoming portable families, such as a PHA in a declared disaster area. However, the PHA must have approval in writing from HUD before refusing any incoming portable families.

(c) Portability procedures. The following portability procedures must be followed:

(1) When the family decides to use the voucher outside of the PHA jurisdiction, the family must notify the initial PHA of its desire to relocate and must specify the location where it wants to live.

(2) The initial PHA must determine the family's eligibility to move in accordance with §§ 982.353 and 982.354.

(3) Once the receiving PHA is determined in accordance with paragraph (b) of this section, the initial PHA must contact the receiving PHA, via email or other confirmed delivery method, prior to approving the family's request to move in order to determine whether the voucher will be absorbed or billed by the receiving PHA. The receiving PHA must advise the initial PHA in writing, via email or other confirmed delivery method, of its decision.

(4) If the receiving PHA notifies the initial PHA that it will absorb the voucher, the receiving PHA cannot reverse its decision at a later date without consent of the initial PHA.

(5) If the receiving PHA will bill the initial PHA for the portability voucher and the cost of the HAP will increase due to the move, the initial PHA may deny the move if it does not have sufficient funding for continued assistance in accordance with § 982.354 (e)(1).

(6) If a billing arrangement is approved by the initial PHA or if the voucher is to be

absorbed by the receiving PHA, the initial PHA must issue the family a voucher to move, if it has not already done so, and advise the family how to contact and request assistance from the receiving PHA.

(7) The initial PHA must promptly notify the receiving PHA to expect the family. The initial PHA must give the receiving PHA the form HUD-52665, the most recent form HUD 50058 (Family Report) for the family, and all related verification information.

(8) The family must promptly contact the receiving PHA in order to be informed of the receiving PHA's procedures for incoming portable families and comply with these procedures. The family's failure to comply may result in denial or termination of the receiving PHA's voucher.

(9) The receiving PHA does not redetermine eligibility for a participant family. However, for a family that was not already receiving assistance in the PHA's HCV program, the initial PHA must determine whether the family is eligible for admission to the receiving PHA's HCV program. In determining income eligibility, the receiving PHA's income limits are used by the initial PHA.

(10) When a receiving PHA assists a family under portability, administration of the voucher must be in accordance with the receiving PHA's policies. This requirement also applies to policies of Moving to Work agencies. The receiving PHA procedures and preferences for selection among eligible applicants do not apply to the family, and the receiving PHA waiting list is not used.

(11) If the receiving PHA opts to conduct a new reexamination for a current participant family, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit.

(12) The receiving PHA must determine the family unit size for the family, and base its determination on the subsidy standards of the receiving PHA.

(13) The receiving PHA must issue a voucher to the family. The term of the receiving PHA voucher may not expire before 30 calendar days from the expiration date of the initial PHA voucher. If the voucher expires before the family arrives at the receiving PHA, the receiving PHA must contact the initial PHA to determine if it will extend the voucher.

(14) Once the receiving PHA issues the portable family a voucher, the receiving PHA's policies on extensions of the voucher term apply. The receiving PHA must notify the initial PHA of any extensions granted to the term of the voucher.

(15) The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA voucher. As required in § 982.303, if the family submits a request for tenancy approval during the term of the voucher, the PHA must suspend the term of that voucher.

(16) The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program, or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the voucher.

(17) At any time, either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance to the family in accordance with § 982.552 and 982.553.

(d) Absorption by the receiving PHA. (1) If funding is available under the consolidated ACC for the receiving PHA's HCV program, the receiving PHA may absorb the family into the receiving PHA's HCV program. After absorption, the family is assisted with funds available under the consolidated ACC for the receiving PHA's HCV program.

(2) HUD may require that the receiving PHA absorb all, or a portion of, incoming portable families. Under circumstances described in a notice published in the Federal Register, HUD may determine that receiving PHAs, or categories of receiving PHAs, should absorb all or a portion of incoming portable families. If HUD makes such a determination, HUD will provide an opportunity for public comment, for a period of no less than 60 calendar days, on such policy and procedures. After consideration of public comments, HUD will publish a final notice in the Federal Register advising PHAs and the public of HUD's final determination on the subject of mandatory absorption of incoming portable families.

(3) HUD may provide financial or nonfinancial incentives (or both) to PHAs that absorb portability vouchers.

(e) Portability billing. (1) To cover assistance for a portable family that was not absorbed in accordance with paragraph (d) of this section, the receiving PHA may bill the initial PHA for housing assistance payments and administrative fees.

(2) The initial PHA must promptly reimburse the receiving PHA for the full amount of the housing assistance payments made by the receiving PHA for the portable family. The amount of the housing assistance payment for a portable family in the receiving PHA program is determined in the same manner as for other families in the receiving PHA program.

(3) The initial PHA must promptly reimburse the receiving PHA for the lesser of 80 percent of the initial PHA ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program unit under HAP contract on the first day of the month for which the receiving PHA is billing the initial PHA under this section. If administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill under this section (e.g., the

receiving PHA may bill for the lesser of 80 percent of the initial PHA's prorated ongoing administrative fee or 100 percent of the receiving PHA's prorated ongoing administrative fee). If both PHAs agree, the PHAs may negotiate a different amount of reimbursement.

(4) When a portable family moves out of the HCV program of a receiving PHA that has not absorbed the family, the PHA in the new jurisdiction to which the family moves becomes the receiving PHA, and the first receiving PHA is no longer required to provide assistance for the family.

(5) In administration of portability, the initial PHA and the receiving PHA must comply with financial procedures required by HUD, including the use of HUD-required billing forms. The initial and receiving PHA must also comply with billing and payment deadlines under the financial procedures.

(6) A PHA must manage the PHA HCV program in a manner that ensures that the PHA has the financial ability to provide assistance for families that move out of the PHA's program under the portability procedures, and that have not been absorbed by the receiving PHA, as well as for families that remain in the PHA's program.

(7) HUD may reduce the administrative fee to an initial or receiving PHA if the PHA does not comply with HUD portability requirements.

(f) Portability funding. (1) HUD may transfer units and funds for assistance to portable families to the receiving PHA from funds available under the initial PHA ACC.

(2) HUD may provide additional funding (e.g., funds for incremental units) to the initial PHA for funds transferred to a receiving PHA for portability purposes.

(3) HUD may provide additional funding (e.g., funds for incremental units) to the receiving PHA for absorption of portable families.

(4) HUD may require the receiving PHA to absorb portable families.

(g) Special purpose vouchers. (1) The initial PHA must submit the codes used for special purpose vouchers on the form HUD-50058, Family Report, and the receiving PHA must maintain the codes on the Family Report, as long as the Receiving PHA chooses to bill the initial PHA.

(2) Initial and receiving PHAs must administer special purpose vouchers, such as the HUD-Veterans Affairs Supportive Housing vouchers, in accordance with HUD-established policy in cases where HUD has established alternative program requirements of such special purpose vouchers.

§ 982.403 [Amended]

10. In § 982.403, paragraph (b)(3) is amended by removing the citation “§ 982.314” and in its place adding the citation “§ 982.354.”

§ 982.551 [Amended]

11. In § 982.551, paragraph (f) is amended by removing the citation “§ 982.314” and in its place adding the citation “§ 982.354.”

12. In § 982.554, revise paragraph (c)(4) to read as follows:

§ 982.554 Informal review for applicant.

* * * * *

(c) * * *

(4) A PHA determination not to approve an extension of the voucher term.

* * * * *

13. In § 982.555, revise paragraph (b)(4) to read as follows:

§ 982.555 Informal hearing for participant .

* * * * *

(b) * * *

(4) A PHA determination not to approve an extension of the voucher term.

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14. In § 982.637, revise paragraph (c)(1) to read as follows:

§ 982.637 Homeownership option: Move with continued tenant-based assistance.

* * * * *

(c) * * *

(1) Lack of funding to provide continued assistance. The PHA may deny permission to move with continued rental or homeownership assistance if the PHA determines that it does not have sufficient funding to provide continued assistance. The PHA must provide written notification to the local HUD Office within 10 business days of determining it is necessary to deny moves based on insufficient funding.

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§ 982.641 [Amended]

14. Section 982.641(b)(11) is amended by removing the citation “§ 982.314” and in its place adding the citation “§ 982.354.”

Date: August 13, 2015

Jemine A. Bryon
General Deputy Assistant Secretary for
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Nani A. Coloretti, Deputy Secretary

Approved on August 13, 2015

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