

A regional comparison of how
administrators of the Section 8 (Existing)
Program perceive its effectiveness

by

Jocelyn Vanessa Terry

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CHAPTER I.

INTRODUCTION

The Section 8 Existing Low Income Housing Assistance Program was enacted into law in 1974 as a segment of the Housing and Community Development Act of that year. The Program assists low income families and special groups to acquire decent and safe dwelling units. Participants of the Existing Program are aided in two ways: (1) families receive subsidies that lower the percentage of their incomes used for housing, and (2) landlords are induced to maintain their dwelling units within housing quality standards set by the Department of Housing and Urban Development (HUD).

This thesis compares and contrasts how administrators of the Section 8 Existing Program interpret current program guidelines, and whether these guidelines meet its program goals. The modifications of core program variables have resulted in the program name remaining the same while the administrative policies in which the program was founded have been significantly altered.

Statement of the Purpose

The goal of this study is to assess to what extent changes in the Existing Program affected the fulfillment of program goals established prior to the changes. It is also hypothesized that the effectiveness of the program is a factor of local administrative procedures, rather than the voluminous amount of program procedures established by HUD. Moreover, it can further be implied that recent program changes are

based on cost rather than the degree to which program goals are fulfilled.

Program Goals

An assessment of the Existing Program will be measured by examining and comparing program results with the goals which they were established to achieve. The goals are to:

1. Encourage mobility - allows families to reside in neighborhoods of their choice rather than confining them to specific housing units.
2. Assisting special groups - provides housing choices for elderly, handicapped, single persons and large families that often tend to have greater housing problems than other groups.
3. Improve housing units - enables households to live in safe and decent housing rather than substandard units (adequate plumbing, ventilation, security, etc.).
4. Stimulate the economy - encourages the provision of housing by the private market, thus decreasing the cost of new construction to the government.
5. Increase the supply of low income housing units - utilizes existing dwelling units that would have possibly been abandoned or allowed to deteriorate if federal assistance was not available. Consequently, a greater number of houses remain available for low income consumption.
6. Provide housing for moderate income families - provides safe and decent dwellings to moderate income families that would not be able to reside in these units without federal assistance.
7. Reduce housing costs - the program requires that families pay 30% of their income on housing. This aids families that pay an extremely high percentage of their income on housing.
8. Improve neighborhood quality - helps localities and private owners to create and maintain desirable and affordable dwelling units for low and moderate income families.

This list is not conclusive; other goals were established as well,

but this study only focuses on the extent to which these goals were achieved.

Another goal of this thesis is to examine the current status of the Existing Program and whether program changes have tainted its effectiveness. There had not been any major program changes until 1980. Moreover, this thesis seeks to explain not only the administrative procedures of the program, but to also discover whether persons outside of the realm of the Department of Housing and Urban Development hierarchy influence core program decisions.

Although the goal of the Existing Program is to assist low income families, this study maintains that the effectiveness of the program is questionable. This may, in part, be due to constant federal budget cutbacks and the extent to which program goals are fulfilled.

Hypotheses

In addition to the hypothesis mentioned earlier, several additional hypotheses were also tested:

- H₁ The effectiveness of the Existing Program depends on Public Housing Authority input, the number of years participated, and the degree to which program goals are met.
- H₂ The number of leases allocated by the Department of Housing and Urban Development is dependent on the size of the population, the role of the program, and the number of years participated.
- H₃ The freedom to make program decisions is impacted by the number of years participated, total population, and number of leases.

The data for this study were gathered from Public Housing Authorities (PHA) located in cities with populations between 100,000 and 500,000 and located in Housing and Urban Development Regions One, Three,

Five, Seven, and Nine.

Program Definitions

Often laws are made up of terms that are not always familiar to the reader; therefore, some of the terms used in this text have been defined to aid the reader.

Annual Contributions Contract (ACC)--A written agreement between HUD and PHA to provide annual contributions to the PHA to cover housing assistance payments and other expenses pursuant to the Act.

Lease--A written agreement between an owner and a family for the leasing of a unit by the owner to the family with assistance payments under a Housing Assistance Payments Contract between the owner and the PHA.

Certificate of Family Participation--A certificate issued by the PHA declaring a family to be eligible for participation in this program specifying the terms and conditions of participation.

Contract Rent--The rent payable to the owner under his contract including the portion of the rent payable by the family.

Existing Housing--Housing that is in decent, safe, and sanitary condition.

Fair Market Rent (FMR)--The rent including utilities (except telephone), ranges, and refrigerators, and all maintenance, management, and other services which, as determined at least annually by HUD, would be required to be paid in order to obtain privately-owned existing, decent, safe, and sanitary housing of modest nature with suitable

amenities. Separate rents are set for units of varying sizes.

Housing Assistance Payment Contract--A written contract between a PHA and an owner for the purpose of providing housing assistance payments to the owner on behalf of an eligible family.

Housing Assistance Plan--A plan submitted by a local government not participating in the Community Development Block Grant Program and approved by HUD.

Lower Income Family--A family whose income does not exceed 80 percent of the median income for the area as determined by HUD. Income limits higher or lower than 80 percent can be set if the prevailing levels of construction costs, unusually high or low incomes show a need to be changed.

Owner--Any person or entity, including a cooperative, having the legal right to lease or sublease existing housing.

Very Low Income Family--A family whose income does not exceed 50 percent of the median income for the area as determined by HUD with adjustments for smaller or larger families (U.S. Department of Housing and Urban Development, 1983).

Organization of the Thesis

Chapter II gives an overview of the components of the Existing Program. Chapter III presents pertinent literature of studies on the status of the Existing Program. Chapter IV outlines the procedural techniques used to select the sample and the method used to collect data. Chapter V examines the returned data and also examines various

relationships between core program variables. Chapter VI concludes the research and makes program recommendations.

CHAPTER II.

PROGRAM OVERVIEW

This chapter will present an overview of the major program elements of the Section 8 Existing Housing Program. It will also compare and contrast elements of the New Construction, Substantial Rehabilitation, and Moderate Rehabilitation Housing Programs.

The Politics of Housing

Government-subsidized housing for lower income families began with the Housing Act of 1937. This Act was the oldest national housing program to assist renter households. The act was aimed at stimulating employment, clearing slums, and providing good housing for needy households. This was the first time since World War II that federal funds were used to finance the construction of new housing (Aaron, 1972). Nevertheless, it was the Housing Act of 1949 that set a national goal of a "decent home and a suitable environment for every American family" (Aaron, 1972). As a result of this act, the use of federal programs to assist low income families has continued to this day.

Housing policy often appears as an ongoing social dialogue. Production policy assumes a continuing contest between those who favor an active role for government in setting targets, rationalizing supply factors (money), and using broad subsidies to bring the product within reach of mass demand and those on the other side who favor a hands-off minimum public intervention stance. The first group seeks to achieve high levels of production and believes that the trickle down and

multiplier effects will take care of equity. The latter groups attempt to accept certain market failures and seek to aid low income persons by direct income strategies (Downs, 1973).

The two major political parties reflect these positions. The Democrats are advocates of an activist role by government, while Republicans seek to minimize regulation and omit direct financial aid. As these parties alternate control of the presidency or Congress, the national housing policy changes accordingly. An example of these actions occurred during the mid-1960s. President Johnson's (Democratic) Great Society Program set staggeringly high production targets and enacted a broad set of supply side subsidies in order to obtain them. Ironically, the Nixon (Republican) Administration overnight extinguished the Great Society Production Program (Downs, 1983).

Although the suspension led to the creation of the Section 8 Program of the three major components of the program (Existing, New Construction, Substantial Rehabilitation), the emphasis was placed on utilizing existing structures rather than newly-constructed units. This approach resulted in less spending on low income housing since earlier programs had been cancelled. The production levels reached during the Johnson era were not matched during the Nixon/Ford years. Nevertheless, when Jimmy Carter (Democratic) took office in 1976, his administration shifted from an emphasis on existing units (Nixon/Ford approach) to an emphasis on new construction. Therefore, the 1976 to 1980 period increased the number of newly-constructed units available for low income families.

Consequently, one could hypothesize that the utilization of existing units is a method used by Republican leaders to limit the amount of money spent on low income housing. A comparison of Table II-3 shows the cost and unit allocations of the Carter and Reagan eras. While Carter emphasized New Construction, Reagan emphasized the Existing Program. Although the expenditures for the Nixon/Ford years were not included in the table, reports show that the administrations on these former presidents did emphasize the utilization of existing structures.

Recently, the current Reagan (Republican) Administration has proposed the future demise of the Section 8 Existing Program.

The program is perceived by the current administration as being too costly. Its policy makers contend that new procedures and programming would greatly improve the provision of low income housing. As a result, the administration decided to conclude the program in 1985. Prior to this time, program funding will be continually decreased.

Politics and the development of sound housing policies can be mixed, but the needs of the client must be kept in mind at all times. Political ideologies should be held secondary to those adequately addressing low income housing needs. The politics of housing presently does not separate partisan ideologies from the needs of their low income constituents. The trend for the provision of low income housing is directed by varying perceptions of need. These definitions are often tainted by middle class perceptions of need and the provision of assistance. Moreover, the higher the income, the less supportive groups are of subsidies. Conversely, the lower the income, the more supportive individuals are of subsidies. Persons in higher income stratas tend to

perceive that welfare/subsidy programs are a waste of federal dollars. While politics remain the manifest directorate of housing policies, it must be sensitive to the needs of all constituents: Republican, Democratic, rich or poor.

The Evolution of Subsidy Programs

During the 1960s, there were severe urban problems in many cities. Low income persons rioted to bring attention to these problems (housing, health care, unemployment, etc.). To assist the low income groups in housing, various subsidy programs were developed. The Below Market Interest Rate (BMIR) 221(d)(3) was a provision of the Housing Act of 1961 that allowed private corporations and nonprofit groups to participate in providing housing as long as their profits were limited to six percent. This limit was later reduced to three percent in 1965. The act also created the Rent Supplement Program which required families to pay 25 percent of their income toward rent while the government subsidized the remaining cost.

Housing history was made during this era with the creation of the Department of Housing and Urban Development (HUD) in 1965 to succeed the Housing and Home Finance Agency.

In 1966, HUD initiated the Demonstration Cities and Metropolitan Development Act. The model cities program was a comprehensive effort to coordinate physical, social, and economic programs to improve urban neighborhoods (Wedin and Nygren, 1976).

In 1968, the landmark Housing and Development Act of 1968

introduced a new subsidy technique in which private lenders were paid to assist sponsors in the development of low and moderate income housing. Government subsidies covered the difference between monthly debt expenses at market interest rates and those which would be required on a mortgage with an interest rate of one percent. The savings were later passed on to the homeowner or the renter. The Section 235 home ownership established under this Act allowed homeownership program participants to pay 20 percent of their income toward monthly payments. The Section 236 Program, which is a similar subsidy program, also required that program participants spend up to 25 percent of their incomes on rent. The additional cost was contributed to maintenance and repair costs that were associated with homeownership.

The Brooke Amendment in the Housing Act of 1969 authorized additional assistance to local public housing authorities by requiring that tenants pay no more than 25 percent of their income on housing (Wedin and Nygren, 1976).

These earlier housing programs were viewed as effective until they came under criticism in the early 1970s. Some of the criticisms stemmed from the cost of construction and the fact that the programs only served a fraction of the poor. It was also charged with concentrating the poor in housing projects, thus causing a distinct separation of lower income people and minorities from the general public (Struyk, 1980).

During this period, the Nixon Administration and Congress were also feuding over the future of housing policy. The controversy of these earlier programs led the administration to suspend federally-assisted housing programs in 1973. In the following year, the Housing and

Community Development Act of 1974 was passed. This Act shifted from the use of categorical grants to the use of block grants. These changes further led to a shift from production-oriented programs to programs that provided renters with funds to compete for adequate dwelling units. Consequently, newly constructed and existing units were used to house low income families. The 1974 Act included the Title II Section 8 Lower Income Housing Assistance Program.

The Forerunners of the Existing Program

The Existing Program replaced and improved housing programs serving low income families. Some of the elements of its predecessors were incorporated in the Existing Program. A significant number of the elements of the Existing Program were borrowed from the Section 23 Leased Housing Program. Nevertheless, the Existing Program is a hybrid of the Section 23 Leased Housing Program and the Experimental Housing Allowance Program. Like its predecessors, the program has a goal of lessening the financial housing burden of low to moderate income groups.

The Section 23 Housing Program

The Section 23 Leased Housing Program was established by the Housing Act of 1965. Leasing required prior approval of local governments. While leasing did not have to be administered by a Local Housing Authority (LHA), in most cases such an agency administered the program. The leases were originally for 12- to 36-month periods. However, in 1966 they were extended to five years and later extended to 15 years in 1970.

Generally, units were leased from the owner and then subleased to a low income family. Nevertheless, there were provisions for direct leases between owners and tenants. The owners were paid a Fair Market Rent (FMR) established by HUD that covered the cost of ranges, refrigerators, utilities, and management services. Rents had to be comparable to unsubsidized units and houses had to meet set housing quality standards. LHAs performed simple maintenance functions while major services were the responsibility of the owner.

The eligibility of the tenant was dependent on the family income. In addition, program participants were required to pay 25 percent of their income on housing. Tenant eligibility was decided by the LHA.

In 1971 and 1973, there were several major changes made in the program which were later used in the Section 8 Existing Program. These changes resulted in placing management responsibilities in the hands of the owner, thus reducing the role of LHAs. The responsibilities of the owners were extended to include payment of utilities, taxes, insurance, performance of all maintenance functions, processing tenant applications, selecting tenants, and collecting rents. The changes further placed greater responsibilities on the tenant family. This was the first time in the history of public housing that tenants had definite responsibilities. Earlier tenants needed only to apply, establish eligibility, and wait for an opening. Under the Section 23 Program, accepted applicants were given a certificate of eligibility good for 45 days, and they were permitted to find the dwelling unit of their choice that met HUD guidelines. These regulations released LHAs from maintenance duties and searching for units. LHAs were given

additional time to re-emphasize program administrative procedures. Their role was to conduct initial inspection of the unit and to process the housing assistance payments. They also controlled evictions (Phares, 1981).

The Housing Act of 1974, while incorporating a significant portion of Section 23 Program guidelines, made new additions to the administrative regulations. Distinctions were made between low and very low income families, such that families with income 80% of the median income are considered low income, and families with incomes 50% or less of the median income are considered very low income families. Large families consisted of six minors while very large families consisted of eight minors. These definitions also assisted in establishing rent limitations.

In addition, certificates of eligibility were extended to 60-day periods, and owners' responsibilities were further increased. They controlled evictions with LHA approval and HUD agreed to pay 80% of the rent for 60 days if tenants violated a lease agreement. The authority of LHAs was reduced, tenant responsibilities increased, and owners controlled a significant portion of program operations (Phares, 1981).

The Experimental Housing Allowance Program

In 1972, the federal government initiated the largest social experiment that tested direct cash assistance on the use of housing. This test involved 23,000 low income families in 12 locations that accepted monthly cash subsidies for a guaranteed period from three to 10 years. The major purpose of the program was to provide responses to the

following questions:

1. How do households use allowances?
2. When use of funds is unrestricted, is more spent on housing?
3. Does mobility occur by location and neighborhood?
4. Does housing quality change and are these changes in response to the housing price?

The results of the program showed that 60 percent of eligible households would accept unrestricted housing assistance compared to 50 percent. When the assistance was restricted, only 10 percent of the actual assistance received would be used for housing. Households that moved used 80 percent or more of their assistance on acquiring housing. Yet, only 40 percent of the increase could be directly ascribed to the assistance itself. The principal positive effect was that there was a reduction in the proportion of a household's income spent on housing consumption. Additional effects were that income assistance did not significantly alter households, neighborhood type, and ethnicity rarely changed. There was also no major price effect and new construction did not occur. It was also concluded that the assistance-granted families did little to promote racial integration, increase production, or stimulate neighborhood revitalization (Bourne, 1981).

Section 8 Program Components

There are four distinct elements of the Section 8 Program.

The first element is the New Construction Program, which guarantees a rental stream to private developers of new housing projects prior to construction. The government provides subsidies to income-eligible

households who apply directly to the owners for rental units.

The second element is the Substantial Rehabilitation Program. Like the New Construction Program, it guarantees subsidies to income-eligible households and assists in the rehabilitation of existing structures that require more than routine or minor repairs.

The third element is the Moderate Rehabilitation Program. Unlike the other program components, it was enacted in the Housing and Community Development Act of 1978 rather than the Housing and Community Development Act of 1974. It provides rental subsidies to owners who upgrade substantial units and lease them to low income families. This program is designed to fill the missing gap between the Existing Program and the Substantial Rehabilitation Program. Consequently, units that did not need major repairs could also be upgraded through this program.

The final element is the Existing Program. It assists households by leasing units which meet certain physical standards from the existing privately-owned housing stock. The units are inspected by Public Housing Agencies to assure that the units are of standard quality. The government pays the landlord the difference between the actual market rent and the rental contribution of the tenant (Drury, 1978). This thesis will focus on the programming procedures utilized to administer the Existing Program.

The Legal Foundation of the Existing Program

Federal regulations outlining the administrative procedures of the Existing Program are found in the Code of Federal Regulations, section

882 (Appendix A). This section is used by both Public Housing authorities and HUD regulatory offices to administer the program according to HUD guidelines.

Admission Procedures

The regulations require that prior to the submission of an application package for admission into the program, organizations must meet two prerequisites: (1) the organization must be a designated Public Housing Authority, and (2) it must be formally invited by HUD to apply for support, and the agencies that are not PHAs must contact HUD for admission guidelines. If the application is approved, the agency is granted an annual contributions contract (ACC). This contract specifies the number of units to be financed and the terms in which PHAs will be reimbursed for their administrative costs. The procedures for admittance to the program is illustrated in Figure II-1.

Subsequent to meeting the prerequisites, to obtain assistance PHAs must prepare a housing assistance plan. The plan establishes present and future housing needs and surveys the conditions of existing housing. The purpose of the plan is to establish planning data and to relate the Section 8 Program to local needs and housing market characteristics.

Program Eligibility Requirements

The Existing Program is partly an income transfer and partly a housing subsidy. Tenants who choose to remain in their homes receive income transfers while tenants who move to new units benefit much like

Program Initiation

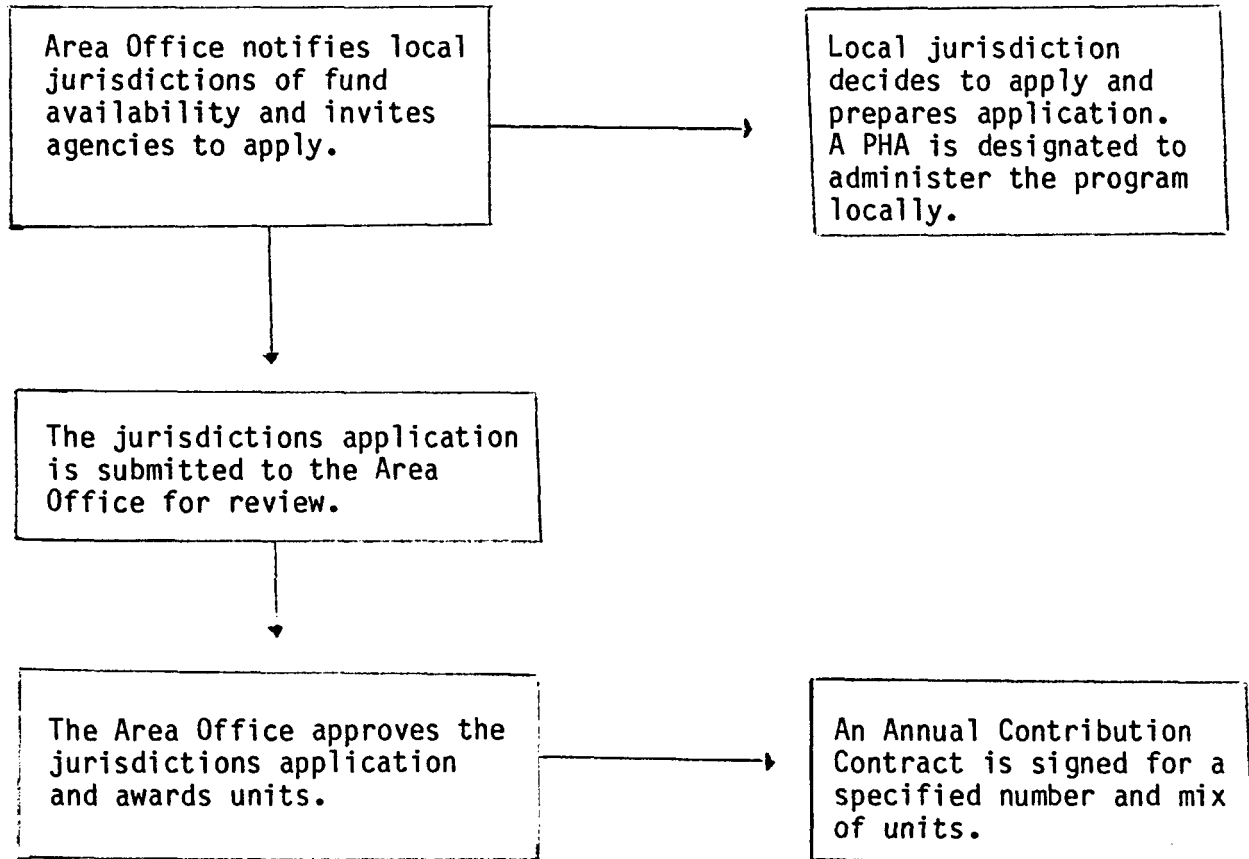


Figure II-1. Program initiation and administrative functions in the Section 8 Program for existing housing (U.S. Department of Housing and Urban Development, 1978).

conventional public housing. Moreover, the Existing Program services the same clients that public housing serves.

Persons eligible for participation in the program must have incomes 50 percent or lower than the area's median income. This percentage was originally between the 50th percentile and 80th percentile of the median income. The recent change eliminates 6.3 million lower income families (Bratt, 1982). These families contain 24 percent that pay more than 30 percent of their incomes on housing and 10.8 percent that live in substandard units (Bratt, 1982). Although many upper income families are excluded from the program, families with the lowest incomes will be greater served. The Reagan Administration argues that the change was made because affordability is the major housing problem facing low income families. A Reagan Administration study revealed that 62 percent of all very low income families pay more than 30 percent of their incomes on rent; consequently, the reduction in income status reduces individual tenant contributions. Therefore, the program assists those whose housing costs are "catastrophic" (Bratt, 1982).

In addition, families with incomes greater than 50 percent can only make up 10 percent or less of the units leased. New units can only be leased to five percent of this group. Consequently, 90 percent of the Section 8 Existing housing will be leased by very low income families. This action could result in holding stations for the low income. Often when this occurs, there are stigmas attached to the housing units and rapid deterioration is inevitable.

Direct Assistance

To receive assistance a low income family applies for a Certificate of Family Participation in the community where its members wish to reside. The applicants do not have to be residents of the community when they apply. A family eligible to participate is given a period of 60 days to find a suitable housing unit (Finders Keepers Policy) that meets the Public Housing Authorities' housing standards and rent limitations (Drury, 1978). If both constraints are met, a contract is signed with the landlord, while the tenant signs the lease. The relationship between the landlord and the tenant is outlined in the lease which is a formal binding contract.

Participating in the Section 8 Program places households in a position where they can negotiate with the landlord for services. Service requests can be in the form of repairs and maintenance. The landlord and tenant are aware of the housing standards; therefore, each party knows the extent to which grievances or concessions can be requested and made. This arrangement gives the low income family some sense of influence on the maintenance of their dwelling unit. The belief that low income households cannot receive additional improvements or nonessential services is nullified by the housing quality standards (Drury, 1978).

Existing subsidies to families are made for one month, 12 months, 36 months, and 180 months. Moderate Rehabilitation payments are also made up to 180-month periods, while New Construction and Substantial Rehabilitation payments are made for a period between 240- and 480-month

periods.

The Functions of Fair Market Rents

Fair Market Rents (FMRs) are the principal basis for determining maximum gross rents permitted to be paid for occupancy of dwelling units assisted by Section 8. They are established by HUD for major housing markets in the nation, updated annually and computed separately for existing, newly constructed, and substantially rehabilitated units. Fair Market Rents were criticized as being too low. However, a 1980 study to Congress reported that the rates had risen to levels which could in the future produce challenges to the existence of the program. Since FMRs are set by the federal government, often they do not reflect the housing costs of some localities. As a result, they may be too high in one locality while too low in another.

Fair Market Rents have two basic functions: (1) establish a ceiling on the amount of rent a household will pay, and (2) establish an upper limit on the housing quality subsidized, so that units that exceed the "modest design" will not be eligible for the program. Fair Market Rents that are too high cause landlords to turn away nonsubsidized households in favor of Section 8 certificate holders. If they are too low, landlords are discouraged against participating, thus reducing the average quality of units available that would qualify for subsidy. Moreover, landlords are not given any incentive to update or repair structures to meet HUD housing standards.

Low Fair Market Rents also tend to limit the interest of all but

the poorest households. As rents increase, program participants increase. Therefore, stated succinctly, Fair Market Rents define where along a continuum between housing quality and price the limits of the program will be drawn.

Mahlon R. Straszheim (1979) asserts that Fair Market Rents result in horizontal equity. The author contends that by establishing Fair Market Rents for an entire urban area, program regulations tend to exclude the poor from better quality neighborhoods resulting in the denial of households eligible for assistance. He questioned subsidizing the most modest and the least expensive rental units.

The multidimensional products that make up a housing unit make it hard to place values on the age of the house, neighborhood, and the level of decency and safety. Basing Fair Market Rents on these categories is complicated. The housing quality level desired for recipients must be based on these multidimensional variables. Additionally, housing markets are generally geographically partitioned. Dwelling units in close geographic proximity may exhibit significantly different prices for similar housing units. Therefore, potential program participants could reside in a higher income area, yet live in a low income dwelling.

Straszheim supports the idea of eliminating or lowering housing standards to reduce the program appeal to those of the lowest income strata. While lowering standards would assure participants of households of very low incomes, the lowered standards would assure participants of households of very low incomes, the lowered standards would negate the major goal of the program 'a decent and safe home.'

Perhaps what is needed is to allow Public Housing Authorities the leeway to set criteria to allow deviant cases to participate in the program.

A national housing policy must tailor its program requirements to meet the diverse needs of local Public Housing Authorities without infringing on national goals. These needs must be addressed individually rather than in the aggregate. Housing officials often refuse to realize that localities have varying degrees of housing needs. Consequently, FMRs must be higher in some areas and lower in others; housing standards must be comparable to neighboring housing units and financial allocations must often extend beyond base rates that can be provided and seek to assist the financial problems of the family. A successful housing plan must view the problem from both a micro and macro perspective. Often program objectives are stated or performed to produce equality for all. This pluralistic approach may address the public interest but it is the public's interest that must be met. Effective programming must express varying degrees of public interest.

To incorporate the needs of various regions, perhaps client analysis as well as benefit cost analysis studies should be performed. Client analysis would examine the program and indicate the progress of the program, the distribution of benefits, the social problems and opportunities, and the resources used. While benefit cost analysis makes a monetary assessment of the effectiveness of the program. Through thorough study of major program elements, guidelines can be developed that allow PHAs to restructure program objectives to meet the needs of their diverse populations (Reiner, Reimer, and Reiner, 1972).

Public Housing Authorities

Although some private organizations administer the Existing Program, the major administrators of the program are Public Housing Authorities (PHAs). The earliest housing authorities extend back to the Housing Act of 1937. Yet, prior to the Housing Act of 1974, Local Housing Authorities (LHAs) administered housing programs for low income families. The Public Housing Agency category was extended in the Section 8 Program to include both Local Housing Authorities and all other entities that would be legally eligible to administer a housing program. A public housing authority is defined as any state, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage or assist in the development or operation of housing for low income families (24 CFR Part 882). This definition is broader than the language encompassing a Local Housing Authority under the conventional public housing program.

Local Housing Authorities established before the passage of Section 8 were a product of the "good government" ethic of the 1920s and the 1930s. During this period, it was believed that public welfare programs should be operated by disinterested laymen representing the "best of the community" who would keep the housing programs out of politics (Hartman, 1969).

Prior to the enactment of the Existing Program, the responsibility of deciding which agency was an appropriate Public Housing Authority rested on the General Counsel in each HUD Area Office. The decisions were based on federal statutory law and relevant state law.

An examination of the programming of PHAs in the 1960s was performed by the National Association of Housing and Redevelopment Officials in 1967. A nationwide questionnaire gathered information on the housing authority commissioners, their training, background values, and attitudes. In addition, the questionnaire also examined the views of the authorities' implementation of housing programs.

There were two salient characteristics of these authorities: their relative independence from normal political processes, and the placing of power in the hands of a lay board that supposedly represented a cross section of the best of the community. The commissioners were very conservative. When asked whether additional public housing was needed they were opposed to the idea. Their feeling on the functions and needs for low income programs were mixed. Enthusiasm for additional programs decreased as one moved down the line of organizational authority to regional and local levels. The attitude of opposition to additional housing for the poor was an indication that the interests of the poor were inadequately represented. Allowing this selective group to operate Public Housing Authorities was a good government approach to providing low income housing. A later study by Hartman in 1973 re-examined the Public Housing Administrators and found that there were not any significant changes in attitudes. The Section 8 Program weakened this approach by broadening the concept of Public Housing Authority. This change allowed organized groups and independent agencies to assist in the provision of low income housing.

Program Costs

When comparing the costs of the Section 8 Program, there is evidence that like current reduction in the use of New Construction and Substantial Rehabilitation Programs is a result of a presidential housing study performed in 1982. The report discovered that the average cost of an existing unit was \$130 per month. In addition, it was estimated that the average rent for a typical unsubsidized unit would be \$291 compared to the \$362 cost of units under the New Construction Program (Table II-1). Consequently, the New Construction monthly rents are 24 percent higher than the market value, thus representing a significant loss of money to the government (Table II-2).

The total costs of the Section 8 Program are higher than those reflected directly in the subsidy payments. An example is the indirect cost for New Construction projects through revenue losses arising from accelerated depreciation allowances and from the tax exemption for housing finance bonds. The Existing Program incurs losses beyond those for direct rental assistance for depreciation and for costs of local program administration. Nevertheless, the indirect cost of the Existing Program is one-half of those incurred in New Construction Programs. A final cost issue associated with the New Construction Program is the budget "overhang" (Table II-2).

The budget overhang locks the government into financing these units for long periods of time (McKenna and Hills, 1982). Consequently, each year these costs must be incorporated in federal spending thus reducing the funds available for other programs.

TABLE II-1

1979 Comparison of subsidy costs for the
New Construction and Existing Housing Program^a

<u>Cost Category</u>	<u>Subsidy Cost New Construction</u>	<u>Subsidy Cost Existing</u>
Gross Rent	\$362/month	\$240/month
Tenant Payment	\$112/month	\$110/month
HUD Subsidy (gross rent minus tenant payment)	\$250/month	\$130/month

^aWallace, 1981.

A study by the Congressional Budget Office, "The Long-Term Cost of Lower-Income Housing Assist Programs," 1980, projected that a Section 8 new construction/substantial rehabilitation program with a 30-year commitment could range in cost from \$161,200 to \$343,400, depending on the rate of inflation. A 40-year commitment cost could range from \$242,600 to \$710,300.

Table II-3 shows that the least expensive Section 8 Program component is the Existing Program. The Moderate Rehabilitation Program is second in lower cost, while the Substantial Rehabilitation and the New Construction Program are the most costly. From 1977 to 1980, the New Construction Program received the highest number of reservations; however, in 1981 there was a shift back to reserving a greater amount of existing units (McKenna and Hills, 1982).

Although there was an apparent decrease in the number of New Construction and Substantial Rehabilitation units, the cost incurred by the government and the following reasons further prompted the shift to increasing the utilization of existing units:

1. Recent analysis of housing problems stresses the need for affordable housing over adequate quality or quantity.
2. Renters are granted similar freedom of choice as non-subsidized households.
3. Families receiving assistance are not limited to designated projects and locations.

The New Construction and Substantial Rehabilitation Programs attempted to solve two major problems: (1) too little housing, and (2) bad housing (Solomon, 1974).

The inadequate amount of housing is solved by emphasis on

TABLE II-3

Numbers of Section 8 unit reservations by
unit cost (in dollars) from 1976-1983 and 1984 and 1985 projections^a

Year Program	Existing	Moderate Rehab.	New Construction	Sub. Rehab.
1976 (Net)	206,046	---	157,116	18,971
Unit Cost	\$2,198	---	\$3,598	\$3,567
1977 (Net)	140,480	---	145,272	24,124
Unit Cost	\$2,200	---	\$3,900	\$3,900
1978 (Net)	98,300	---	99,342	22,703
Unit Cost	\$2,553	---	\$4,325	\$4,190
1979 (Net)	90,357	34,294	111,692	33,346
Unit Cost	\$2,485	\$3,493	\$4,518	\$5,212
1980 (Net)	36,336	26,167	75,033	17,730
Unit Cost	\$3,148	\$4,037	\$5,143	\$5,594
1981 (Gross)	83,041	19,916	58,108	15,753
Unit Cost	\$3,372	\$6,405	\$5,823	\$4,510
1982 (Gross)	23,418	6,799	24,114	3,413
Unit Cost	\$3,600	\$4,500	\$6,200	\$6,200
1983 (Gross)	36,163	14,917	15,116	456
Unit Cost	\$3,800	\$4,500	\$6,550	\$6,550
<u>Projections</u>				
1984 (Gross)	56,000	7,500	12,000	2,000
1985 (Gross)	--	--	9,000	1,000

^aThe Low Income Housing Information Service, 1984.

maintaining an equilibrium between housing supply and housing demand. Moreover, there is an emphasis on aggregate production and economic performance rather than the welfare of specific groups. Thus, housing production and substantial rehabilitation techniques boost housing by engaging developers in lucrative construction contracts, which increases private industry and consumer spending. The actual building of the units employs people and the final product increases the housing supply. The major focus of this approach is not really the benefactors of the new housing but the effects of housing production on the economy.

Unfortunately, the underlying focus of many housing programs is not to aid the general public, but to stimulate growth.

The bad housing problem focuses on improving the living environment of low income families. This approach seeks to redistribute resources rather than stimulating economic growth. Direct subsidies to families increase their income and the number of dwellings available for consumption. The subsidies are from taxes that come from persons with higher incomes. These funds, when given to lower income families, are a method of redistributing wealth. Nevertheless, a latent effect of this approach is a decrease in housing production. Often this approach is used to decrease spending on new construction and reduce the effects of recession on the housing market (Solomon, 1974).

The Future of the Existing Program

Unless there is an immediate change in current low income housing programming, there is no future for the program. However, the program

is viewed as moderately effective in meeting the program goals it was designed to meet. The program is scheduled to be replaced by a voucher system in 1985. The future of the program was altered by the current presidential administration. In an attempt to lessen the governmental control over low income programs, vouchers will be given directly to the family seeking adequate housing, thus relinquishing contractual agreements between tenants and landlords. The program changes prompted the Secretary of HUD to note that the shift from the Existing Program to vouchers represents a departure from earlier programming procedures. Yet, the change will not show any substantial savings during the initial years of its implementation phase. Appendix A illustrates current program changes.

Budgetary Changes

The average value of a voucher for a two bedroom unit is \$2,953 per year compared to \$4,548 per year for an Existing Certificate. The major difference in unit cost is that vouchers are estimated contributions. Moreover, under the Existing Program the tenant contribution remains in a program reserved to cover future rent increases. While the voucher program provides for two rent increases over a five-year period, any additional cost must be borne by PHAs out of existing contract authority. Presently, rent increases only occur when income increases, landlords' operating funds are increased, or if housing cost increases. In addition, if PHA funds are low, they are bailed out of financial debt by HUD. The voucher program gives them a set amount of funds and

whether the organization survives depends on how they manage their money.

Table II-4 illustrates the current budget changes of the Section 8 Program. Funds have been shifted away from the Existing Program to be used under the voucher system. By 1985, there will be no funds allocated for the program.

The 1984 Executive Budget is an improvement over the 1983 budget. In the previous year, the 1983 budget attempted to rescind \$9 billion; this would have cut off all funds provided by Congress for additional New Construction and Substantial Rehabilitation units for low income families. The proposed rescission would have left HUD with funds only for existing dwelling units.

Congress only approved a \$4.1 million rescission, two-thirds of the administration's original request which had been accepted largely in the Republican-dominated Senate and rejected in the Democratic House. This budget was called a "major departure from the past" by Secretary Samuel Pierce. The administration proposed no additional new low income housing construction except for 10,000 units for the elderly and handicapped. The fund reservations were for mostly modified Section 8 Existing rental certificates. This program contract extends only for five years, thus reducing future federal subsidy obligations (Morral and Olsen, 1980).

The subsidies would be based on the difference between 30 percent of households adjusted income or 10 percent of their gross income. Households may spend more than 30 percent of their income if they choose to or pay a smaller amount and keep the remaining money.

TABLE II-4

Highlights of HUD Section 8 Program budgets
compared to earlier years (dollars in millions)^a

Section 8 Program	1981	1982	1983	1984	1985
New Construction/ Substantial Rehabilitation	10,245	3,704	1,955	1,926	1,592
Moderate Rehabilitation	--	551	1,024	540	--
Existing	5,791	1,280	2,013	3,820	--
Vouchers	--	--	--	241	1,572
<u>PROGRAM CHANGES</u>					
Section 8 Program	Change 1984-1985	Change 1981-1985	Percent of Change 1981-1985		
New Construction/ Substantial Rehabilitation	-334	-8,653	-84.5		
Moderate Rehabilitation	-540	--	--		
Existing	-3,820	-5,791	-100		
Vouchers	-9	1,572	--		

^aThe Low Income Housing Information Service, 1984.

The 1985 Reagan budget continues to reshape the role of government in social programs. Although the budget does contain reductions, the projected budget cuts are not as great as the prior years. The goal of the Reagan Administration remains--replacing the Section 8 Existing Program with vouchers. The total funds for low income housing are only 15 percent of the 1980 level. The 1985 budget authority for additional low income housing is 37 percent less than the 1984 figure. It has been noted that the 1985 budget sets a return to 1971 real spending levels (i.e., eliminating the effects of inflation) for almost everything except defense spending. In addition, for each dollar deducted from low income programs \$4.15 has been added to the military budget and \$2.26 to interest on the public debt. For each dollar authorized for national defense in 1980, 19 cents was authorized for subsidized housing programs. However, in 1984 only three cents was authorized per defense dollar. In 1985, the administration proposes less than one and one-half cents for subsidized housing per military dollar.

The Proposed Voucher Program

The voucher system is the core of the Reagan Administration Housing Program. This program embodies three major changes from the Existing Program: (1) the subsidy for each household is fixed regardless of the amount of rent annually paid; (2) adjustments of the subsidy amount to reflect rising costs may be made only twice over a five year period rather than annually; and (3) the contract between HUD and the local agency (Public Housing Authority, Independent Housing Authority) is for five years instead of fifteen years.

The subsidy allowed for a voucher is 30 percent of the tenant income and the FMR for existing units. Like the Existing Program they are set at the 45th percentile of rents in each market area for units of standard quality including movers but excluding new and assisted units.

Some of the program elements remain the same for vouchers and Section 8. The programs will be administered by PHAs under HUD guidelines. An updated list of changes for both programs is noted in Appendix A.

The calculation of the low income budget authority renders the program less expensive than the Section 8 Existing Program (the maximum annual cost times the number of years of each contract). There appears to be a \$3.8 billion saving from vouchers only run five years rather than fifteen. Consequently, the cost of extending these contracts will come in the 1990 budget as opposed to the budget of the year 2000.

The administration plans to convert as many Section 8 Existing and other contracts to vouchers as soon as possible. It will most likely come up for renewal. HUD anticipates converting 160,000 units presently assisted under the Existing Program to vouchers by 1987.

The Reagan Administration laissez-faire attitude centers around the belief of their people that the program is unbeneficial and too costly. The recent program budget cuts abandon the goals of the housing program. This attitude further ignores the progress gained by housing programs in the past and dims the prospect of progress in the future.

Table II-5 compares major program elements of the Existing Program to the voucher program. Some of the elements under review are program eligibility requirements, housing quality standards, and the budget

authority. While there are some similarities, there are some distinct differences.

Some of the similarities are the FMR standards which are currently set at the 45th percentile, units must meet the HUD housing quality standards and the Housing Assistance Plan under both programs continues between the PHA and the owner. Program differences are found in the program eligibility requirements, shopping incentives, and administrative fees.

TABLE II-5

Comparison
Section 8 Existing and Voucher Demonstration Programs^a

Program Component	Section 8 Existing	Voucher Demonstration
Program Eligibility	For units becoming available after the 1981 HCD Act, 95% of assistance shall be for very low income families.* *very low income is defined as at or below 50% of median income for the locale.	Assistance is limited to very low income families or a family previously assisted. Preference shall be given to families who are involuntarily displaced or who are paying more than 50% of income for rent.
FMR/Payment Standard	FMRs are established at the 45th percentile of rents for recently rented standard housing in the community.	Identical to Section 8 Existing Housing Program. (Is identified as Payment Standard.)
Assistance Level	Federal assistance is limited to the difference between 30% of family income and actual rent. FMR serves as maximum rent for unit to be eligible for inclusion in program.	Federal assistance is the difference between 30% of family income and Payment Standard does not serve as the maximum rent for inclusion of unit in the program.
Housing Quality	Participating units must meet Housing Quality Standards as currently defined in the program regulations.	Identical to Section 8 Housing Program.

Family Contribution	The higher of 30% of family monthly income; 10% of family's monthly income, or housing component of welfare rent, if applicable.	Difference between Payment Standard and actual rent paid for the unit.
Shopping Incentive	No longer permitted by regulations.	If family rents a unit below the Payment Standard, the family's contribution will be reduced. Conversely, families may increase their contribution by paying rents above the Payment Standard.
Budget Authority	Based on FMR, is calculated for a 5 year term, renewable up to 15 years.	Calculated only for a 5 year term.
Project Reserve Account	When calculating Budget Authority, no tenant contribution is assumed. This provides for the establishment of a project reserve account to meet increases in assistance payments for families.	DHUD provides 15% of estimated first year assistance level as a reserve fund to be available for the 5 year term of the ACC.
Assistance Adjustments	Annual adjustments in Contract Rent and Family assistance payments are authorized based on DHUD changes to FMRs.	PHA will be permitted to make two adjustments during the 5 year ACC period. PHA has the option to make the adjustments in assistance levels or to provide assistance to additional families. However, PHA must consult with the

^aThe Low Housing Information Service, 1984.

Table II-5 (continued)

Program Component	Section 8 Existing	Voucher Demonstration
Owner/PHA Relationship	HAP Contract between PHA and Owner; lease between Owner and Tenant. PHA makes monthly payment directly to Owner on behalf of assisted tenant.	public and local government regarding impact of such adjustments on the number of families who can be assisted.
Vacancy Payments	Up to 60 days after tenant vacates unit.	Only for the remainder of the month in which tenant vacates unit.
Certificate Ownership	Certificate stays with assisted family.	Identical to Section 8 Existing Housing Program.
Administrative Fee	Administrative fee structure presently under consideration for revision.	Will be lower than Section 8 Existing Housing Program administrative fee.
Nature of Payment	Section 8 Existing Payment made to landlord on behalf of assisted household. Required contract between administering agency and landlord.	Voucher Payment made directly to assisted household. No contract with landlord required.

Rent Subsidy Limit
Maximum allowable rent levels limit household's housing choices and size of subsidy.
No maximum rent apply. Subsidy cap limits federal expenditure but households may choose any physically standard unit.

Size of Subsidy
Subsidy equals difference between full market rent on occupied unit and fixed percentage of tenant income and with market rents on occupied units.
Subsidy equals difference between subsidy cap and fixed percentage of tenant income. Subsidy varies only with household income.

CHAPTER III.
LITERATURE REVIEW

This section presents pertinent literature on the Section 8 Existing Program. The reports cover the early implementation stages during 1975 to implementation procedures used currently. Data from other studies will be noted as well. Nevertheless, there appears to be a limited degree of material that actually examines the effectiveness of the Existing Program. Most studies simply outline the administrative procedures of the program without committing themselves to an evaluation of the program.

Many of the earlier studies on the Existing Program were performed by three research firms: Urban Systems Research and Engineering, Contract Research Corporation, and Westat Incorporated.

These research companies were under contract to HUD and as a result they utilized HUDs division of housing authorities into geographical regions as a method of selecting samples for their studies. Backed by government funding the research firms studied these regions which were further divided into sectors. The sectors and regions were: Urban Systems Research and Engineering Section A (HUD Regions I, II, III), Contract Research Corporation Sector B (Regions IV, V, the central and the southern states east of the Mississippi including Minnesota), and Westat Inc. Sector C covers the remaining HUD regions and includes all remaining states west of the Mississippi. Each contractor was given sectors in which one-third of the Section 8 Program activity occurred. The researchers did not study individual cities. They examined Standard

Metropolitan Statistical Areas (SMSAs), NonSMSAs and counties. The data therefore represent aggregate Section 8 programming procedures. This approach was possibly used because HUD bases its fund allocations on: (1) county population data, (2) county poverty levels--households with incomes less than 50 percent of the county median, (3) county over-crowdedness figures, (4) county housing vacancies, (5) county substandard data, and (6) county cost adjustment factors. These factors are based on the 1980 Census Monthly Labor Reviews, Bureau of Labor Statistics, and the Annual Housing Survey (Goetze, 1982).

The contractors surveyed 30 Public Housing Authorities from each region. They were classified by size of their initial housing unit allocation and by their location in metropolitan and nonmetropolitan areas. The size of the city was not a program variable.

The conclusions derived from assessing how programs were administered were different for each contractor. Westat stated that Public Housing Authorities in Sector C had made serious endeavors to respond to local political and organizational influences and to respond simultaneously to HUD regulations. The Urban Systems Research and Engineering Contractors concluded that Public Housing Authorities in Sector A implemented the program with ease and with a strong emphasis on personalized services. The third and final contractor, Contract Research Corporation, noted that Sector B Public Housing Authorities had a high level of satisfaction with the program.

A nationwide study by Drury of the Existing Program examined the following program elements.

1. Participation by households with varying incomes and

demographic characteristics,

2. The willingness of landlords to participate in the program, and
3. The Public Housing Authorities' method of administering the program.

The study also examined the program elements in relation to two program constraints: the housing quality requirements and rent ceilings. Some of the findings were:

1. All those involved in the program at the local level (participating households, landlords as well as local officials) expressed a high degree of satisfaction with the program.
2. Eighty-nine percent of the participating agencies were local housing authorities or a combination of housing and redevelopment agencies.
3. The maximum rents allowed by the program appeared to be comparable to unsubsidized units. Units of similar sizes and structure types were also found to be priced similarly throughout the study area.

It was further discovered that local support has a bearing on whether or not a Housing Authority applied to the program. Moreover, participating Housing Authorities were more community and tenant oriented than nonparticipating Housing Authorities. Additionally, the program provided affordable housing to low income recipients and significantly increased the housing services received by households that moved.

The Drury study showed that there was a general acceptance of all program components. Yet, it must be noted that the results of early program studies often do not reflect the actual program benefits and limitations of the program. Often administrators are so overwhelmed by the initial impact of the reduction of problems that they often ignore

the negative effects of new programs (paper work, FMRs, housing quality standards).

On many occasions, administrators are not aware of all possible program outcomes such that any unexpected spillover effects are incorporated into the programming as program elements. Therefore, a review of the program in its tenth year of existence is warranted. Moreover, examining the current perceptions of Public Housing Authorities administrators will show the actual internal and external outcomes of the Program.

The studies completed during the initial years of the Existing Program administration period were done to examine how various program variables were applied and to iron out any negative impacts of these variables. The program was viewed by administrators as a viable method of assisting low income families. They were attempting to understand the applied program procedures better.

Program Administration

A research report by Westat Inc. (1977c) assessed the effectiveness of the Existing Program operations, performances, and tried to identify program improvements. It was hypothesized that the extent, nature, and success of the program could be linked to particular Public Housing Authority characteristics: agency experience, size of staff, staff qualifications, prior participation in other housing programs, housing inventory, program size, and proportion of ACC unit allocation leased to certificate holders. The report further attempted to describe the

reasons Public Housing Authorities participated in the program. A second line of inquiry dealt with the PHAs' perceptions of their overall experiences and success with the program.

It was found that there were no apparent relationships between either the size of the Public Housing Authority, professional staff, the number of years the agency had existing or the agency's inventory of non-Section 8 units, and the rate of Section 8 lease-ups. However, there was a relationship between funding and the type of area in which the program was administered (*metropolitan or nonmetropolitan*).

Participation in the program was biased toward metropolitan areas. The exact breakdown of funding between metropolitan and nonmetropolitan areas was not known. Nevertheless, the unit allocations combined with the higher cost of building in metropolitan areas and delivery of program benefits measured by lease-up rates suggested a metropolitan bias because more money was allocated to metropolitan areas than other areas.

The administration of Section 8 differs from traditional public housing programs. There is a contract not only with the clients but owners, managers, caretakers, public officials, and taxpayers as well (Figure III-1). A public relations program keeps the various lines of communication open between the various program participants. If there are little to no public relations, managers would refuse low income program participants. There is a minimum of 20 steps from the original HUD monitoring to compliance of the final contract. To keep the lines of communication open between PHAs and managers, outreach programs are enacted that clarify program procedures and requirements. This

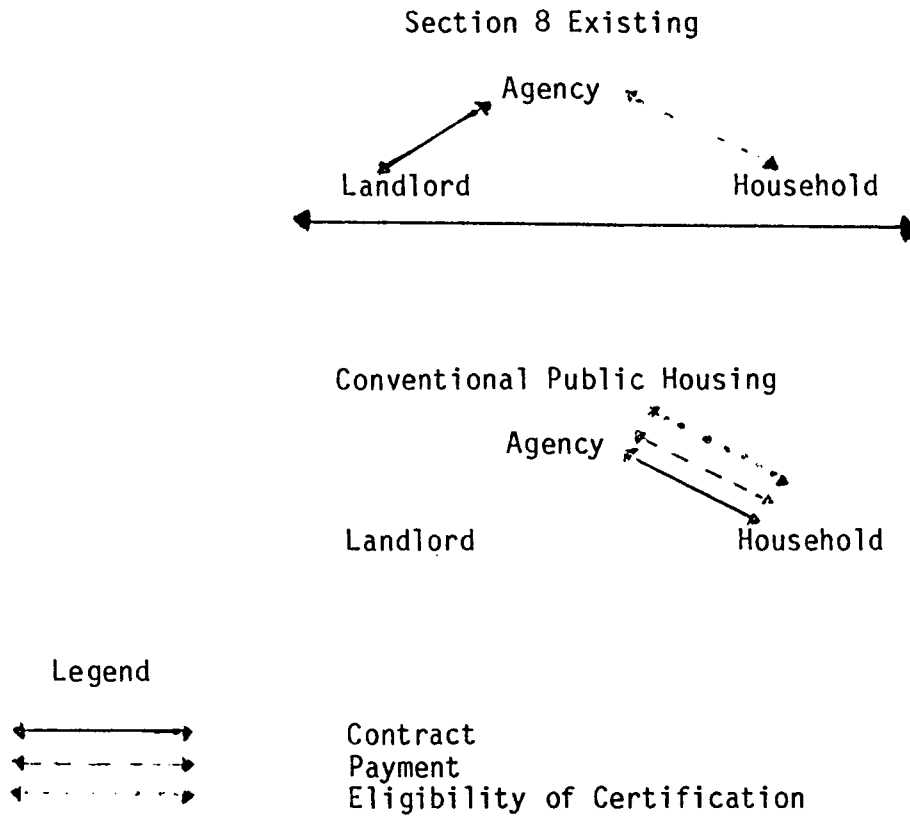


Figure III-1. Contractual relationship, payment, and certification of eligibility of Section 8 Existing Program and conventional public housing (Struyk, 1981).

procedure allows input from landlords on programming activities.

Each Public Housing Authority that administers the program performs certain administrative functions. Some of these functions are: attracting applicants and landlords to the program, determining eligibility and benefit levels, providing direct client services, inspecting housing units to ensure that they comply with housing quality standards, and making payments to landlords. Additional functions are: accepting applications for Section 8 waiting lists, awarding ACC certificates and assisting in finding apartments. Prospective program participants are not "steered" to specific units. They select the residence that best fits their needs and are within program guidelines. Often families prefer to remain in their current dwelling units.

A recent study by Robert Engler and Kermit Baker (1977) examined the administrative functions of Public Housing Authorities. The fundamental question of the study was: Were there differences among Public Housing Authorities in performing the administrative functions of the Section 8 Program, and, if there were differences, did the differences result in different program outcomes?

The report utilized the following variables to represent program outcomes (dependent variables): (1) percent of ACC unit authorization under lease (program utilization), (2) the proportion of applicants who became certificate holders and the proportion of certificate holders who became recipients (efficiency), and (3) the proportion of high priority households being served (target achievement). It was hypothesized that these variables are influenced by: program variables--the number of units allocated to the Public Housing Authority by its ACC, population

variables--the number of households to be considered at each Public Housing Authority, and administrative variables--performance factors (frequency duration and perceived effectiveness of various functions). To illustrate the relationship, the authors developed a model (Figure III-2). The model showed Engler and Baker's finding that PHA administrative functions are only one facet of determining program outcomes. The program variables, population variables, and PHA administration also determine outcomes. Therefore, the determination of outcomes is accomplished in relation to the other variables. These variables are engulfed by federal constraints and consequently they are not independent of each other. Like the outcome variables, the independent variables should be blocked to show their independence (Figure III-2).

These variables determine the amount of money allocated by HUD, acceptance to the program, and jointly they decide how effective the program will be in meeting the needs of the client population.

Public Housing Authority Adherence to Program Guidelines

Daniel H. Weinberg (1982) discovered that some Public Housing Authorities were not holding units strictly to Section 8 housing quality standards that decided the conditions of dwelling units at the time of leasing. More than half of the recipients in some areas were living in units that did not meet the acceptance criteria. The criteria cover sanitary facilities (a working stove, refrigerator, and kitchen sink), space and security (sufficient rooms and locked doors and windows),

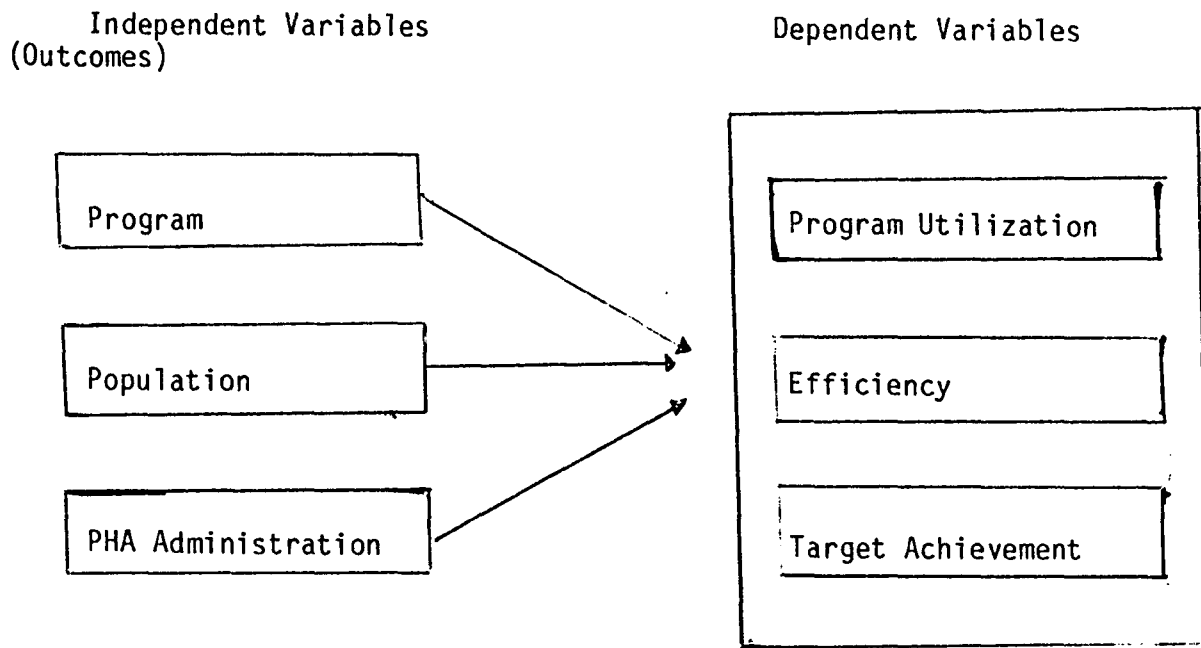


Figure III-2. Analytical model of Section 8 Program outcomes (Engler and Baker, 1977).

thermal environment (safe heating), illumination and electricity (satisfactory floor, walls, ceilings, and steps), interior air availability (adequate ventilation), access (direct access, fire exits), site and neighborhood (no serious adverse environmental conditions), and rodent infestation (no rats).

Failure to implement Federal-imposed regulations were due to three factors: differences in interpretation of research definitions by program evaluators, HUD intentions and Public Housing Authority interpretation, and the inaccurate application of existing guidelines by Public Housing Authority Inspectors. Although the inference is that the units were not acceptable from a policy perspective, the reasons for failure to adhere to acceptance criteria are not always indicative of serious deficiencies.

A review of the acceptability requirements by the Reagan Administration has proposed that housing quality standards be reduced. Consequently, the existing housing standards will be eroded because the acceptability criteria will be loosely interpreted. Moreover, some housing that may have been rejected as unsuitable for habitation will now be acceptable.

Early Program Experiences

A report by the Urban Institute and HUD's Office of Policy Development and Research also examined the early experiences of the Section 8 Program (Olsen and Rasmussen, 1979). The examination was focused on how Public Housing Authorities responded to items on a

questionnaire concerning various program elements. The report was based on the findings of three research contractors (Contract Research Corporation, Westat, and Urban Systems Research and Engineering).

The questions were based on the following program elements:

1. Patterns of participation by households using income and demographic characteristics;
2. The landlord's willingness to rent to subsidized tenants;
3. PHAs' administrative procedures; and
4. The method in which administrative reimbursements were made.

Highlights of Findings

Household Participation

1. Elderly women make up the primary households served under the Program.
2. Most male-headed households are large, minority families.
3. A majority of the recipients are very low income tenants who also receive Social Security pension benefits or welfare.
4. Eighty-five percent of those who want to move, move, and 95 percent of those who do not want to move, do not move.
5. Neighborhoods are less overcrowded.
6. Households that relocated felt that the quality of their house as well as of their neighborhood had improved.
7. Households that had the most difficulty finding units have younger heads, large families, and tend to be minority and male-headed households.
8. The most appealing program features to households are the ability to choose where they live and the option to move.

Landlord Participation

1. The majority of landlords who participate in the program owned fewer than 10 real estate properties, 50 percent owned fewer than 10 rental units.

2. The majority of landlords in all samples had no previous experience with government housing subsidy programs.
3. Ninety percent of the landlords interviewed were pleased with the program recipients.

Administrative Functions, Costs, and Fees

1. Large-scale fraud or malfeasance was not evident among program participants.
2. The Section 8 Program can be implemented with a reasonable degree of success by HUD Area Offices and PHAs.
3. HUD Area Offices exercise wide discretion in selecting participating jurisdictions establishing start-up fees, setting FMR's, and allowing variations in housing acceptability standards.

This report, while having many positive findings on the administration of the Existing Program, only represents positive data on the implementation processes. Little was mentioned on the major fallacies of the program. Therefore, like many of the earlier studies, an evaluation of the overall effectiveness of the housing policy was not addressed.

Subsidies

Arthur P. Solomon (1974) also conducted an empirical study on the Existing Program. His research focused on housing subsidies in Kansas City. His objective was to assess the impact of the subsidy program on rent levels, landlord behavior, tenant behavior, and tenant aspirations. The study was based largely on interviews and lacked a control group. The study showed that recipients improved their housing conditions (larger units, less overcrowdedness, and better facilities). The

housing units were also comparable to unsubsidized units (Wexler and Peck, 1975).

Residential Mobility

Joan Restsinas (1981) investigated the impact of the Section 8 Existing Program on residential mobility. A goal of the program is to increase residential mobility and heterogeneity. To examine the impact of this goal data from five housing authorities in Rhode Island was analyzed. It was found that most certificate holders did not move. As a result, the program served more in the capacity of an income transfer system.

The author cited social, ecological racial, and status as barriers to mobility. It was further indicated that in the Rhode Island area the goal of mobility was not achieved. While low income families were helped financially, factors outside of the realm of HUD administration hampered efforts of mixing various racial and ethnic groups. As a result, the Existing Program shows that money does not spur mobility. Moreover, status, groups with like occupations, groups with similar race, social, and ecological factors heighten the extent to which neighborhoods are integrated or segregated.

Similar reports confirm Restsinas' results that little to no mobility occurs among participants of the Existing Program. In addition, participants generally use their subsidy to move to homogeneous neighborhoods. Although the goals of mobility and integration are not achieved, the conditions of the participants'

neighborhoods and housing units did change.

Program Decision-Making at the Department of
Housing and Urban Development

Jill Kadduri and Raymond Struyk (1981) reviewed the process of implementing findings of various evaluation studies of the Section 8 Program during the late 1970s. To understand the implementation process of program policies, the role of the Research Office in HUD's policy process was reviewed. The research was based on the findings and recommendations for program changes and the process of developing recommendations for these changes. It was discovered that HUD has major programs that often have conflicting goals, and often these goals are prone to generate direct conflict among its major offices. An example of this is the position of the Assistant Secretary of Fair Housing and Equal Opportunity (FHEO). His role is to mandate and promote integration, but there are almost no program services directly under FHEO jurisdiction to deliver to communities. Therefore, FHEO staff utilizes programs that normally belong to other parts of HUD as a vehicle of promoting integration and establishing fair housing goals. Likewise, the Office of Community Planning and Development seeks to promote preservation of urban neighborhoods. They, too, work through other programs to implement preservation techniques. Nevertheless, the Section 8 Program is a prime example of a program that focusses on conflicting goals. In addition to enabling poor people to live in better housing, the program also seeks to dismantle high concentrations of minorities and very low income groups. Resources for upgrading

housing in neighborhoods, preserving historical areas, and relocating families that are displaced by urban development efforts.

Each goal requires special guidelines. These guidelines often conflict with one another. Earlier reports have found that the program achieves mobility but often families move to segregated neighborhoods. The goal of mobility has been achieved but segregation has been promoted. Thus, one goal has been achieved at the expense of forfeiting another one.

The translation of these policies into program variables was shown as a process of communication between various groups within HUD. Program recommendations are developed by the Assistant Secretary for Policy and Development Research and the Assistant Secretary of Housing. Both offices met and jointly developed a proposal for future program changes. The final report was submitted to the Secretary of HUD who in turn turned the proposal over to her immediate staff and revisions were made to the proposed changes.

The focus of this article was not the proposal changes but the channels in which the proposals were translated into valid housing programs. From evaluating the process in which theories are made into practices, little to no input was provided by PHAs, who are in the field actually administering the program. Emphasis is placed on how HUD secretaries perceive housing programs. The authors concluded that policy making of this nature does allow collaboration between groups, but the policy process at HUD is unstructured, making it difficult to move decisions through the Office of the Secretary. The lack of structure further resulted in a decision process so lengthy that many

issues were not resolved.

This scenario occurred during the Carter Administration (1977 to 1980). In 1981, a new administration was sworn into office. Presently, the decision-making process of this administration has not been researched. Nevertheless, there appears to be extensive communication between the Secretary of Housing and Urban Development and the President.

Summary

The Existing Program is often studied from the aspect of program cost rather than program effectiveness. Most readings hail the benefits of utilizing the Existing Program when comparing it with other low income programs. Yet, the environment in which the program is actually implemented and utilized is rarely incorporated in decision making. Moreover, the program is subject to the whims of constantly changing political regimes. As a result, programming methodologies are often changing to reflect the ideologies of current reigning forces. Consequently, Public Housing Authorities are relegated to mere implementors of policy rather than policy makers. As a result, this thesis seeks to examine program effectiveness and to test whether effectiveness is a factor of local administration rather than the countless volume of program guidelines funneled down by the Department of Housing and Urban Development.

CHAPTER IV.

METHODOLOGY

This study provides a descriptive analytical framework that examines how administrators of the Existing Program perceived its effectiveness. Public Housing Authorities are the major group that operates the program. Therefore, they are the units of observation. The PHAs selected were located within cities with populations not less than 100,000 but not greater than 500,000. This population range was selected because cities of these sizes are rarely the focus of major studies. The reason given is that researchers tend to feel that larger populations due to their heterogeneous nature can reflect the trends occurring in cities of all sizes. Cities between these two poles are active participants in the Existing Program and must be examined as well. The top down approach to studying PHAs does not necessarily address the programming techniques of smaller cities. Perhaps by examining PHAs in cities with populations between 100,000 and 500,000, projections and inferences will be discovered that represent programming techniques of smaller and larger PHAs.

The Sample

The U.S. Census Report of 1980 showed that nationwide there were 149 cities with populations between the 100,000 and 500,000 range. It was not financially feasible to undertake a comprehensive study. Therefore, it was decided that a random selection of HUD Housing Regions would better focus the sample population. Of the ten HUD Regions,

Regions I, III, IV, VII, and IX were selected as sample areas. These Regions are located in the Northeastern (I, III), North Central (V, VII), and Western (IX) sectors of the United States. Each Regional Office serves several states. Within each state there is generally a PHA in each city and several Area Offices. The sample was further narrowed by the exclusion of several states that did not contain any cities with populations between the 100,000 and 500,000 range. United States Territorial Islands were also excluded. The states and cities included in the study are listed in Appendix C. A map of the area is shown in Appendix D.

The names and locations of the Housing Authorities were obtained from a 1979 Housing and Urban Development List of Public Housing Authorities. This was the latest list in print. There were 54 housing authorities that were located in the selected regions. The 54 Public Housing Authorities along with HUD Regional and Area Offices were surveyed. The reason all three groups were contacted was to compare the individual perceptions of each group on core programming techniques.

The Survey

Questionnaires were used as the data gathering instrument. The instrument consisted of items that required objective and subjective responses. The objective items focused on major program elements, while the subjective items focused on individual perceptions of program outcomes. Open-ended questions were used so that administrators could further express their opinions. Closed-end questions were used to

standardize some of the answers. Eighty questionnaires were mailed. Fifty-four were mailed to Public Housing Authorities, 21 were mailed to Area Offices, and five were mailed to Regional Offices. The questionnaires mailed to Area and Regional Offices were less detailed than those sent to Public Housing Authorities. A pre-test was not performed due to the lack of time and financial constraints.

The questionnaires were constructed on three pages of 8 1/2 x 11 paper. Instructions for completing the survey instrument were written directly on the questionnaire. It was designed so that they could be folded, stapled, and mailed after completion. All questionnaires were self addressed and affixed with stamps to ensure an early and high response rate. A follow-up letter was also mailed to remind the respondents to return the surveys. A sample of the questionnaire and the transmittal letters are provided in Appendices C and D.

The questionnaire (while not divided into individual sections) elicited responses on length of participation, reasons for participation, and the number of employees administering the program. These questions were chosen to develop background information on individual Public Housing Authorities. Other questions sought information on the client population, the number of leased units, and the total population of the area. These questions attempted to identify trends or increases in participation. To identify the participants in the decision-making process, PHAs were asked the degree to which the Chamber of Commerce, mayor, civic groups, and client population had input into Section 8 programming. To examine increases and decreases in programming, PHAs were asked to compare their freedom to make decisions

from 1976 to 1979, and from 1980 to the present. The amount of money expended from 1976 to the present was also addressed but most PHAs did not give the expenditure figures for all years. As a result, the question could not be analyzed. A major question asked was to what degree program goals were met. PHAs were asked to rate a goal as effective, moderately effective, or ineffective. Other questions examined the role of the program in each locality and PHAs' perceptions of the strengths and limitations of the Existing Program.

Of the 80 questionnaires mailed to the sample population, 47.5 percent were returned. Sixty-one percent of the questionnaires mailed to PHAs were returned, while the return rate for Area Offices was 14.3 percent and the return rate for Regional Offices was 40 percent. Table IV-1 illustrates the response rate by sample population.

Table IV-1 also illustrates the limited number of returns from HUD Area Offices and Regional Offices. Fortunately, the most questionnaires returned were from Public Housing Authorities. These agencies administer the Existing Program and are the units of analysis for this study. The low response rate from Area and Regional Offices resulted in grouping the responses of the entire sample. This was done because the responses from Area Offices and Regional Offices did not represent a valid sample.

Level of Involvement

To measure the level of involvement in the Existing Program, PHAs were asked to rate the extent to which the Existing Program had

TABLE IV-1
Response rate by sample

Agencies	Sample	Response	Percent
PHA	54	33	61%
Area Offices	21	3	14.3%
Regional Offices	<u>5</u>	<u>2</u>	<u>40%</u>
Total	80	38	47.5%

fulfilled core program goals. As a result, the program will be assessed by examining and comparing program results with the goals they were established to achieve. The goals examined were:

1. Encourages mobility
2. Assists special groups
3. Improves housing units
4. Stimulates the economy
5. Increases the supply of low income housing
6. Provides housing for moderate income families
7. Improves neighborhood quality
8. Reduces housing costs

Administrators were asked to rate each of the variables as (1) very effective, (2) moderately effective, or (3) ineffective. An effectiveness index was then developed by taking the mean score of each variable. The index provided a vehicle to examine the interrelationships between the variables.

A variable was rated as effective if it addressed the needs of the low income clients and no major fallacies were cited. Variables were rated as moderately effective if they assisted in easing the housing burden of low income families, but minor changes could be made to make the variable more effective. In addition, an ineffective variable was a program element that failed to meet the needs of low income families and major program changes were needed to make it a workable program.

The overall rating for each variable was calculated by adding the index scores and dividing by eight. The numbers were rounded so that they could be indexed into an effective, moderately effective, and

ineffective category. Rather than rate each PHA separately, the mean value of each variable was calculated to discover the overall effectiveness level. The effectiveness scale for individual PHAs was not calculated because often PHAs did not list the effectiveness level of all the program values. As a result, the responses were analyzed in the aggregate since the use of aggregate data are less affected by missing values than by individual cases.

The effectiveness scale was developed by first selecting the major components of the program to be examined. The eight variables selected were: years participated, leases, client population, PHA-input, client population-input, role, freedom, and goals.

After the values were selected, each variable was indexed into three groups (effective, moderately effective, and ineffective).

The variables were also given numerical values so that the degrees of effectiveness could be measured. Values receiving "1" were indexed as "effective," "2"- "moderately effective," and "3"- "ineffective" (Table IV-2). Scores were assigned after the variables were divided into three groups. The groups were established in two forms. First, variables which are numerical were divided into groups by subtracting the lower value from the higher value, then grouped into the effectiveness scale. The higher the score the more effective the variable. An example of this was years participated, the values ranged from participating from one year to 10 years. The smaller number "one" was subtracted from "10." The result, "9," was then classed into three groups. The groups were 7-9 years (effective-1), 4-6 years (moderately effective-2), and 1-3 years (ineffective-3). The scores for leases were not developed by

TABLE IV-2
Level of involvement

<u>Program Variables</u>	<u>Effective</u>	<u>Moderately Effective</u>	<u>Ineffective</u>
Years Participated	9-7	6-5	3-1
Leases	3000-2001	2000-1001	1000-1
Client Population	300,000-200,001	200,000-100,001	100,000-1
PHA Input	Major	Moderate	Minor
Client Population Input	Major	Moderate	Minor
Role	Major	Moderate	Minor
Freedom	More	Same	Less
<u>Goals</u>	<u>Effective</u>	<u>Moderately Effective</u>	<u>Ineffective</u>
Score	1	2	3

finding the range of the number of leases reported by all of the PHAs and subtracting the values. The range was not found because the value of 3000 could be more easily divided into three groups, than smaller even numbers. As a result, leases were scaled 3000-2001 (effective-1), 2000-1001 (moderately effective-2), and 1000-1 (ineffective-3).

Likewise, client population was scaled similarly. The highest value was 300,000 and the lower value was 1000. Client population was scaled, 300,000-200,001 (effective-1), 200,000-100,001 (moderately effective-2), and 100,000-1 (ineffective-3).

The second method of grouping data was to assign values of 1 (effective), 2 (moderately effective), and 3 (ineffective) to responses that rated the program variables as major, moderate, minor, and more, same or less. The responses were grouped as 1 (major/more), 2 (moderate/same), and 3 (minor/less). One variable goal was listed as effective, moderately effective, and ineffective. As a result, effective was assigned a value of 1, while moderately effective was assigned a 2, and ineffective was assigned a 3 (Table IV-2).

The program variables are independent variables. They define effectiveness, such that this research design tests whether program effectiveness is dependent on the number of year participated, leases, client population, PHA input, client population input, program role, freedom, and achievement of program goals.

Method of Hypotheses Testing

To test the hypotheses mentioned in the introductory chapter,

Correlation Analysis and Analysis of Variance tests were performed. They were performed by the Statistics for Daisy Program, a statistical package for the Apple Computer. Unlike the popular Statistical Package for the Social Sciences (SPSS), data were typed directly into the computer and stored on a diskette. Although Daisy is not as elaborate as the SPSS program, the programming capacity is sufficient for performing many statistical operations.

Using the Daisy package correlations were performed first. Each variable was correlated with the remaining variables.

Correlation Analysis

The correlation coefficient describes the extent to which two variables are related. It is an indicator or index of the relationship between these two values. The values of a correlation coefficient ranges from -1.0 to +1.0 inclusively.

Correlations were performed first to ascertain if there were any relations between the Existing Program variables. Causation and degrees of association cannot be deduced from correlations. Consequently, only the relationships are noted. The interpretation of the coefficient was based on the following:

- .90 - 1.00 (-.90 to -1.00) Very high positive (negative) correlation
- .70 to .90 (-.70 to -.90) High positive (negative) correlation
- .50 to .70 (-.50 to -.70) Moderate positive (negative) correlation
- .30 to .50 (-.30 to -.50) Low positive (negative) correlation
- .00 to .30 (.00 to -.30) Little, if any, correlation (Bohrstedt and Knoke, 1982)

Analysis of Variance

To further examine the relationships between the program variables, Analysis of Variance tests were executed. Analysis of Variance (ANOVA) is the analysis of one or more independent variables and one dependent variable. The F distribution is used as the test statistic. There are several accepted assumptions underlying the theory of ANOVA. The assumptions are:

1. The observations are random and independent samples from populations,
2. Measurement of the dependent variable is of an interval level,
3. The populations from which the samples are drawn are normally distributed, and
4. The variances of the populations are equal (homogeneity of variance), same shapes, means, and variances (Bohrstedt and Knoke, 1982).

The major methods incorporated in this study have been introduced. The following chapter presents the data and analyzes the statistical computations performed.

CHAPTER V.
ANALYSIS OF DATA

This chapter analyzes the responses obtained from the questionnaires. It also cites the implications of the data. The responses on the questionnaire represent administrators' subjective and objective perceptions of how effective the Section 8 Existing Program is in meeting eight program variables. To this end, it is hypothesized that years participated, leasing, client population, PHA input, client population input, role, freedom, and goals define the effectiveness of the Existing Program. To make this and other hypotheses operational, each variable was examined in relation to other variables to discover any association or statistical significance.

Years Participated

Thirty-five respondents listed the number of years they had participated in the Existing Program. The average number of years they had participated was six. Therefore, the participants had administered the program for 60 percent of the 10 years the program had been in existence. Ninety-six percent of the respondents were participants because of an invitation from HUD. A breakdown of the reasons PHAs participated in the program showed that of the total participants 30 percent also were influenced by local officials and only four percent participated for other reasons.

Additional reasons for participating were the demise of the Section 23 program and the influence of housing directors. While most of the

PHAs had participated in the program for some time, the average age of the agencies was 23. The age reflects some knowledge of operating housing programs. Most of the PHAs, regardless of agency age, were continual participants in the program after their initial year of participation (Table V-1).

Employees

The PHAs were asked to give the number of employees administering the program prior to 1980 and the number of employees currently administering the program. Of the 27 cases having complete information on both years, 22 PHAs had increased their number of program administrators at least by one and no more than four. The average number of administrators prior to 1980 was three, while the current number of employees was five. The PHAs further reported that most of the administrators were college graduates. Nevertheless, several were high school graduates and some had earned associate degrees. Those with associate degrees and high school diplomas often mentioned they had several years of experience as administrators of housing programs. There were a few cases in which the administrators had master's degrees and doctorates.

The purpose of this question was to examine whether there had been a decline in the number of program administrators or changes in their education level. The PHAs in this sample did not report any substantial decreases in the number of administrators in the Existing Program. This relative stability implies that although there have been significant

TABLE V-1

Reasons for PHA participation in the Existing Program

<u>Reasons</u>	<u>Frequency</u>	<u>Percent</u>
HUD invitation only	20	74%
Prompted by HUD/local officials	3	11%
Influenced by local officials only	3	11%
Other reasons	<u>1</u>	<u>4%</u>
	27	100%

budget cuts and divisions of HUD have been reorganized. At this time local PHAs do not show signs of a significant negative impact.

Leased Housing Units

When asked to list the number of units leased from 1976 to a projected number for 1984, the responses showed a steady increase in the number of units leased. The average number of units leased per year were as follows:

<u>Year</u>	<u>Units Leased</u>
1976	91
1977	137
1978	217
1979	247
1980	386
1981	414
1982	496
1983	563
1984	439

The number of leases for 1984 indicates a decline in the number of houses leased. This change is probably due to the uncertainty regarding the future of the program. Many existing units will be converted to a new modified voucher system. Therefore, administrators were probably not sure of which program their units would be under. However, the decrease in units could be due to recent budget cuts.

Population

As aforementioned, the survey was mailed to PHAs located in cities with populations between 100,000 and 500,000. The average size of the populations in cities from which surveys were returned was 131,000. The

average size of the client population was 17,000. Neither the income of the household, nor the number of family members were identified. Nevertheless, the racial and age information was studied. The data showed that 25 percent of the clients were black, 18 percent were white, and two percent were hispanic. Fourteen percent of the overall population was elderly. Race is not a factor for admission to the program. As a result, many PHAs could not break down the client population into racial percentages. Nationally, minorities participate in proportion to their overall population size. Yet, in aggregate figures, nonminorities are the major participants.

Goal Attainment

Public Housing Authorities were asked to rate the extent to which eight program objectives were being fulfilled. They were to check (1) if the goal was effectively met, (2) if the goal was moderately effectively met, and (3) if the program was ineffective (Table V-2). The percentages of the number of PHAs that rated the goals are shown in Table V-2.

Rarely did 50 percent or more of the respondents rate any of the goals as being met effectively. Conversely, most of the respondents felt that the goals were moderately effectively met. Perhaps HUDs' decision to alter the program is a result of their also perceiving the program as less than effective.

The results also showed that the PHAs felt that the only goals that were being effectively met were assisting special groups (1), improving

TABLE V-2

PHA perceived level of goal obtainment

Program Goals	Mean	Effective	Percentages		Number of Responses
			Moderately Effective	Ineffective	
Encourage mobility	1.5	48%	39%	12%	33
Assist special groups	1	81%	19%	0%	32
Improves housing units	1.3	45%	52%	3%	29
Stimulates the economy	1.5	27%	50%	23%	26
Increases the supply of low income housing	1.6	45%	45%	10%	29
Provides housing for moderate income families	1.5	39%	55%	6%	31
Reduces housing costs	1.4	47%	40%	13%	30
Improves neighborhood quality	1.7	13%	77%	10%	31

housing units (1.3), and reducing housing costs (1.4).

Input Into Programming

The response to the question of how much input does the Chamber of Commerce, Mayor, Civic Groups, Client Population, and PHA have in making programming decisions showed that PHAs felt that they played a major role in making local housing decisions. They also felt that the client populations had the second highest degree of input in existing decision making. The overall percentages are contained in Table V-3.

Public Housing Authorities perceive themselves as having major input to programming. Nevertheless, major programming decisions are made by HUD and filtered down to the PHAs.

The actual implementation of the decisions is carried out by PHAs. The client populations are affected by the decision and therefore also participate in carrying out HUD guidelines from a different level. The PHAs' input centers around administering the program and includes input by the client population in meeting program guidelines. Each participates as an implementor rather than as a program planner. Each is the recipient of guidelines filtered down from HUD.

Freedom to Make Decisions

When asked the degree of freedom PHAs had from 1976-1979 and from 1980 to the present, several PHAs reported that their decision making in these two periods was about the same (Table V-4).

A quick comparison of the respondents' perceptions of their freedom

TABLE V-3

PHA input into Section 8 programming

Groups	Program Input			Total
	Major	Moderate	Minor	
Chamber of Commerce	13%	13%	74%	100%
Mayor	31%	42%	27%	100%
Civic Groups	13%	33%	54%	100%
Client Population	33%	30%	37%	100%
Public Housing Authority	77%	10%	13%	100%

TABLE V-4

Freedom to make decisions

Degrees of Freedom	1976-1979 Percent	1980-Present Percent	Total
More	27%	12%	39%
Same	25%	25%	50%
Less	<u>4%</u>	<u>7%</u>	<u>11%</u>
	56%	44%	100%

N=26

during these two phases, however, shows that administrators felt they had more freedom to make programming decisions from 1976-1979 than they do now.

It must be noted that the administrative regulations during the 1976-1979 period were developed by the Ford and Carter Administrations. These years were periods in which the program was in its earlier phases of existence. Both administrations made no major changes in the program. Perhaps this is the reason 27 percent of the respondents felt that they had more freedom during this period. Twenty-five percent felt they had the same amount of freedom and four percent felt they had less freedom. During the 1980 period, which is governed by the Reagan Administration, 25 percent felt they had the same amount of programming freedom, seven percent felt they had less freedom, and 12 percent felt they had more freedom during the present period. The decision-making process actually takes place in Washington D.C. However, PHAs are often allowed to adapt Federal program guidelines to their localities. Prior to recent changes in the Existing Program, the PHAs' influence on the decision-making process was greater. Nevertheless, the rapidly approaching demise of the program diminishes the input of local PHAs.

Program Assets and Limitations

In the survey questionnaire, administrators were given the opportunity to state subjectively the assets and limitations of the Existing Program. Four blanks were available for their input. There was a list of comments on this question. This approach was used so that

the administrators would not be limited or influenced by particular variables. The most frequent observations were mobility/choice, affordability, and better housing under program assets. The major limitation was excessive paper work and the fact that not enough units were allocated. The results are in Table V-5.

Program Future

The Existing Program's future is questionable; administrators felt that the program would be altered but continued. Fifty-two percent felt the program would be altered, 36 percent felt it would be continued, and 12 percent thought that the program would be phased out. When further asked did the state assist in providing assistance to low income families or whether states had increased their assistance to low income families since 1980, the respondents reported that there was little to no state assistance.

The administrators were all aware that there would be program changes but very few felt that the program would be discontinued. Surely if they were a part of the actual program planning, they would have known that 1985 would be the final year of the program's existence and would have also been knowledgeable regarding future program changes. Their lack of knowledge of the future demise of the program leads one to question the degree to which PHAs actually have input in making core programming decisions. While most PHAs noted that the program plays a moderate role in providing low income housing, HUD decided that the program was to be eliminated. As a result, PHAs will simply incorporate

TABLE V-5

A summary of questionnaire responses on the
Section 8 Existing Program assets and limitations^a

<u>Program Assets</u>	<u>Frequency</u>
Guaranteed rent to landlords	5
Public private cooperation	7
Provisions for damages/loss payments	2
Not stigmatized	2
Mobility/choice	16
Deconcentration	4
Affordable	12
Better housing	15
Owners responsible for maintenance	4
Unit repairs on tax role	1
Support for city people	1
More assistance than conventional public housing	1
Quasi-normal tenant/landlord relationship	1
Assist the elderly	1
	<u>73</u>
<u>Program Limitations</u>	<u>Frequency</u>
Does not produce new housing	2
Not well suited for special groups	2
Must meet housing quality standards	3
No incentive for upward mobility	3
Minimal assistance for working families	1
Restrictive Fair Market Rents	6
Difficult to find large units	3
Eligibility requirements	2
Available on a first-come basis	2
Excessive paper work/unclear guidelines	5
Not enough funds/units allocated	12
Marginal upgrading of housing stock	1
Must use the unit for housing only	1
Housing quality standards	1
	<u>44</u>

^aBoth lists are not conclusive, yet it is evident that the program has strong as well as weak points. Although there were more assets listed than limitations, the limitations render the program to be perceived as moderately effective. This possibly contributed to the future demise of the program.

the new programming procedures in their housing plans without any real input in the process. This helps confirm their lack of input in core programming.

Correlations

As indicated earlier, causation cannot be implied when using correlations; however, relationships between variables can be implied. The correlations examined show that there is a moderate relationship (.622) between the number of years participated and civic group input into programming. This confirms the hypothesis that the years participated influences input into making housing decisions. Moreover, it can further be implied that as years of participation increase, input will increase. This gain possibly occurs because the PHAs that have participated the longest in the program have a greater understanding of HUD housing regulations.

A moderate relationship (.512) also occurred between the number of employees prior to 1980 and freedom to make program decisions from 1976-1979. The positive relationship is possibly a result of the years prior to 1980 being the period in which the program was in its earliest existence. Moreover, during this transitional phase constant feedback from program administrators was solicited as they monitored the program. Conversely, as time progressed, HUD information gathering decreased. Consequently, there was not a significant relationship (.329) between the number of employees after 1980 and freedom to make program decisions.

After 1980, housing policy was examined from a different perspective than it was by earlier administrators. Administrators felt that the Section 8 Program was too big and changes had to be made to bridle the growth in personnel and dollars spent on the program. This action caused a reduction in the number of program administrators and also lessened the degree to which they sought input from PHAs and further decreased the freedom of PHAs to make programming decisions. These occurrences confirm the low relationship between the two variables.

Surprisingly, there was a negative relationship between client population and leases from 1976 through 1981. The correlations ranged from -1 to $.2$. Nevertheless, the correlations for 1982 through 1983 are positive but low. There was a correlation of $(.536)$ for the year 1984. PHAs indicated earlier that they did not receive enough ACCs to lease the number of units needed to assist their low income population effectively. The little to no correlation between client population and leases somewhat affirms the PHAs' perception of an inadequate number of ACCs. The high correlation for 1984 indicates that PHAs wish to assist more families. The figures for 1984 were projections by PHAs of the number of leases they felt they would finance (Table V-6). Correct figures will not be available until the year ends.

Additional correlations were computed between mobility and improved housing units. The value of the correlation was $(.57)$, thus, representing a moderate positive relationship. There was also a positive relationship between mobility and providing housing for special groups $(.514)$. The increased mobility of families is a goal of the

TABLE V-6

Correlation coefficients between program goals

	X ₁	X ₂	X ₃	X ₄	X ₅	X ₆	X ₇	X ₈
X ₁ Years participated	1.00	*.622	.416	.422	.142	.139	.131	.131
X ₂ Input civic groups		1.00	*.57	*.596	.273	.192	.109	.092
X ₃ Number of employees prior to 1980			1.00	.718	-.087	.156	.138	.048
X ₄ Number of employees after 1980				1.00	.03	.106	.111	.086
X ₅ Client population					1.00	.122	.277	.138
X ₆ Mobility						1.00	*.57	.399
X ₇ Improves housing units							1.00	.514
X ₈ Assists special groups								1.00

N = 35

*Significant Correlation at .05 level

Existing Program. PHAs hope that families that receive assistance will relocate to better dwelling units, but moving is optional. Families can receive assistance in place. Generally, families move to improved housing units. As a result, there would be a positive relationship between these variables.

Moreover, studies show that groups like the elderly and small families are greatly assisted by the Existing Program. Therefore, the correlation between special groups and mobility indicate direct assistance to these groups. Finally, there was a high positive relationship between white renters and elderly renters (.727) (Table V-7). The elderly are considered a special group. Therefore, it is expected that their needs would be addressed. In aggregate numbers there are more white renters than nonwhite members. Consequently, there would be a greater number of white elderly. Nevertheless, the elderly, whether white or nonwhite, are major participants in the program.

The correlations indicate that some of the program elements are effective. The needs of special groups are met; mobility has increased, and housing has been improved. Nevertheless, there are not enough leases under PHA control; therefore, many families cannot be assisted. PHAs therefore are compelled to rate the program as moderately effective in meeting its program goals.

In addition, their perceptions of the program are based on the role of the program administrators, their input on decisions and the extent to which program goals are fulfilled. The data showed that while PHAs perceive themselves to be instrumental in making program decisions, they were not totally reliant on the Existing Program to provide financial

TABLE V-7

Correlation coefficients between program goals and housing characteristics

	X ₁	X ₂	X ₃	X ₄	X ₅	X ₆	X ₇	X ₈
X ₁ Provides moderate income housing	1.00	*.542	*.549	.379	-.126	-.021	.353	.41
X ₂ Reduces housing cost		1.00	.335	.332	-.118	-.06	.296	.346
X ₃ Improves neighborhoods			1.00	*.559	-.106	-.147	-1.08	.371
X ₄ Program role				1.00	-.05	-.029	-6.03	.315
X ₅ White renters					1.00	*.727	.213	-.226
X ₆ Elderly renters						1.00	.364	-.122
X ₇ Black renters							1.00	.087
X ₈ Improves housing units								1.00

N = 35

*Significant Correlation at .05 level

assistance. Likewise, they did not feel that the established program goals were being adequately met. Moreover, the data infer that the effectiveness of the program is based on a multiplicity of factors. As a result, it was hypothesized that PHA input, years participated, program rate, and client population input were core variables in achieving an effective program. The responses from the PHAs confirm this hypothesis. They go even further to indicate that while these variables are major program elements, the Existing Program does not effectively institute these mechanisms in its programming.

Analysis of Variance

An ANOVA testing the relationship between program role (dependent variable) and total population, agency age and resident mobility (independent variables) had a calculated F statistic of 2.35. The critical value of F (1, 3.05) was 10.1. The data show that there is an association between these variables, but not at the level of statistical significance. Apparently, total population, agency age, and mobility do have some impact upon the role of the Existing Program.

To examine the extent of the impact, the calculated t values were examined. The calculated t values for the independent variables were (1.28) years participated, (2.18) total population, and (1.52) mobility. Using a .05 significance level, the critical value of t at 3 degrees of freedom (df) was 2.35. The total population had the highest t value, indicating that city population size apparently has the greatest impact on the role of the program. Among those who rated the role of the

program, most felt that the larger the population, the greater the role of the program in the city.

There were 30 respondents ranking the role of the Existing Program. Of the total respondents, 57 percent reported that the Existing Program plays a moderate role in providing low income housing, 36 percent reported it plays a major role, and six percent reported that it played a minor role. The data were further divided into groups by population size. There were seven respondents that rated the role as major. The size of the cities in which the PHAs were located ranged from 115,000 to 340,000. The mean of the sizes was 196,375. There were fifteen cases that reported that the Existing Program played a moderate role in providing low income housing. The size of the populations ranged from 100,000 to 293,000. The average size of the cities was 142,866. The greater number of cases did not affect the smaller mean, most of the case populations were under 150,000. There was only one case that reported that the size of the population played a minor role in providing low income housing. The cases show that the larger the population, the greater the role of the program. Larger populations often do not have the funds adequately to address the housing needs of their low income families. Therefore, participation in the Existing Program eases the financial burden of both the family and the city.

When role was examined in relation to input of PHA, such variables as "meets the needs of special groups," "improves housing units," "stimulates the economy," "increases housing supply," "houses moderate income families," "reduces housing cost," "improves neighborhoods," "state assistance," "the future of the program," and "increased state

assistance," the calculated F value was 2.7. The critical value at F (1, 11, alpha 0.05) was 4.84. The t value at alpha was .05 with 11 df was 1.80. There was a negative relationship between role and most of the variables. Only three variables were greater than the critical value of 1.80. These variables were "improves neighborhood" (3.03), "state assistance" (2.93), and "reduces housing cost" (1.86) (Table V-8).

Public Housing Authorities perceived the Existing Program as playing a moderate role in providing low income housing. The ANOVA of role and the 11 independent variables show that all of the variables influence PHA's perceptions of the role of the program (Table V-8). Although there are a multiplicity of variables that impact the perceived role of the program, the primary purpose of the program is to improve housing and neighborhoods. Fortunately, the variable indicating improved housing registered the highest F score in the ANOVA reflecting the role of the program.

Hypotheses

The hypotheses cited in the Introduction, while all are not cited in this section, were examined earlier in this research design. These hypotheses were developed while testing various relationships between program variables. They are mere extensions of earlier hypotheses. As a result, Hypothesis One examines the local decision-making process of PHAs by civic group input and years participated. Hypothesis Two also examines decision making, but it is examined in relation to its

TABLE V-8

ANOVA of the role of the program with 11 independent variables

Multiple R = .751314261

Std Err Est = .655420157

F = *2.70996356

B	Std Err (B)	T
Input by PHA -.06	.15	-.40
Special group needs .19	.32	.60
Improves housing units -.11	.20	-.54
Stimulates economy -.11	.13	-.84
Increases housing supply -.03	.07	-.45
Moderate income housing -.07	.24	-.28
Reduces housing costs .31	.16	1.88
Improves neighborhoods .73	.24	3.02
State assistance .85	.29	2.92
Increased state assistance -.35	.30	-1.16
Future -.06	.17	-.37
Constant -5.48-04		

*Significant at .05 level

dependence on PHA input, employees, and the number of years participated in the program. Hypothesis Three examines leases and its dependence on size of population, role of the program, and the number of years participated.

H₁ The input of civic groups is dependent on the number of years an agency has participated in the program.

An ANOVA computed on these variables showed that the calculated F statistic was 20.8. The critical value of F 1 and 1 df at alpha .05 was 161. Further investigation of the association revealed that the calculated t value was 4.56 at 1 df and an alpha of .05. The critical value at 1 df and alpha .05 was 6.31. As a result of these values, we fail to reject the hypothesis at the .05 critical level. The calculated values of the test falls within the critical values of the F and T tables. There is a relationship between the two variables. The multiple R was .62.

Civic groups have input in local program implementation. The data imply that the greater the years of participation, the more input civic groups have. PHAs participating for eight years or more reported that the impact of the civic group was minor. Of the 23 cases, 13 reported that civic groups had minor input, seven listed they had a moderate degree of input, while three listed major input (Table V-9).

The data further imply that civic groups have no input into the programming of PHAs that have participated in the program for less than five years. It is possible that in the earlier years of participation the PHA focused on familiarizing itself with core program elements. Perhaps as a result of this period of acquiring information the input of

TABLE V-9

Response rate of number of years participated
by input of civic groups

Number of Years Participated	<u>Input Civic Group</u>		
	Major	Moderate	Minor
1	0	1	0
2	0	0	0
3	0	0	0
4	0	0	1
5	0	0	0
6	1	1	1
7	1	0	1
8	1	3	5
9	0	2	5
Total	3	7	13

the civic group is not solicited. Nevertheless, as PHAs become familiar with program guidelines, they entertain input from outside groups. Public Housing Authorities that had participated in the program six years or more gave more responses to the question on the amount of input civic groups had in making programming decisions. Authorities participating less than six years gave little data on the input rate of these groups. Again, this may be a factor of not soliciting civic groups' input, while PHAs attempted to understand major program components.

H₂ Freedom to make programming decisions from 1980 to present is dependent on the input of PHAs, employees from 1980 to the present, education, and the number of years PHAs have participated in the program.

The F calculated value for this analysis was 3.6. The F ratio at 1,4 df at alpha .05 had a critical value of 7.71. The F calculated value is less than the critical values; this indicates that there is a moderate association between the variables. To further analyze the degree of the association, the t values were studied. The calculated t values for years participated was 2.5; employees from 1980 to the present, 1.32; education, 1.13; and input of PHA's, 2.11. The critical value for the three variables t, alpha .05 at 3 df was 2.13. All three variables influence the perceived freedom to make programming decisions from 1980 to the present (Table V-10).

The multiple R of .55 shows that there is a moderate positive relationship between the variables. The highest correlation was .25 for years participated. Each variable had 27 cases. The mean for the variable measuring local PHA freedom in decision making in 1980 to the

present was two. Consequently, administrators perceive that they did not gain any additional freedoms during these periods. The average number of years participated was six. Therefore, program administrators were familiar with the past and present existing programming procedures. The data appear to indicate that freedom to make decisions has not increased tremendously since 1980, nor has the number of employees. Yet, PHAs still perceive their input in programming to be influential on housing decisions.

H₃ The number of leases allocated by the Department of Housing and Urban Development is dependent on the size of the population, the role of the program, and the number of years participated.

Data were provided for leases from 1976 to 1984 (projected number). Nineteen eighty-three had the most data on leases. Consequently, this year was used as the dependent variable. The independent variables were those stated in the hypothesis size of population, the role of the program, and the number of years the agencies had participated in the program. A one-way ANOVA test resulted in a calculated F value of .28. The critical value of F with (1, 3 df 0.05) was 10.1. The results of this test allows us to conclude there is little if any relationship between these variables.

The statistical test did not support the hypothesis. The Department of Housing and Urban Development base their allocation of ACCs for leases on these variables, such that these variables dictate how many units are operated by or regulated by PHAs. The apparent correlation between the variables is probably a result of missing data. In addition, the phases covered include time of transition. During the early phases of the program, very few PHAs or LHAs participated.

Moreover, during 1983 to the present, the program is going through a phasing-out period. These periods reduce the total number of units leased under the program and therefore result in a low correlation between the units leased and the population size.

The results of this thesis will be summarized in the following chapter. The implications of these findings will also be noted.

CHAPTER VI.

CONCLUSIONS

The Existing Program has assisted families in acquiring safe and decent dwelling units for ten years. The use of existing units minimize the cost of housing to the tenant and to the government when compared to other components of the Section 8 Program. The Existing Program is not only less expensive, but it can also be utilized by more needy families.

Summary of Findings

This study showed that PHAs use the Existing Program as a vehicle for providing financial assistance to low income families. A Level of Involvement Scale developed from PHAs' perceptions of core program variables showed that PHAs perceive the Existing Program to be moderately effective in meeting its program variables. Of the variables examined, only two, PHA input and leasing, were not perceived as moderately effective. Public Housing Authority input was perceived as effective while leasing procedures were considered ineffective.

To further determine PHAs perception of the program, they were asked to declare the degree to which several program goals were achieved. Eight goals were listed for their evaluation of these goals. The PHAs felt that special groups were being assisted. They also felt that housing units were improved and housing costs were reduced. The other variables were rated as moderately effective. Again, PHAs signal that the program is not as effective as it could be. This implies that during its ten years of existence, its major program weaknesses have not

been adequately addressed.

Most of the Public Housing Authorities had participated in the program for five years or more. During this period, there had been no major changes in the number of administrators overseeing the program. Moreover, the larger the population, the greater the role of the program was perceived by administrators. Cities with populations greater than 200,000 reported that the program played from a moderate to a major role in assisting low income families acquire decent homes, while cities with smaller populations felt that the program played a minor role.

Program Implications

The hypotheses earlier set forth are valid indicators of the components necessary for an effective program. The data show that the Existing Program, while perceived as being moderately effective by PHAs, must be revamped to address better the needs of low income families. While restructuring of the program is needed, the program will be discontinued in the near future. As a result, the program will not be given the opportunity to achieve its full potential of overall effectiveness.

The level of involvement rating of the Section 8 Existing Program signals that all is not right with the program. While moderately effective means that the program is addressing some of the problems of Public Housing Authorities, core program elements taint the effectiveness of the program. Administratively, PHAs perceive that they have direct input into the program. Yet they also feel that their

freedom to make programming decisions has not changed significantly since their initial participation year. Furthermore, they also felt that the goals established by the Existing Program were being achieved to a moderate degree. While most of the program variables were scored as moderately effective, the allocation of leases was perceived as ineffective. This stems from the fact that most PHAs felt that they did not receive an adequate number of Annual Contribution Certificates to service the needs of the low income in their areas.

There were many assets of the Existing Program. Yet, the limitations noted greatly impaired the effectiveness of the program in assisting core program goals. These limitations were used as a reason to gradually phase out of the program. The limitations with the greatest impact were leasing procedures, excessive paper work, and Fair Market Rents that were set either too high or too low depending on individual housing markets.

Nevertheless, the Section 8 Program is not being phased out because of ineffectiveness. It is perceived by politicians as one item society can do without. The benefits of the program are not acknowledged and only the liabilities emphasized. This program is a victim of the Reagan Administration decentralization focus. This focus lessens government participation in programming and supposedly places the responsibility for the program in the hands of the participants with little directive power left to the PHA.

Currently, administrators participate in all facets of the provision of low income housing (for example, application and rent process, obligations of tenant, and landlord evictions). When the

Existing Program is phased out, the watch-dog role of the PHA diminishes. Thus, the landlord and the tenant are responsible for how successful the program is. The contract between these two parties will be initiated and terminated with little input from PHAs. This lessens the responsibility of the government and shifts the fundamental decision making to others. Only time will tell whether the program will have detrimental impacts upon the provision of housing for low income groups.

While this study evaluated a program that is slated to be discontinued, the perceptions of the program by PHAs informs policy makers of the strengths and weaknesses of the Existing Program. These perceptions can be used in future programming so that the mistakes of the past will not reoccur.

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ACKNOWLEDGMENTS

Of all the sections in this thesis, this is my favorite. This section not only signals an end to this research project, but it also allows me to express my sincere appreciation to the many persons that have made this research project possible.

I would first like to thank my major professor, Dr. Mary Kihl, for not just taking time, but making the time, to render invaluable comments and guidance. I would also like to thank Bill Malone who, while called in after the project began, willingly read and made suggestions concerning the text. I am also grateful to Dr. Ardith Maney. Although she was an outside member on the committee, her comments were more than useful.

Other individuals to whom I am grateful are Deb Arneson, Omer Ertur, Judith Wood, Vanessa Latimer, and countless friends who stood by me constantly saying "you can do it." Moreover, special thanks are given to Branford Nortei Adumuah who was always there, constantly giving support, and a having a strong shoulder to lean on. Special thanks are also given to Charles A. Ramsey II for his wise counsel, patience, and support.

This list of thanks could not end without thanking two beautiful parents, Louis and Cora Franklin for molding inside me the foundation for the quest for further knowledge.

APPENDIX A:
THE FEDERAL REGISTER

12291. Federal Regulation, because it will not result in:

- (1) An annual effect on the economy of \$100 million or more;
- (2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or
- (3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Authority: Sec. 4, 63 Stat. 111, as amended, 75 Stat. 527-538; 22 U.S.C. 2658, 2451 note; Reorg. Plan No. 2 of 1977; E.O. 12048 of Mar. 27, 1978.

§ 515.3 [Amended]

Part 515 is amended by removing paragraph (h) from section 515.3.

Dated: March 22, 1984.

Charles Z. Wick,
Director, U.S. Information Agency.

[FR Doc. 84-8360 Filed 3-28-84; 8:45 am]
BILLING CODE 8230-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 51

[Docket No. R-84-709; FR-935]

Environmental Criteria and Standards; Siting of HUD-Assisted Projects Near Hazardous Operations Handling Petroleum Products or Chemicals of an Explosive or Flammable Nature; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule; correction and technical amendment.

SUMMARY: The purpose of this document is to indicate the correct placement of Appendices to a final rule published on February 10, 1984 (49 FR 5100), as corrected on March 20, 1984 (49 FR 10253), that provided standards for the safe siting of HUD-assisted projects near hazardous operations that handle petroleum products or chemicals of an explosive or flammable nature.

EFFECTIVE DATE: The effective date for the technical amendment appearing in item 2 of this document is March 29, 1984.

FOR FURTHER INFORMATION CONTACT: James L. Christopoulos, Office of

Environmental and Energy, Telephone number, (202) 755-7225. (This is not a toll-free number).

Accordingly, the following corrections are being made to 24 CFR Part 51:

1. In the March 20, 1984 issue of the Federal Register, in FR Doc. 84-7325, on page 10253, column two, item three corrected a February 10, 1984 final rule of the Department. The correction reinstated an Appendix which had been erroneously removed. The correction should have stated also that it was revising the title of the Appendix to read as follows:

Appendix I to Subpart B—Definition of Acoustical Quantities

2. In 24 CFR 51.103 (a) and (b), the term "Appendix" is changed to read "Appendix I to this Subpart" wherever it appears.

3. In the February 10, 1984 issue of the Federal Register, in FR Doc. 84-3516, on page 5105, column two, item three, (1) correct the amendatory language to read as follows: "3. Appendix I to Subpart C and Appendix II to Subpart C are added to read as follows:"; and (2) correct the titles of the two Appendices to read as follows:

Appendix I to Subpart C—Specific Hazardous Substances

Appendix II to Subpart C—Development of Standards; Calculation Methods

4. In the February 10, 1984 issue of the Federal Register, in FR Doc. 84-3516, page 5103, column three, correct the table of contents entry for § 51.207 to read as follows:

51.207 Amendments to Appendix I to this subpart.

5. In the February 10, 1984 issue of the Federal Register, in FR Doc. 84-3516, page 5105, column one, in § 51.207, (1) correct the section heading to read: § 51.207 Amendments to Appendix I to this Subpart; and (2) correct the term "Appendix I" wherever it appears to read "Appendix I to this Subpart."

Authority: Sec. 2, Housing Act of 1949 (42 U.S.C. 1441); Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); Sec. 2, Housing and Urban Development Act of 1969 (42 U.S.C. 1441(a)).

Dated: March 23, 1984.

Grady J. Norris,
Assistant General Counsel for Regulations.

[FR Doc. 84-8419 Filed 3-28-84; 8:45 am]
BILLING CODE 4210-32-M

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 205, 207, 213, 221, 232, and 244

[Docket No. R-84-1065; FR-1559]

Mortgage and Loan Insurance Programs Under the National Housing Act—Creation of Inferior Liens To Secure Governmental Loans

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The Secretary is adopting as final an interim rule that amended certain of HUD's multifamily and related mortgage insurance regulations to facilitate the use of grants or loans by Federal, State, and local governmental agencies or instrumentalities in connection with the development of projects with FHA mortgage insurance. The rule permits liens inferior to the insured mortgage where needed to secure the Federal, State, or local loan. The rule also provides that, where the proceeds of such a loan or grant are to be used as "front money" to assure completion of the project and the payment of expenses incident to its construction, "front money" deposit requirements for these purposes may be satisfied by a letter of credit or an agreement among the relevant parties rather than by cash, and insured mortgage proceeds may be advanced to cover these expenses before full disbursement of the loan or grant proceeds.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT: Linda Cheatham, Director, Multifamily Technical Support Division, Office of Multifamily Housing Development, Room 6138, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Telephone number (202) 426-7113. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On August 4, 1983 the Department published an interim rule in the Federal Register (48 FR 35389), amending the then-existing regulations at 24 CFR Chapter II, Subchapter B, governing certain multifamily and nonresidential mortgage insurance programs under the National Housing Act.

As explained more fully in the interim rule, and briefly summarized here, the amendments are designed to facilitate the use of grants and loans by Federal,

State, and local governmental agencies or instrumentalities in connection with the development of projects whose mortgages are insured under those authorities. The rule also permits liens inferior to the lien of the insured mortgage if they are given in favor of the Federal, State, or local governmental agency under circumstances approved by HUD. Additionally, the rule relaxed the "front money" regulatory requirements in those cases where the money is provided by a grant or loan from a government instrumentality. Finally, the rule specified that the mortgagee of record could not be the issuer of a letter of credit used in connection with the insurance of advances for the programs covered by the rule without the prior written consent of the Commissioner.

The interim rule became effective on October 10, 1983, and provided for public comments to be received by October 3, 1983. The Department received only one comment, and this was from a HUD Field Office.

The comment recommended that the rule be withdrawn (and the old policy reinstated) or modified because of its potentially adverse effects on all parties if the proceeds of secondary financing are withheld to the end of a job. The comment argued that the requirement to post a letter of credit for ten percent of the secondary financing amount could be financially burdensome to the borrower; and, in some cases, may represent an insignificant amount in relation to the total cost of a project. The comment further questioned the fairness of having the borrower incur this additional cost because of the borrower's having little influence over the actions of the secondary lender. Finally, the comment contends that, written agreements aside, delays and cost overruns could result if the government agency fails to honor its obligation to provide the loan or grant funds.

The Department disagrees with the comment. The Field Office misapprehends the funding procedure contemplated by this rule. As the rule (along with the instructions to HUD's Field Offices) makes clear, the secondary financing will be advanced either before the disbursement of mortgage proceeds or concomitantly on a pro rata basis with the expenditure of mortgage funds. Mortgage proceeds will not be substantially drawn down before the disbursement of grant or loan funds. The provision for a letter of credit ensures that the general contractor is paid in a timely manner; it does not, in

the Department's view, create an undue financial burden on the mortgagor.

HUD recognizes that in the normal course of events, there exists the possibility of funding delays—a contingency the agreement was designed to ameliorate by its provision for a letter of credit or escrowed funds. Finally, the Department believes that the rule's cost effectiveness (interest expense is minimized by deferring the time that loan or grant funds—proceeds of government borrowing—are disbursed) outweighs the potential adverse effects cited in the comment.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. The rule does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule is a cost-saving measure with little, if any, adverse impact on small entities.

This rule was listed as RIN 2502-AA30 (H-45-81; FR-1559), in the Department's Semiannual Agenda of Regulations published on October 17, 1983 (48 FR 47435) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Program Numbers are 14.112, 14.116, 14.125, 14.126, 14.127, 14.129, 14.134, 14.135, 14.137, 14.138, and 14.139.

List of Subjects

24 CFR Part 205

Community facilities, Land development.

24 CFR Part 207

Mortgage insurance, Manufactured homes.

24 CFR Part 213

Mortgage insurance, Cooperatives.

24 CFR Part 221

Condominiums, Low and moderate income housing, Mortgage insurance, Projects, Cooperatives.

24 CFR Part 232

Fire prevention, Health facilities, Loan programs-Health, Loan programs-Housing and community development, Mortgage insurance, Nursing homes, Intermediate care facilities.

24 CFR Part 244

Health facilities, Mortgage insurance. Accordingly, the interim amendments to 24 CFR Parts 205, 207, 213, 221, 232, and 244, published on August 4, 1983 (48 FR 35389) are hereby adopted as final without change.

Authority: Section 211 of the National Housing Act (12 U.S.C. 1715b); Section 7(d) of the Department of HUD Act, 42 U.S.C. 3535(d).

Dated: March 21, 1984.

Shirley M. Wiseman,
General Deputy Assistant Secretary for Housing.

[FR Doc. 84-8490 Filed 3-28-84; 8:45 am]

BILLING CODE 4210-27-M

24 CFR Part 882

[Docket No. R-84-955; FR-1539]

Section 8 Housing Assistance Payments Program; Existing Housing

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, (HUD).

ACTION: Final rule.

SUMMARY: This rule amends the regulation for the Section 8 Existing Housing (finders-keepers) Program concerning: (1) Lease term and termination of tenancy; (2) selection of applicants for program participation; (3) determination of the number of bedrooms appropriate for a family; (4) review of certain PHA decisions affecting an applicant or participant; and (5) related regulatory changes. The purpose of this rule is to delineate certain notice and hearing requirements

and waiver requirements associated with the Section 8 Existing Housing program and to make final previously published rules on termination of tenancy.

This rule will provide more explicit guidance to PHAs and families participating in the program.

EFFECTIVE DATE: May 10, 1984.

FOR FURTHER INFORMATION CONTACT:

Gerald J. Benoit, Existing Housing Division, Office of Elderly and Assisted Housing, (202)-755-5353, Department of Housing and Urban Development, Washington, D.C. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Consolidation of Rulemaking

This rulemaking consolidates two prior rulemaking proceedings in a single final rule:

A. On July 26, 1982 (47 FR 32169), HUD published a proposed rule implementing Federal Court orders (in *Nichols v. Landrieu*, Civil Action No. 79-3094, United States District Court, District of Columbia, September 12, 1980):

1. Certifying a class action on behalf of persons whose section 8 existing housing subsidy may be terminated or reduced, by a PHA "because of family size and composition requirements without notice of the reasons for termination, the availability of a waiver of family size requirements, and an opportunity to be heard to contest the propriety of termination or claim entitlement to the waiver";

2. Directing HUD to publish as a rulemaking for notice and public comment portions of the administrative handbook for the Section 8 Existing Housing Program "delineating notice and hearing requirements pursuant to subsidy reduction"; and

3. Directing that the PHA notify the participant family of its "right to a waiver [of the PHA's family size requirements] and the grounds upon which a waiver may be granted."

In addition to provisions related to the *Nichols* plaintiff class and required under the court order, the rulemaking also proposed other amendments regarding selection of applicants for Certificates and informal hearing requirements for applicants and program participants.

The Department has received 29 public comments on the proposed rule.

For convenience, this rulemaking is referred to below as the "selection and hearing" rule.

B. On August 3, 1982 (47 FR 33497), HUD published an interim rule implementing 1981 legislation (Pub. L. 97-35, Section 326(e)(1)) which requires

a minimum one year lease term in section 8 existing housing, eliminates a prior requirement for PHA participation in a termination of tenancy, and requires good cause for termination of tenancy.

The Department has received 58 public comments on the interim rule.

For convenience, this rulemaking is referred to below as the "termination of tenancy" rule.

II. Statement of Family Responsibilities

Before issuance of this rule, the regulation (§ 882.118) provided that: "A Family receiving housing assistance under this program shall be responsible for fulfilling all its obligations under the *Certificate of Family Participation* issued to it by the PHA and under the *Lease with the Owner*."

Family "obligations under the Certificate" were not otherwise defined in the regulation. The form of Certificate signed by the Family (Form HUD 52578, 10-78) states that the Family agrees "to perform all its obligations under the Existing Housing Program." The Certificate also requires the Family to:

—Provide family income information and records required in administration of the program.

—Permit inspection of its dwelling unit at reasonable times after reasonable notice.

—Give at least 30 days notice to the PHA if the family intends to vacate the unit, and

—Cooperate with the PHA in finding a new unit if the unit is too large because of a change in family size.

The Certificate provides that the "conditions" (i.e., the statement of family obligations on the Certificate) "continue to apply after the Family begins to receive assistance under this program."

The proposed selection and hearing rule (proposed § 882.209(a)(2)(i)) stated that the PHA may deny issuance of a Certificate to an applicant who, as a past participant in the Section 8 Existing Housing Program, failed to comply with "family obligations under the section 8 Existing Housing Program."

A legal aid office objects that the authority to deny a Certificate for failure to comply with family obligations under the program is vague, and does not distinguish between a serious violation of program standards, and minor technical or unintentional infractions for which deprivation of assistance would be unfair. The comment also claims that grounds for denial of a Certificate are already sufficiently clear under the regulation and handbook.

The Department agrees that violation of unstated family program "obligations" is not a sufficiently

definite regulatory statement of grounds for denial of assistance, but does not agree that grounds are already adequately stated in the regulation. The responsibilities of the family in the Section 8 Existing Housing Program should be comprehensively listed in the regulation.

As revised by this rule, § 882.118 lists the obligations of a family under the Section 8 Existing Housing Program, both positive (requirements) and negative (prohibitions). The PHA may deny or terminate assistance to a current program participant, or to a prior participant seeking readmission to the program, for violation of any of the stated family obligations (see new § 882.210, discussed in section III of this preamble).

A. Obligation To Furnish Required Information and Certification

The regulation (§ 882.118(a)(1)) requires the family to supply such certification, release, information or documentation as the PHA or HUD determine to be necessary in the administration of the program, including use by the PHA for a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements. The requirement to supply program-related information and records, and to certify family income and composition, is not new.

B. Obligation To Allow PHA Inspection of Unit

The regulation (§ 882.118(a)(2)) requires the family to allow the PHA to inspect the unit at reasonable times and after reasonable notice. The requirement to allow PHA inspection of the unit supports the PHA obligation (see § 882.211) to determine by inspection whether the unit is decent, safe and sanitary, and otherwise in accordance with the lease and assistance contract. This obligation is not a new requirement, and is currently stated in the Certificate.

C. Obligations Related To Use and Occupancy of Unit

The family must use the dwelling unit solely for residence by the Family, and as the family's principal place of residence, and may not assign the lease or transfer the unit (§ 882.118(a)(4)).

The requirement for use solely for residence by the family serves to enforce the statutory purpose of section 8 assistance, to provide assistance for occupancy by a lower income family (see U.S. Housing Act of 1937, sec. 8(c)(4); 42 U.S.C. 1437f(c)(4)).

The requirement for use of the dwelling unit as the family's principal place of residence is intended to prevent the use of scarce subsidy resources for a secondary or seasonal place of residence, or for a unit not actually occupied by an eligible family.

The regulation (§ 882.118(b)(3)) also prohibits the family from receiving assistance under the Section 8 Existing Housing Program "while occupying, or receiving assistance for occupancy of, any other unit assisted under any federal housing assistance program (including any section 8 program)." This provision is intended to prevent double subsidy for a family, or the payment of section 8 subsidy for a unit not occupied by an eligible family.

As under the current form of Certificate of Family Participation, the new regulation (§ 882.118(a)(3)) requires the family to notify the PHA before vacating the dwelling unit. The PHA needs to know when the family is going to leave the unit, so that the PHA will not continue assistance payments, other than authorized vacancy payments (§ 882.105(b)), for a unit no longer occupied by the family.

D. Ownership of Unit

The regulation prohibits the family from owning or having any interest in the dwelling unit (§ 882.118(b)(1)). Currently this is one of the owner's certifications on receipt of payment under the assistance contract. The prohibition is based on the statutory character of the section 8 program, as a rental subsidy for a unit under lease from an owner. Section 8 is not a subsidy for owner occupied housing.

In accordance with the two statutory exceptions to the broad restriction on section 8 subsidy for owner occupied housing, section 8 subsidy may be paid on behalf of a cooperative member (see U.S. Housing Act of 1937, sec. 8(f)(2), 42 U.S.C. 1437f(f)(2)), or to subsidize pad rental by the owner of a manufactured home unit (pursuant to sec. 8(j) of the United States Housing Act of 1937, 42 U.S.C. 1437f(j), as amended by the Housing and Community Development Amendments of 1981, Pub. L. 97-35, sec. 329 H).

E. Fraud

The rule provides (§ 882.118(b)(2)) that the family may not commit any fraud in connection with the Section 8 Existing Housing Program. See also § 882.210(b)(3) and (d)(1), discussed in section III B below, concerning the denial or termination of assistance because of applicant or participant fraud in connection with any federal housing assistance program.

F. Tenant Violation of Assisted Lease

In one major respect, the final rule significantly narrows the regulatory definition of family responsibilities under the program. Since the beginning of the Section 8 Existing Housing Program, the program regulations have provided that the family is responsible for "fulfilling all its obligations . . . under the Lease with the Owner" (§ 882.118 of prior rule). This provision is deleted in the final rule.

Enforcement of the family's obligations to the owner under an assisted lease is properly the concern of the owner, not the PHA. The PHA has, in general, no firsthand knowledge of tenant behavior in the unit. If the family has violated the lease, the owner may take action to terminate the tenancy and, if necessary, to evict the family, without involvement of the PHA.

The PHA is prohibited (under prior program policy and the provisions of this final rule, § 882.209(a)(5)) from establishing selection criteria based on an applicant's expected behavior as a tenant. (The prohibition on screening in selection of tenants will be further discussed in section IV D of this preamble). The termination of assistance because of a family's behavior as tenant of an assisted unit is not an appropriate role for the PHA. For this reason, the tenant's responsibility to comply with the lease is not included in the regulatory listing of family program obligations.

III. Bases for Denial or Termination of Assistance

Under the proposed rule on selection and hearing (§ 882.209(a)(2)), the PHA would have been permitted to refuse a Certificate to an applicant who owes money to a PHA or who (as a past participant in the Section 8 Existing Housing Program) vacated a unit in violation of the lease, or failed to pay amounts owed to a section 8 owner. The PHA could also deny a Certificate to a family which failed to comply with family obligations under the Section 8 Existing Housing Program, or which committed fraud or misrepresentation in connection with a federal housing assistance program.

The proposed rule would not have modified regulatory provisions concerning the grounds for denying a new Certificate to a current program participant (former § 882.209(e)(1), now redesignated § 882.209(m)), and would not have contained any new provisions concerning the grounds for termination of assistance to a program participant. On reconsideration, the Department believes this approach is too narrow,

and that the regulations should set out a comprehensive statement of the grounds not only for denial of initial selection for participation, but for termination or denial of further assistance to a current program participant because of an action or inaction by the family. The final rule includes therefore a new and complete statement, in a separate regulatory section (§ 882.210), of the bases for denial or termination of assistance because of the family's behavior. (The former provisions of § 882.210 ("Request for lease approval") have been moved to § 882.209, as paragraphs (e) to (l).)

A. Failure To Make Payment to PHA

Under the final rule (§§ 882.210(b)(1) and (2)), the PHA may deny participation in the program, may deny issuance of another Certificate to a participant who wants to move to another dwelling unit, may decline to enter an assistance contract or to approve a lease, if the applicant or participant:

—Currently owes rent or other amounts to the PHA or another PHA, and the debt was incurred in connection with public housing or section 8 assistance under the United States Housing Act of 1937, or

—Has not reimbursed claims paid on its behalf by the PHA to a section 8 owner, either for rent or for other damages under an assisted lease, or for section 8 vacancy payments.

The PHA may properly conclude that families which have not paid the PHA are less deserving of further assistance from limited funding than other families which meet their financial responsibilities. Payment by the Family of amounts owed to a PHA or of section 8 owner claims paid by a PHA will promote the fiscal welfare of the PHA. Reimbursement of section 8 owner claims paid by a PHA on behalf of the family replenishes funds for operation of the PHA's section 8 program, and for assistance payments for families. The requirement for reimbursement tends to discourage tenant behavior which can result in owner claims, such as claims for tenant damage to the unit.

1. *Treatment of Past Rent or Other Debt to a PHA.* Legal aid comments on the proposed rule assert that the denial of assistance because of rent owed to the PHA, including denial because of rent owed under the public housing program, is an "unauthorized collection practice," and that a PHA may not withhold benefits under the PHA's Section 8 Existing Housing Program because of debt incurred in another "completely unrelated" program.

Section 8 and public housing are different forms of housing assistance under the U.S. Housing Act of 1937, but implement the same statutory purpose—to provide decent, safe and sanitary dwellings for lower income families (U.S. Housing Act of 1937, sec. 2 and sec. 3, 42 U.S.C. 1437 and 1437a). Funding for section 8 housing assistance payments and for development of public housing, is drawn from the same statutory source (the amount of contract authority authorized by the Congress under sec. 5(c) of the Act, 42 U.S.C. 1437c(c)), and the statutory criterion for family eligibility is applicable to both section 8 and public housing assistance under the Act (U.S. Housing Act of 1937, sec. 3(a) and sec. 3(b)(2), 42 U.S.C. 1437a(a) and 1437a(b)(2)). The claim that the two programs are unrelated is an artificial distinction between two forms of lower income housing assistance under the Act.

A comment from a legal aid office states that the denial of assistance to a family which owes rent or other charges is "harsh and unjustified," since this policy penalizes people who have trouble paying for their rents, the class for which the Section 8 Existing Housing Program is designed.

By statutory definition the section 8 and public housing programs serve people who do not have an adequate income. Family dollars paid for rent cannot be used to meet other family costs. However, this is true for all families assisted under these programs, and is not a justification for failure by a family to pay the statutory rental contribution.

Lower income families are required to pay a part of the full economic rent of their housing, in accordance with a statutory formula. The rental contribution from a family provides resources needed for operation of the programs. The requirement for a rental contribution also encourages the sense of family responsibility for its own welfare. Although the payment of rent is difficult for a poor family, the requirement for payment of the statutory rent contribution could collapse unless enforced by the possibility of effective sanctions.

Under the proposed rule, the PHA would have been permitted to deny assistance because of *any debt* owed by a family to the PHA or to another PHA (proposed § 882.209(a)(2)). The final rule only allows a denial of assistance because of debt incurred to a PHA *in connection with section 8 or public housing assistance under the United States Housing Act of 1937* (§ 882.210(b)(1)).

Comments from legal aid offices state that a denial of program participation because of debt to the PHA may not be automatic and that the regulation should include standards for mitigation of prior debt. They state that the PHA must be required to afford an opportunity for a family to justify the failure to pay rent, to show that the amounts claimed are not owed (e.g., where the debt is barred by the statute of limitations), to show that rent was lawfully withheld under local law, or to show a change in financial circumstances, and that the PHA must be required to afford a hearing to consider these factors. Several comments claim that the *Vandermark* (*Vandermark v. Housing Authority of the City of York*, 633 F.2d 436 (3d Cir. 1981)) and *Baker* (*Baker v. Cincinnati Metropolitan Housing Authority*, 675 F.2d 836 (6th Cir. 1982)) decisions mandate a hearing which gives the applicant an opportunity to explain a failure to pay rent to the PHA.

Under the new regulation, an applicant family has the opportunity to explain the alleged debt. The PHA is required to give an applicant the opportunity for informal review of a decision to deny assistance for this reason (§ 882.216(a); see section VII E of preamble).

The proposed rule is amended to clarify that the PHA may only deny assistance because of debt due a PHA if an applicant or participant "currently owes" money to a PHA (§ 882.210(b)(1)). Past debt to a PHA is not grounds for denial of assistance. The PHA may not deny assistance if the debt has been paid, or is not valid for any reason (e.g., a rent claim extinguished by the statute of limitations). Thus the final regulation automatically takes into account a change in conditions which results in a satisfaction of the prior debt.

A comment from a legal aid service organization objects to allowing a PHA to deny assistance because of debt to other PHAs. The comment notes that only the PHA to which the debt is owed has access to information on the debt. The Department has decided to retain the regulatory authority for a PHA to deny assistance because of rent or debt owed to another PHA. A family which has incurred an obligation to a PHA should not be assured that if the family moves to the assistance program of a new PHA, the new PHA will be compelled to ignore the delinquency. PHAs may give mutual support for the efforts of other PHAs to collect program-related debts owed by assisted families.

2. Reimbursement of Owner Claims Paid By a PHA. The proposed rule (§ 882.209(a)(2)(i)) would have allowed

the PHA to deny issuance of a Certificate to an applicant who (as a past program participant) vacated a section 8 existing unit in violation of the lease, or failed to satisfy a liability to a section 8 owner for rents or other amounts owed under the lease.

Under the final rule, the PHA may only deny assistance if the PHA has been forced to pay an owner claim. The final rule (§ 882.210(b)(2)) permits a PHA to deny assistance if an applicant or participant has not reimbursed a PHA for any amounts paid by the PHA to a section 8 owner: (1) For rent or other amounts owed by the family to the owner under the lease, or (2) for vacancy payments.

3. Opportunity for Future Payment; Agreement to Pay. Under the proposed rule (proposed § 882.209(a)(2)), the PHA may condition issuance of a Certificate on an applicant's "willingness" to enter into an agreement to repay rent or other amounts owed a PHA. Under the final rule (§ 882.210(c)) the PHA may at its discretion offer an applicant or participant the opportunity to enter an agreement to pay amounts owed to a PHA in connection with public housing or section 8, or claims paid by a PHA to a section 8 existing owner. If the PHA chooses to make such an offer, the terms of the agreement are prescribed by the PHA. If the participant breaches the agreement, the PHA may deny or terminate assistance at any time (§ 882.210(b)(5), § 882.210(c) and § 882.210(d)(3)).

A PHA comment states that the issuance of a Certificate should be conditioned on the applicant's agreement to repay amounts owed to the PHA, not just the "willingness" of the applicant to enter an agreement to repay under the language of the proposed rule. The final rule has been revised to clarify, in accordance with the original intention, that the PHA may at its discretion choose whether or not to offer the family the opportunity to enter an agreement for deferred payment of the amounts owed. If the PHA decides not to offer an agreement, or if the family refuses to execute the agreement, the PHA may deny assistance to the family until the family has paid up.

A comment from a legal aid service organization recommends that the family should have the regulatory *right* to enter into a repayment agreement. Another legal aid comment asserts that there should be standards specifying when the PHA *must excuse* prior debt. These recommendations have not been adopted. The decision to accept or not to accept a family promise of future payment properly rests in the discretion

of the PHA, as applied to particular cases, not in the creation of a federal regulatory right to defer the payment of present debt, or in the prescription of a federal standard defining cases in which present debt must be forgiven or in which the present debt may not serve as ground for a denial of assistance. The family can at any time remove the impediment to assistance, by payment of the debt to a PHA, or reimbursement of PHA payments to a section 8 owner.

Some comments claim that a family has a constitutional right to defer payment of amounts owed to a PHA (citing the decisions in *Vandermark* and *Baker*). We do not agree. The *Vandermark* and *Baker* decisions hold that PHAs may withhold entrance to the Section 8 Existing Housing Program because of a family's past failure to pay public housing rent. Procedural and substantive due process do not create any constitutional right to issuance of a Certificate without payment of current debt. The substantive validity of a requirement for prior repayment to a PHA is governed by a simple constitutional test under equal protection—whether the requirement rationally furthers a legitimate State purpose. This preamble has stated some of the main reasons for allowing a PHA to deny section 8 existing assistance to a family until repayment to the PHA.

B. Denial or Termination of Assistance Because of Fraud or Violation of Family Program Obligations

Under the proposed rule (§ 882.209(a)(2)) the PHA would have been authorized to deny issuance of a Certificate to an applicant who failed to comply with "family obligations" under the section 8 program, or who has committed any fraud or misrepresentation in connection with any federal housing assistance program.

The final rule contains a full regulatory definition of the obligations of a program participant (§ 882.118 of the final rule, described in section II of this preamble). The final rule also explicitly confirms that a PHA has the option of denying or terminating assistance for violation of the stated family obligations (§ 882.210(b)(4) and § 882.210(d)(2)).

The PHA may also deny or terminate assistance if the applicant or participant has committed any fraud "in connection with any federal housing assistance program" (§ 882.210(b)(3) and § 882.210(d)(1)); see also provisions on family obligation not to commit any fraud in connection with the Section 8 Existing Housing Program (§ 882.118(b)(2), discussed above in section II E of this preamble).

C. Participant—Denial or Termination of Assistance

Prior to this rule, the program regulation did not contain any unified statement of the bases for denial or termination of assistance to a participant family because of the family's action or inaction. The proposed rule (selection and hearings) only dealt with the grounds for initial denial of participation. Although the proposed rule stated a uniform set of informal hearing requirements for termination or reduction of assistance (proposed § 882.216), the proposed rule did not state the grounds for termination or denial of assistance to a participant family. The final rule defines the bases a PHA may use for denial or termination of assistance to a current program participant. This definition will clarify the substantive rules to be applied in the participant hearing process under the regulation (§ 882.216(b)).

1. *Denial of New Certificate to Participant.* Under the previous rule (§ 882.209(e)(1)), the PHA was required to issue a new Certificate to an assisted family at any time the family wanted to move to another unit in the area (if the PHA had sufficient funds to issue a new Certificate, and the family was meeting its program responsibilities under § 882.118) unless the PHA determined that the family owed payment to the owner "on account of nonpayment of rent or other amount owed under the lease." Under the final rule (§ 882.210(b) and § 882.209(m)(1)), the grounds for denial of a new Certificate to a current program participant are the same as the grounds for denial of assistance to an applicant: failure to pay rent or other debt to a PHA in connection with section 8 or public housing, failure to reimburse claims paid by the PHA to a section 8 owner, fraud or breach of program obligation, breach of agreement to pay or reimburse the PHA.

The final rule (§ 882.209(m)(1)) also specifies that a participant who wants to move must request a new Certificate "during or at the end of the term of the Lease." This is intended to clarify that the right to issuance of a new Certificate applies only to a current program participant. A past participant who applies for a Certificate is treated as an applicant for participation in the PHA's program.

2. *Termination of Assistance Payments Under an Outstanding Assistance Contract.* Under the final rule (§ 882.210(d)), the PHA may terminate housing assistance payments under an outstanding HAP Contract for fraud in connection with any federal housing assistance program, or for

violation of family obligations under the section 8 program.

The PHA may not terminate housing assistance payments under an outstanding HAP Contract for nonpayment by the family of amounts owed to a PHA or of section 8 owner claims unless the family breaches an agreement for payment of these amounts (§ 882.210(c) and § 882.210(d)(3)). (Nonpayment is, however, grounds for refusing to issue a new Certificate to the family. See section III A of this preamble.)

The regulation also states (§ 882.210(d)) that the listing of bases for termination of a family's housing assistance payments (because of the action of failure to act by the family) does not affect or limit the right of the PHA to exercise any Contract remedy against the Owner, including the termination of housing assistance payments to the owner. Termination of payments to the owner could become necessary, for example, because of the owner's failure to maintain the unit in compliance with the housing quality standards.

IV. Selection of Participants

Selection of applicants for participation in a PHA's section 8 program begins with determination of statutory eligibility. The applicant must qualify as a "family," and must be income eligible (see U.S. Housing Act of 1937, sec. 3; 42 U.S.C. 1437 a (a) and (b); and see § 882.209(a)(2) and Parts 812 and 813). However, there are many more eligible families than the number that can be assisted with the section 8 funds committee by HUD to a local PHA. To distribute the limited assistance among eligible families, the PHA must have some way to choose which families will be assisted, and in what order. The regulations require a PHA to set up procedures to allocate fairly the available Certificates in accordance with definite selection standards which have been approved in advance by HUD (see § 882.204 (b)(1)(i)(C) and (b)(3)(ii) and § 882.209(a)). The PHA selects applicants for participation from the program waiting list in accordance with the HUD-approved policies and procedures stated in the PHA's administrative plan and equal opportunity housing plan (§ 882.209(a)(7)).

The proposed rule (§ 882.209 (a)(2) and (a)(4)) provided that a PHA may establish "requirements or preferences" for selecting applicants, including use of a nondurational residency requirement or preference; and may refuse to issue a Certificate because of fraud, or because

of certain types of conduct of a former section 8 or public housing program participant. However, the PHA would not be allowed to establish selection criteria based on an applicant's "expected behavior as a tenant" (proposed § 882.209(a)(3)).

Under the final rule (§ 882.209 (a)(3) and (a)(4)) a PHA may establish PHA determined "preferences" in selection of applicants (if incorporated in the HUD-approved administrative plan or equal opportunity housing plan). The PHA may not, however, impose PHA designated "requirements" for selection in addition to the basic program eligibility requirements under the statute (see section IV C on elimination of authority of the PHA to establish a residency "requirement").

Provisions on denial of assistance for fraud or for past conduct as a section 8 or public housing program participant are moved from the regulatory discussion of tenant selection (in proposed § 882.209) to the new unified statement of bases for denial of assistance because of action or inaction by the family (in the new § 882.210 of the final rule, discussed above in section III of this preamble).

In addition to prohibiting selection based on an applicant's expected behavior as a tenant, the final rule prohibits the PHA from considering an applicant's "suitability as a tenant" (§ 882.209(a)(5)).

A. PHA Discretion in Establishing Selection Procedures

Comments from legal aid offices object to the degree of PHA discretion in selection of applicants. The comments state that PHAs should be required to use uniform selection procedures, should not be allowed to set local selection preferences and should not have authority to establish selection criteria not required by statute.

The statutory scheme presumes a bias in favor of PHA autonomy and local discretion. The statute is intended to take advantage of the flexibility allowed by administration of the program through State chartered entities sensitive to local concerns and priorities, and able to respond to local conditions (see U.S. Housing Act of 1937, secs. 2, 3(b)(6), and 8(b)(1); 42 U.S.C. 1437, 1437a(b)(6), 1437f(b)(1)). Section 2 of the Act states that "it is the policy of the United States . . . to vest in local public housing agencies the maximum amount of responsibility in their administration of their housing programs" (U.S. Housing Act of 1937, sec. 2. 42 U.S.C. 1437).

It is the judgment of the Department that the selection procedures in this rule

strike a reasonable balance between the necessary minimum of federal regulatory controls, and the capacity of each PHA to administer the program in accordance with local objectives and circumstances. Removing PHA discretion and authority in selection of program participants in the manner requested by the legal aid comments would forfeit the advantage of program administration by local public bodies.

The statute does not, as suggested by some comments, bar use by PHAs of non-statutory criteria for admission to the program, nor does the statute deny to HUD the authority to regulate the use of such non-statutory criteria by PHAs. The caselaw has very clearly and soundly concluded that PHAs may establish additional non-statutory criteria for program admission which are reasonably related to program objectives (*Baker v. Cincinnati Metropolitan Housing Authority*, 675 F.2d 836, 839-40 (6th Cir. 1982); *Vandermark v. Housing Authority of the City of York*, 663 F.2d 436, 439-40 (3d Cir. 1981)). Preferences function also as an explicit mode of allocation of a finite subsidy resource where there is no reason to favor a federal formula over a local choice.

B. Denial of Participation to Particular Group or Category

A legal aid organization recommends adoption in the Section 8 Existing Housing Program of the current public housing regulatory provision that PHA admission procedures may "not automatically deny admission to a particular group or category of otherwise eligible applicants (e.g., unwed mothers or families with children born out of wedlock)" (§ 860.204(c)(1)).

There is no present need to expand the reach of this regulatory requirement to the Section 8 Existing Housing Program. The section 8 existing annual contributions contract currently prohibits automatic exclusion of participation in the program "because of membership in a class such as unmarried mothers, recipients of public assistance, handicapped persons, etc." (ACC, Part II, § 2.5(c), HUD 52520 C (Supp) (10/79), p. 3.) In addition, PHA selection procedures must be approved in advance by HUD. HUD can require elimination of unreasonable selection procedures proposed by a PHA.

C. Residency

The proposed rule did not revise the prior regulatory provisions which allow a PHA to utilize a requirement or preference for persons living in the jurisdiction, but which prohibit a requirement or preference based upon

the length of time the applicant has resided in the jurisdiction (proposed rule § 882.209(a)(4); old rule § 882.209(a)(3)). The residency provisions were included in the proposed rule because of an editorial reorganization to accommodate other substantive changes in the rule. However, a comment from a legal aid organization claims that any requirement for local residency before issuance of a section 8 Certificate discourages travel, and therefore violates the constitutional right to travel. The comment states that any residency requirement, even a non-durational requirement, denies assistance to persons too poor to move to a PHA jurisdiction. The comment also argues that it is unnecessary to impose a local residency requirement in order to make the Section 8 Existing Housing Program "politically palatable" in most communities.

The claims that the residency provisions are unconstitutional ignores the established constitutional distinction between a bona fide residence requirement, and a requirement based on length of residence (e.g., *Dunn v. Blumstein*, 405 U.S. 330 (1972); *Shapiro v. Thompson*, 394 U.S. 618 (1969)). The Constitution does not prohibit a requirement or preference for bona fide residence in the locality as a condition for State benefits, such as subsidized housing.

Local residency preferences serve purposes other than making a section 8 program politically palatable. A community may wish to provide assistance first to families already living in the community before offering assistance to families not yet residing in the community. The residency preference is a device for allocation of a limited pot of assistance.

The final rule (§ 882.209(a)(4)) continues to allow PHAs to establish nondurational residency "preferences," and prohibits durational preferences. The PHA may not, however, impose a residency "requirement," which would prohibit selection of non-residents.

D. Owner Responsibility for Selection of Tenants

Legal aid comments assert that allowing PHAs to establish selection requirements and preferences violates the statutory directive that selection of tenants "shall be the function of the owner" (U.S. Housing Act of 1937, sec. 8(d)(1)(A), 42 U.S.C. 1437f(d)(1)(A)).

Under the final rule (§ 882.209(a)(5)), the PHA may not:

establish selection criteria based on the applicant's suitability as a tenant or expected behavior as a tenant. The Owner will select

the tenant. The PHA's selection of an applicant for participation is not a representation by the PHA to the Owner concerning expected behavior of the Family in tenancy of a unit, or concerning the Family's suitability for tenancy.

The provisions of the rule amply comply with the statutory allocation of responsibility for tenant selection.

The statute allocates selection functions between the PHA and the owner, and indicates also that the precise division of functions is subject to HUD requirements. The provision that selection of tenants for existing units is the function of the owner is "subject to the provisions of the annual contributions contract between the Secretary and the [Public Housing] Agency" (U.S. Housing Act of 1937, sec. 8(d)(1)(A), 42 U.S.C. 1437f(d)(1)(A)). Under the annual contributions contract, the PHA administering a Section 8 Existing Housing Program agrees to comply with HUD regulations and requirements for the program.

In describing the respective roles of the PHA and the owner, the Congress has referred to "the basic responsibility over tenant selection which, under current law, rests solely with the PHA and owner" (Conference Report, Housing and Community Development Amendments of 1979, H.R. Rep. No. 96-706, 96th Cong., 1st Sess. 55 (1979)) (emphasis supplied). The PHA selects a family to be assisted under the program, if and when the family rents a suitable unit. The owner selects tenants for occupancy of the owner's units. Indeed, under the structure of the Section 8 Existing Housing Program, the PHA has no way of forcing an owner to select and rent to a family holding a Certificate. On the other hand, the owner has no involvement with the separate process by which a PHA selects families for participation in the program.

Legal aid comments claim that allowing PHAs to reject an applicant because of the applicant's past conduct as a section 8 or public housing tenant violates the requirement that the selection of tenants is the function of the owner. However, the regulatory grounds for denial of admission (§ 882.210, see discussion at section III of this preamble) do not permit the PHA to deny assistance because of a family's suitability or expected behavior as a tenant. The responsibility for tenant selection is left to the owner. The owner decides whether a family holding a Certificate from the PHA will be selected to reside as a tenant in the owner's unit. The grounds for denial of admission because of past conduct of the applicant (§ 882.210(b)) all deal with actions by the applicant related to past

participation in a federal housing assistance program (fraud or violation of section 8 program obligations, failure to pay amounts owed to a PHA or to reimburse section 8 owner claims paid by a PHA). The PHA is responsible for determining who may receive a subsidy under the program. This is not the function of the owner. The PHA's decision to deny assistance because of the family's past conduct in Federal housing programs does not in any way compromise the owner's choice to rent or not to rent a unit to a family holding a Certificate.

Unlike the comments from legal aid offices, individual and PHA comments favor allowing the PHA to deny assistance to a past section 8 program participant who violated the lease, failed to pay rent or vacated the unit in violation of the lease. A PHA comment states that the PHA should be able to deny a Certificate for verified undesirable behavior as a section 8 or public housing tenant. Another comment recommends that PHAs should be able to screen applicants, for their past tenancy and credit record. The comments suggest that the admission of tenants with a history of lease violation reduces the credibility of the program among owners, and will affect owner participation.

The Department is sensitive to the importance of the concerns reflected in the comments. The ability of the Section 8 Existing Housing Program to provide a broad choice of housing opportunities to program families depends completely on the voluntary choice of private owners to rent their units under the program. The ability of a PHA to induce owners to rent units to Certificate holders may be affected by the characteristics of families selected by the PHA to participate in the program.

However, a family unacceptable to one owner may be acceptable to another. Leaving screening of prospective tenants to the owner offers the family the maximum opportunity to find a unit in the local housing market. In selecting tenants, the private landlord may use whatever credit checks or screening process best suits the landlord's interest (subject of course to applicable fair housing limitations). The landlord may apply this process to any prospective tenant, including a section 8 Certificate holder. In deciding whether to rent to a family, the owner's judgment should dictate the level and type of tenant screening.

There is also considerable administrative advantage to PHAs in avoiding screening for expected behavior or suitability as a tenant. Because screening is not the

responsibility of the PHA, the PHA does not need to decide whether the PHA has enough information to justify withholding assistance. The PHA can, however, emphasize to the owner, before execution of an assistance contract for a unit, that the PHA has not pre-screened the family for suitability or behavior and that, as with any other private market tenant, this is the job of the owner.

E. Waiting List

Prior to this rule, requirements for administration of a PHA waiting list were handled separately (old § 882.207 (b) and (c)) from the procedures for selection and issuance of Certificates (old § 882.209). The final rule merges the regulatory treatment of waiting list procedures into the treatment of PHA selection procedures (in § 882.209(a) (7) and (8), for a clearer presentation of the sequence of procedures leading to family participation in the PHA program.

The regulation continues the requirement for the PHA to maintain a waiting list of income eligible families which have applied for participation in the program (§ 882.209(a)(7)). However, under the old regulation (§ 882.207(c)), the PHA could suspend taking of applications only if there "is no reasonable prospect" that additional Certificates can be issued in the next year, and must make public announcement of the suspension. The new regulation provides that if there is insufficient funding to admit all eligible applicants for participation, the PHA may at any time suspend the acceptance or processing of new applications, or the addition of new listings to the waiting list (§ 882.209(a) (8)).

This revision will allow PHAs more flexibility in administration of the waiting list. The change will also tend to minimize PHA expenses in processing of applications, and in maintenance of the waiting list. The PHA is able to judge whether additional applications are necessary to enlarge the pool of eligible applicants to whom Certificates may be issued. The regulation continues the requirement for public announcement of a suspension.

F. Implementation of Statutory Selection Preference

A 1979 statutory amendment requires a preference for selection of families which occupy substandard housing or are involuntarily displaced at the time they are seeking assistance (amendment of sec. 8(d)(1)(A) of the U.S. Housing Act of 1937, Housing and Community Development Amendments of 1979, sec.

206(b)(1), Pub. L. 96-153, 42 U.S.C. 1437f(d)(1)(A)). A comment from a legal aid organization urges that implementation of the 1979 preference should be included in the rule. The 1979 preference provision was amended by the Congress in 1983 to expand the preference requirement to cover families who "are paying more than 50 per centum of family income for rent" (amendment of section 8(d)(1)(A) of the U.S. Housing Act of 1937, by Housing and Urban-Rural Recovery Act of 1983, Title II, sec. 203(b)(1), Pub. L. 98-181).

The 1979 preference, as amended in 1983, will be implemented in a separate rulemaking, which will cover parallel statutory requirements for preference in selecting families for various types of assisted housing, including section 8 existing. This is desirable in order to assure a uniform implementation of the statutory preference requirements applicable in the different programs.

G. Statement of Selection Procedures: Equal Opportunity Housing Plan and Administrative Plan

Under the proposed selection and hearing rule, PHA selection procedures, including any preferences or requirements for selection, must be stated in a single, HUD-approved "equal opportunity housing plan" (§ 882.204(b)(1)). The preamble stated (47 FR 32170) that "PHA discretion in determining selection criteria and preferences should be limited only by statutory eligibility limitations and the distinctive set of policy concerns which are evoked by equal housing opportunity review." The proposed change in selection procedures is not adopted in the final rule.

A comment from a legal aid service organization recommends that a statement of selection criteria and preferences should be retained in the PHA's administrative plan, and should be reviewed by HUD personnel with responsibility for programmatic issues.

A PHA urges that certain types of preference factors (such as excess rent burden, displacement, occupancy of substandard housing, handicap or disaster) should be in the administrative plan rather than the equal opportunity housing plan.

On reconsideration, the Department has decided to preserve the separate roles, under prior practice, of the administrative plan and the equal opportunity housing plan in establishing the PHA's selection procedures. Administration of selection requirements involves factors not characteristically considered in the province of an equal opportunity review. The equal opportunity housing plan is

best used to express the particular equal opportunity concerns in selection of tenants."

The final rule provides that the PHA must select applicants for participation in accordance with policies and procedures, including any preferences, stated in the administrative plan or equal opportunity housing plan (§ 882.209(a)(7) and § 882.209(a)(3)). The regulation now indicates the special role of the equal opportunity housing plan. The final rule (§ 882.204(b)(1)(i)(C)) states that the *equal opportunity housing plan* must describe the PHA's policies and procedures for "selecting Families for participation without discrimination because of age, race, color, religion, sex, handicap or national origin." On the other hand, the regulation (§ 882.204(b)(3)(ii)) states that the PHA's *administrative plan* must state the PHA's policies and procedures for "handling applications and determining Family eligibility" and "selecting Families for participation in the PHA's Section 8 program (including any selection preferences)."

A PHA comment expresses concern that the PHA should not be restricted to stating its selection criteria in the equal opportunity housing plan. Neither the proposed nor the final rule limits the ability of the PHA to publicize the nature of its selection requirements in any desired form.

V. Unit Size

The proposed rule on applicant selection and informal hearings deals with two aspects of a PHA's standards for determining the unit size which is entered on a family's Certificate. First, the proposed rule (§ 882.209(b)(i)) gives the PHA flexibility in establishing standards for determining the appropriate unit size ("number of bedrooms or other sleeping rooms") for different types of families. Second, the proposed rule (proposed § 882.209(b)(ii)) allows the PHA to establish criteria for granting exceptions from the unit size standards. Both aspects were the subject of public comment.

Under the proposed rule, a PHA's unit size standards must provide for efficient use of program resources while avoiding overcrowding, and must be consistent with the housing quality standards (which establish minimum requirements for approval of a unit selected by a family). A comment from a former PHA employee recommends that HUD prescribe a nationally developed occupancy standard. A comment from a legal aid service organization asserts that because of the PHA discretion allowed under the rule some PHAs may establish unit size standards that will

cause hardship to program families. The comment also objects to deletion of the prior regulatory requirement that the bedroom size assigned (on the Certificate) may not require persons of opposite sex, other than husband and wife or very young children, to occupy the same room.

The Department has considered the comments, but has decided to allow considerable discretion to PHAs in establishment of unit size standards, rather than dictate for all PHAs national standards governing the number of bedrooms for a family. The final rule requires (§ 882.209(b)(2)) that:

The PHA shall enter on the Certificate the smallest number of bedrooms consistent with standards established by the PHA for determining the number of bedrooms for Families of different sizes and compositions. The PHA's standards shall provide for the minimum commitment of housing assistance payments while avoiding overcrowding and shall be consistent with the applicable housing quality standards * * *

The regulation as adopted sufficiently controls the discretion of PHAs in determining unit size standards, while allowing PHAs to adjust unit size standards to local circumstances. The Department addresses this issue in the spirit of the statutory objective to leave maximum discretion to PHAs in the administration of their section 8 programs, and of the broad national objective of deregulation across the spectrum of federal programs.

To understand the regulatory provisions it is necessary to distinguish the function of the Certificate unit size standards (under amended § 882.209(b)(2)), as contrasted with the function of the housing quality standards ("HQS") (especially the HQS space and security standards in § 882.109(c)). The Certificate unit size standards are used to determine the maximum fair market rent (expressed in number of bedrooms) for a unit rented by a family (cf. definition of "unit" in § 882.102 and cf. § 882.106 and § 882.102(b) (as revised 48 FR 43582)). The HQS are used to evaluate the characteristics of the individual unit selected by a family, so that units subsidized under the program are decent, safe and sanitary as determined under minimum program standards. The Certificate unit size standards limit the rent that can be paid for a unit, while the HQS determine whether the unit can be subsidized under the program at any rent.

Under the final rule (§ 882.209(b)(2)), the PHA is required to establish occupancy standards to govern the number of bedrooms entered on the

Certificate issued to a family. The PHA occupancy standards must provide for the smallest subsidy level which will avoid overcrowding of a family, and will permit the family to rent a unit conforming with HQS. When issuing a Certificate, the PHA must enter the number of bedrooms for which the family is eligible under the PHA standards.

The proposed and the final rule do not relax the HQS standards in any way. The HQS (§ 882.109(c)) provide, first, that the unit must afford the family "adequate space and security" (minimum requirement), and, second, that there must be "at least one bedroom or living/sleeping room of appropriate size for each two persons". This standard may be modified with approval of the local HUD office (as in the case of all HQS acceptability criteria). Previously the HQS required at least one "sleeping or living/sleeping room" for each two people (§ 882.109(c)(2) of prior rule). This technical amendment clarifies the purpose of the original HQS standard.

Another amendment (§ 882.209(i)(2)) specifies that the PHA may not prohibit a family from renting a unit with fewer bedrooms than the number stated on the Certificate. The smaller unit must, however, satisfy the regular HQS requirements. Thus, where the PHA unit size standards as applied to a family exceed the HQS minimum, the family has the choice of renting a unit up to the maximum FMR (by bedroom size) allowed under the Certificate, or down to the HQS minimum.

Comments from a legal aid office and a PHA object to deletion of the minimum bedroom requirement in the unit size standard. The legal aid comment states that families will be pressured by PHAs and owners into accepting units which are unsafe and unsanitary. The PHA objects to counting a living room as a sleeping room under HQS. The regulation change does not lower HQS minimums. The regulation permits the family to shop for a unit which satisfies the HQS space and other requirements, and which can be rented within the applicable FMR. At the same time, the PHA is required (§ 882.209(b)(2)) to establish Certificate unit size standards higher than the HQS minimum where necessary to avoid overcrowding.

A. Occupancy Standards—Family Members of Opposite Sex

The Department agrees with comments advising that the regulation should continue to prescribe minimum unit size standards for persons of different sex who are members of an assisted family. In the final rule, this

concern is addressed in the determination of unit acceptability under HQS rather than in the Certificate unit size standards, as under the prior regulation (old § 882.209(a)(2)(ii)). The following provision has been added to the HQS "acceptability criteria" for unit space and security:

Persons of opposite sex, other than husband and wife or very young children, shall not be required to occupy the same bedroom or living/sleeping room.
(§ 882.109(c)(2))

The number of bedrooms entered on the Certificate issued to a family must be consistent with the amended HQS acceptability requirement on occupancy by persons of opposite sex.

It should be noted that whereas the old Certificate unit size standards established a minimum number of bedrooms ("bedroom size") for persons of opposite sex, the new HQS criterion is a limitation on occupancy of the same "bedroom or living/sleeping room" by persons of opposite sex.

B. Granting of Exceptions to Unit Size Standards

Under the judgment of the United States District Court in the *Nichols* case, a PHA which terminates or reduces section 8 subsidy to a recipient family because of a change in family size and composition must notify the recipient of any right to waiver of family size requirements, and of the grounds on which a waiver may be granted by the PHA.

The proposed rule (selection and hearing) (§ 882.209(b)(ii)) would have permitted a PHA to: "grant exceptions from the PHA unit size standards . . . to allow the assignment of a larger unit size than that established under the standards if warranted by the relationship, age, sex, health or handicap of the Family members." Comments from legal aid offices state that the proposed provisions do not satisfy the *Nichols* order, since the provisions do not use the word "waiver" and do not establish a "right" to a waiver, that the right to a waiver should be mandatory, not discretionary, and should be built into the unit size standards, or that families should have a "mandatory right to a waiver" if they can show "unique reasonable circumstances" that demonstrate "good cause" for deviation from the standards.

With respect to terminology, HUD believes that the authority for an "exception," as provided in the regulation, is the same as a "waiver," i.e., authority for the PHA to treat special cases in a special manner. The term "exception" will be more readily

understood by PHAs and families. The Department prefers to reserve the term "waiver" for a provision relieving obligations under an outstanding Department regulation (see Part 899, Subpart A).

The final rule (§ 882.209(b)(2)) provides that:

The PHA shall grant exceptions from the standards if the PHA determines the exceptions are justified by the relationship, age, sex, health or handicap of Family members, or other individual circumstances. (emphasis added)

The provision allowing exceptions justified by "individual circumstances" is new, and is intended to afford the PHA additional latitude to respond to special needs in individual cases. In each case, the determination to grant an exception from the standard rests in the PHA's administrative discretion.

HUD does not believe, as suggested by the comments, that the order in *Nichols* requires that the regulations specify the grounds for waiver of unit size standards by each PHA participating in the program. The order requires that a PHA notify the participant of the grounds for which a waiver may be considered by the PHA (see discussion in section V C below). Different PHAs have different unit size standards which reflect local circumstances and the administrative judgment of the individual PHAs. Similarly, there should be local discretion to define the types of circumstances in which the PHA may consider a waiver of the local standards to meet the unique problems of individual families.

HUD also does not agree that granting a waiver by a PHA must be mandatory under the court order, or that circumstances in which a waiver must be given must be predefined in the PHA standards. The order requires notice of the grounds upon which a waiver "may be granted" by a PHA. As stated in a PHA comment, exceptions from unit size standards should be based on the circumstances of individual cases. The purpose of providing for a "waiver" is to allow the PHA flexibility to respond to special cases and problems not adequately treated in the generally applicable PHA unit size standards.

C. Notice of Grounds for Exception

The proposed rule stated that the PHA criteria for granting exceptions from the unit size standards, and the procedures for granting exceptions shall be made available to applicants and participating families (proposed § 882.209(b)(1)(2)). The comment from counsel for the *Nichols* plaintiff states that the

proposed requirement that exception criteria must be "made available" does not satisfy the *Nichols* obligation to give notice of the right to a waiver. A comment from a PHA, however, objects to the requirements to make the grounds for exception available to applicants and participants since it is difficult to foresee all possible reasons for exception.

The decree in *Nichols* applies to a participant ("recipient") whose assistance is reduced or terminated pursuant to § 882.213 because of a decrease in family size. To clarify the Department's action to comply with the notice requirement of the *Nichols* decree, the provision for notice to a recipient "of his right to a waiver and the grounds upon which a waiver may be granted" is now incorporated in § 882.213, and provides in terms that the PHA must "notify" the family that exceptions to the unit-size standards may be granted and of the circumstances in which the grant of an exception will be considered by the PHA.

VI. Status of Applicant and Participant

The United States Housing Act of 1937 sets the minimum conditions of eligibility for assistance under the Section 8 Existing Housing Program, but does not create an entitlement of any individual to section 8 assistance. The rule has now been amended to make clear that nothing in the rule is intended to create or imply any right to participation in the program. The rule acknowledges, however, that an applicant may have a right, independent of the rule, to bring a judicial action challenging a PHA's violation of a constitutional or statutory requirement (e.g., equal opportunity requirements under Title VI or Title VIII), and states that the rule is not intended to affect such a right of action:

Nothing in this Part is intended to confer on an applicant for participation any right to be listed on the PHA waiting list, to any particular position on the waiting list, to receive a Certificate, or to participate in the PHA's program. The foregoing sentence shall not be deemed to affect or prejudice any judicially-recognized cause of action. (§ 882.209(a)(9))

The status of an applicant is different from that of a participant. It is important to define the point at which a family moves from the status of "applicant" to the status of "participant":

A Family becomes a participant in the PHA's Section 8 Existing Housing Program ("participant") when the PHA executes a Contract with an Owner for housing assistance payments on behalf of the Family. (§ 882.209(a)(1)) (emphasis supplied)

The program regulation has been revised at various points to reflect the distinction between an applicant and a participant, and to define regulatory requirements applicable to each stage of program participation (see especially, § 882.216). The revisions will remove confusion under the prior rule as to the status and rights of a family at the preliminary stages which may lead to participation in the program.

VII. PHA Review of Decisions Affecting an Applicant or Participant

Before promulgation of this rule, a single set of minimum hearing procedures applied to both applicants to the program and current participants in the program (Handbook 7420.7, section 10-8, revised November 1979). In the same way, the proposed rule (selection and hearing) provided for a single hearing procedure without distinguishing between applicants and current program participants (although the *Nichols* decision only mandated a rulemaking proceeding for the certified class of participants whose assistance is terminated or reduced because of change in family size or composition). The proposed procedures were essentially the same as in the handbook.

In the preamble to the proposed rule, the Department invited comment on "alternative regulatory patterns" which would grant PHAs greater discretion to fashion locally developed informal hearing procedures after giving "due consideration" to the elements of a fair hearing.

After careful examination of public comments on the proposed rule, the Department has determined:

PHA review procedures will be separately defined for applicants and for current participants in the program.

The regulation will state minimum procedures for PHA review of determinations concerning an applicant or participant.

For an applicant, the minimum procedures will require prompt written notice of a PHA determination, and use of a simple and informal procedure for PHA review of the determination. The applicant will have the opportunity to present written or oral objections to the determination.

For a participant, the PHA will be required to provide an opportunity for an informal hearing to review certain PHA determinations relating to the individual circumstances of the participant. The purpose of the hearing is to consider whether a PHA decision is in accordance with PHA rules and HUD regulations.

A. PHA Discretion in Development of Review Procedure

Legal aid comments generally advocate imposing strong, uniform and specific hearing requirements on PHAs. The comments state that PHAs lack the resources and expertise to develop hearing systems on their own, that there are no geographic distinctions justifying local determination of proper hearing procedures, that PHA staff prefer the security of HUD prescribed hearing guidelines, that PHAs will exercise poor discretion if given a choice, that failure to mandate specific hearing procedures will result in litigation, and that specific HUD hearing requirements are necessary for the protection of tenants. Legal aid comments object also that the alternative procedures would only require the PHA to give "due consideration" to basic elements of a due process hearing.

Comments from several PHAs and from a legal aid office state that PHAs should have flexibility in devising hearing procedures for different situations. A PHA comment notes the demand on PHA administrative time if a PHA tries to offer the same level of protection to everyone.

On reconsideration, HUD believes that there are compelling reasons for the Department to specify minimum procedures for appeal of PHA determinations for each of the two major phases of a family's involvement in the program: first as an applicant, and then as a participant. The Section 8 Existing Housing Program is administered by PHAs which differ greatly in program size and administrative resources. Many PHAs do not presently have the expertise and capacity to devise procedures for review of PHA decisions, or may welcome the assurance of HUD-determined minimum procedures. The Section 8 Existing Housing Program functions in much the same way in different places, in accordance with a simple national program design.

The Department has not adopted the alternative hearing approach discussed in the preamble to the proposed rule. The final rule prescribes minimum review procedures for use by all PHAs. The desirability of recognizing differences in the character and importance of the private interests affected by PHA determinations is built into the review and hearing procedures provided in the regulation, by providing separate procedures for applicants and for current program participants (see § 882.216).

B. Review Procedure for Applicants

1. *Public Comments.* Several PHA comments recommend the use of a simple review procedure for applicants. A PHA suggests that an applicant should simply be given an opportunity to meet with a PHA representative. Another PHA states that where an applicant is determined ineligible, the PHA should give written notice of ineligibility, and an opportunity for an interview and review by an impartial official of the PHA. A PHA comment claims that since the determination of applicant ineligibility is generally based on HUD requirements, the hearing for an applicant is useless.

2. *Factors Considered.* Where an applicant seeks admission to the Section 8 Existing Housing Program, neither the statute nor the regulation create any property right to assistance under the Act, or to PHA action which may lead to participation in the program (see section VI of this preamble; see § 882.209(a)(1) and § 332.209(a)(9)). Since the applicant has no property right, a PHA is not constitutionally required to provide any administrative due process hearing on PHA determinations to grant or deny participation to an applicant. The Department has decided, however, to require that PHAs provide an applicant the opportunity for informal review of a decision denying assistance to an applicant, in order to minimize mistakes by the PHA in application of the PHA's selection procedures.

In determining procedures for PHA review of PHA decisions on applications for participation, the Department has balanced possible benefits for the applicant against the programmatic, fiscal and administrative costs of procedural safeguards, and has considered the following factors:

There is a very large pool of program eligibles in relation to the number of places available. Admission to the program does not follow from mere proof of eligibility.

A determination that a family is eligible, and to list the family on the PHA waiting list, means only that the family can stand in line for assistance. There is no guarantee that a determination of eligibility or listing on the waiting list will ever actually result in issuance of a Certificate, or that, if a Certificate is issued, the family will find a landlord who will accept the family as a suitable tenant.

Because of the great number of potential applicants, the administration of procedures for reconsideration of decisions on applicants may be a substantial burden on the administrative

capacities and fiscal resources of a PHA.

There is only one source of funding for housing assistance payments to families and for PHA expenses in administration of the Section 8 Existing Housing Program (U.S. Housing Act of 1937, sec. 5(c) and sec. 8, 42 U.S.C. 1437c(c) and 1437f). If PHA administrative fees are increased to cover increased PHA costs in administering procedures for review of PHA determinations, less money remains for assistance payments to families.

The Section 8 Existing Housing Program has definite and limited resources. The admission of one family means that admission must be denied to some other eligible family.

The chances of admission to the program are determined by the assistance resources available to the PHA, and the operation of the waiting list, rather than by the isolated consideration of facts relating to a particular family. The operation of this selection procedure can best be monitored by HUD review of the PHA management practices, rather than by determinations in PHA hearings for individual applicants.

A PHA hearing process is at best an imperfect device for the determination of controverted fact. PHAs do not have the power to subpoena evidence or witnesses. Even within the limits of the PHA's capacities to conduct hearings, there is an inescapable dilemma: the more elaborate the procedure for PHA review of decisions affecting an applicant, the more burdensome and expensive to the PHA; the less elaborate the procedure, the less effective in determining matters of disputed fact.

3. *Procedures Required.* Having weighed all the above considerations, the Department has decided to require PHAs to establish a simple but effective procedure for informal review of PHA determinations on an application for admission to the program. Under the final rule (§ 882.216(a)(1)) the PHA must give an opportunity for an informal review of a decision denying an applicant:

Listing on the PHA waiting list.

Issuance of a Certificate of family participation.

Participation in the program (i.e., execution of an assistance contract on behalf of the family).

The PHA review procedure must include the following elements (§ 882.216(a)):

Prompt written notice of a PHA decision denying assistance to the applicant. The notice must give a *brief statement of the reasons for the decision*. The notice must also state that

the applicant may request an informal review of the decision, and describe how to obtain the review.

(§ 882.216(a)(1))

An opportunity for informal review of the PHA decision, in accordance with *review procedures established by the PHA*.

Review by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of such person.

Opportunity for applicant to present written or oral objections to the PHA decision.

Prompt written notice of the final PHA decision, including a brief statement of the reasons for the decision.

(§ 882.209(a)(2))

4. *Subjects Covered by Applicant Review Process.* Comment from a legal aid organization contends that a hearing should be required for any PHA action affecting the interest of an applicant or participant. Comments from PHAs on the other hand, suggest limitations on the requirement for a hearing. PHA comments state that a hearing is unnecessary if a tenant fails to supply required information, or fails to keep appointments. PHAs recommend elimination of a hearing requirement for a PHA determination that a family is not eligible for assistance, for a PHA determination of the appropriate unit size for a family (number of bedrooms on Certificate), for a PHA determination that the unit selected by a family is not in accordance with HQS, or for a PHA determination not to extend a Certificate.

Under the final rule, the PHA is required to offer the applicant the opportunity to present objections to a PHA decision denying assistance to the applicant. However, the regulation (§ 882.216(a)(3)) provides that the informal review requirements for applicants do not apply to the following types of determinations, which are properly left to the administrative discretion of the PHA, or which are controlled by applicable program requirements:

To review discretionary administrative determinations by the PHA, or to consider general policy issues or class grievances.

To review the PHA's determination of the number of bedrooms entered on the Certificate under the PHA's unit size standards.

To review the PHA's determination that a unit located by a Certificate

holder does not comply with the HQS. or the PHA's determination not to approve the lease for the unit.

To review the PHA's decision not to approve a request by a Certificate holder for an extension of the term of the Certificate.

C. PHA Hearing Procedure for Participants

The proposed selection and hearing rule (proposed § 832.216(a)(2)) would have required the PHA to provide the opportunity for an informal hearing whenever assistance to a Certificate-holder is *terminated or reduced*. Under the final rule, the PHA is required to provide the opportunity for an informal hearing on key PHA decisions which affect the interests of a participant (§ 832.216(b)(1)). The regulation defines, with more precision than in the proposed rule, the purpose and subjects of the hearing for program participants.

1. *Purpose of Hearing for Participant.* The hearing process under the final rule is designed to assure that decisions by the PHA with respect to a participant family comply with applicable rules. The hearing process does not displace the regular PHA administrative process for matters committed to PHA discretion and management judgment.

The PHA must provide the opportunity for a hearing to consider if a PHA decision is "*in accordance with law, HUD regulations and PHA rules*" (§ 832.216(b)(1)). Thus, the participant may not claim a hearing on a PHA decision merely because the family objects to a law rule. The right to a hearing applies only when the family is claiming that the law or rule has been incorrectly applied by the PHA. For example, if the percentage of income the family must contribute for rent increases because of a change in statutory rental requirements, the family has no right to a hearing unless the family claims that the PHA has made a mistake in computing the family's contribution under the statute and implement HUD rules.

The participant hearing requirements applies only to PHA decisions "relating to the individual circumstances of the Family" (§ 832.216(b)(1)). Correspondingly, the PHA is not required to provide an opportunity for an informal hearing "to review discretionary administrative determinations by the PHA, or to consider general policy issues or class grievances" (§ 832.216(b)(2)(i)).

2. *Subject of Hearing for Participant.* At a family's request, PHA must provide the opportunity for an informal hearing to consider if the following types of decisions are in accordance with law,

HUD regulations and PHA rules (§ 832.216(b)(1));

A determination of the amount of the family contribution to rent (Total Tenant Payment or Tenant Rent) (§ 832.216(b)(1)(i)).

The rule specifies that the administrative hearing requirement does not apply to the determination of the PHA's schedule of Utility Allowances for families in the PHA's section 8 program.

A decision to deny or terminate assistance on behalf of the participant (§ 832.216(b)(1)(ii)).

A determination that a participant is residing in a unit with a larger number of bedrooms than allowed under the PHA unit size standards, or to deny the participant's request for an exception from the standards (§ 832.216(b)(1)(iii)).

A determination of the number of bedrooms to be entered on the Certificate of a participant family which wants to move to another unit (§ 832.216(b)(1)(iv)).

a. *Determination of Family Rent.* The section 8 subsidy is the difference between the family contribution, as determined by a statutory formula, and the full rent for a unit. The regulation requires the PHA to provide the opportunity for an informal hearing on a PHA determination of the amount of the family contribution (total tenant payment and tenant rent (as determined under 24 CFR Part 813) (§ 832.216(b)(1)(i)).

b. *Termination or Denial of Assistance.* The requirement to provide the opportunity for an informal hearing applies to a PHA decision to terminate or deny assistance for a participant (§ 832.216(b)(1)(ii)). Thus the PHA must give a hearing when the PHA terminates assistance payments under an outstanding assistance contract, and when the PHA denies issuance of a new Certificate to a participant who wants to move.

c. *Unit Size Determination.* A PHA comment objects to the requirement for an informal hearing on a PHA determination of the appropriate unit size entered on the Certificate issued to a family. Under the final rule, the requirement to provide the opportunity for an informal hearing will apply: (1) To a determination that a participant family is residing in a unit with a larger number of bedrooms than appropriate under the PHA unit size standards (the *Nichols* situation) and to the denial of the family's request for an exception from the standards (§ 832.209(b)(2), § 832.213 and § 832.216(b)(1)(iii)), and (2) in the case of an assisted family which wants to move to another unit, a determination of the number of bedrooms to be entered

on the Certificate issued to the family under the PHA standards (§ 832.209(m)(1) and § 832.216(b)(1)(iv)).

3. *When Hearing Is Not Required.—a. Sanctions Against Owner.* Under the proposed rule (selection and hearings), the PHA is not required to provide the opportunity for a hearing to a participant when the PHA exercises any sanction against an owner under the assistance contract, including the termination of housing assistance payments to the owner (proposed § 832.216(a)). Several legal aid comments object to this provision.

The final rule retains (§ 832.216(b)(2)(iii)) the exception. The Department considers of paramount importance the need to encourage vigorous enforcement by PHAs of owner obligations under the housing assistance payments contract. It is the responsibility of the PHA to monitor owner compliance with the assistance contract, and to decide whether and when to take action against the owner under the assistance contract because of the owner's breach of contractual obligations to the PHA under the assistance contract.

The determination of the appropriate contractual remedy against the owner involves the exercise of PHA discretion and judgment. For this reason, the decision to impose sanctions against an owner is not an appropriate subject for the participant hearing process. The judgment of the PHA is based on the overall interests of the local assistance program and the enforcement of national program requirements, such as the owner's obligation to maintain the unit in accordance with HQS.

When assistance payments to the owner are terminated because of owner violations of the contract, the participant may obtain a new Certificate, move to a new unit, and continue to receive subsidy under the program. The participant may prefer not to move, and may, for example, be willing to put up with substandard conditions in the unit, to avoid the inconvenience and expense of a move. However, for the benefit of the program, and to assure the proper application of section 8 subsidy funds in accordance with the statutory purpose (i.e., to assist tenants of decent, safe and sanitary housing), the exercise of contractual sanctions against the owner should not be delayed pending an administrative hearing process on behalf of the tenant.

Although the assistance contract is between the owner and the PHA is for the benefit of the family, the family has no direct right under the contract, either as a contractual party or third party

beneficiary. The assistance contract for the Section 8 Existing Housing Program provides explicitly that the family does not have any right to enforce the assistance contract, or to assert any third party claim under the contract section 23 of assistance contract, HUD 50525, 10/82).⁴

b. *PHA Determination on Unit Compliance With HQS.* PHA comments object to a requirement for informal hearing on a PHA determination that a unit is not up to HQS. For participants, the final regulation states (§ 882.216(b)(2)(ii)) that the PHA is not required to provide the opportunity for an informal hearing to review the PHA's determination that a unit does not comply with HQS, that the owner has failed to maintain or operate the unit to provide decent, safe and sanitary housing in accordance with the HQS (including all services, maintenance and utilities required under the lease), or that the unit is not decent, safe and sanitary because of increase in family size or change in family composition.

The HQS implement the statutory purpose to provide subsidy for a family living in decent, safe and sanitary housing. The PHA must enforce the HQS requirements even if the family is willing to live in housing which does not meet the program standards. As with the decision to enforce contractual sanctions against the owner, the determination that a unit does or does not satisfy HQS is a responsibility entrusted under the regulation to the administrative judgment of the PHA. The participant has no right to participate in this determination, and the PHA is not required to afford the opportunity for informal hearing on the determination.

c. *Extension of Certificate.* Under the proposed rule, the right to an informal hearing applies to a Certificate holder whose assistance is terminated "by refusal to renew a Certificate or otherwise" (proposed § 882.216(a)(3)). PHA comments object to a requirement for informal hearing to challenge a PHA decision on extension of a Certificate.

After a Certificate is issued (to an applicant or a participant), the family has sixty days to find a unit (§ 882.209(c)(1)). The family may ask for

extensions of the period to find a unit, for a maximum total Certificate life of 120 days (§ 882.209(d)(2)). The regulation gives the PHA discretion to decide whether or not to grant an extension of the Certificate beyond the initial sixty days (within the maximum allowable period); the regulation does not give the family any right to an extension of the original sixty day Certificate period.

The Department agrees with the comment by a PHA that the decision whether to extend a Certificate is not an appropriate subject of the hearing process. The final rule (§ 882.216(b)(2)(iv)) states that the PHA is not required to afford the opportunity for an informal hearing to review the PHA's decision not to approve a participant family's request for extension of the Certificate.

Extension beyond 120 days is prohibited by the regulation, and consequently is not a proper subject of the hearing process. Extension for up to sixty days after the initial search period is a matter that by regulation is left to the PHA's administrative discretion. In exercising this discretion, the PHA may consider the likelihood of the participant family finding a unit in the period provided; the overall administrative demands on the PHA; and the desirability of releasing funds for use by other families. While the participant may ask for an extension of the Certificate, the participant has no right to an extension.

4. *Furnishing Description of Hearing Procedures to a Participant.* Under the rule, the PHA is required to adopt written procedures for conducting informal hearings for participants (§ 882.216(b)(6)).

Information on the hearing procedures is included in the packet of information given to a family when the Certificate is issued (§ 882.209(b)(4)(vii)). The information contains a general description of the hearing procedures, including a description of the circumstances in which the PHA is required to provide the opportunity for an informal hearing, and of the procedures for requesting a hearing.

5. *Notice of Determination and Right to a Hearing.* The proposed rule (selection and hearings) required the PHA to notify the "Certificate holder" of any PHA decision to "deny, defer, terminate or reduce" housing assistance, and that the Certificate holder may request an informal hearing (proposed § 882.216(b)).

The final rule (§ 882.216(b)(3)(i)) requires the PHA to give prompt written notice of a determination (1) to deny or terminate housing assistance to the

participant, or (2) that the unit in which a family is living is too large under the PHA unit size standards, or to deny the family's request for an exemption from the standards. The notice to the participant must contain a brief statement of the reasons for the decision. The notice must also state that the participant may request an informal hearing on the decision, and the time by which the request for an informal hearing must be made by the participant.

The final rule (§ 882.216(b)(3)(ii)) provides that when the PHA determines: (1) The amount of the family contribution to rent, or (2) the number of bedrooms entered on the Certificate of an assisted family which wants to move to another unit, the PHA must notify the participant that the participant may ask for an explanation of the basis for the PHA determination and that the participant may request an informal hearing on the determination.

By statute, family income is reexamined at least annually, and the family share of the rent is recomputed in accordance with a statutory formula. This reexamination and redetermination is carried out every year for all participant families. For almost all families, the rental determination is a technical application of the HUD-prescribed rent computation procedures to the income information furnished by the family. The need for an informal hearing on a rental determination applies only in that small minority of cases in which the family desires to challenge the legal correctness of the PHA's rental computation (including the factual basis for the computation). The family can request an explanation of the rental computation. The PHA may, for example, furnish the family a copy of the PHA worksheets showing the rental computation.

The decision on the Certificate unit size determination is also part of the PHA's routine administrative process. The unit size is stated on the Certificate issued to the family. There is no need to require separate notice of the unit size determination. The participant may ask for an explanation of how the unit size was determined under the PHA unit size standards.

Legal aid comments recommend that the regulations state that the PHA notice to a participant must give the factual basis for a proposed decision. The Department believes that the regulatory requirements for notice of the reason for decision (termination of assistance, family in oversized unit), or of the opportunity for explanation (rent, unit size on Certificate) are sufficient to

⁴ In *Holbrook v. Pitt*, 643 F.2d 1261 (1981), reh. den. July 7, 1981, the Seventh Circuit held that tenants in another section 8 program were third party beneficiaries of the assistance contract between HUD and the project owner. The assistance contract at issue in that case did not include a contractual disclaimer of intent to create third party rights under the contract. The existence of a third-party beneficiary claim depends on the intention of the original parties, as expressed in the contract, to create a direct right of enforcement in the third party beneficiary.

inform the family of the basis for a decision, and to enable the family to present objections effectively at an informal hearing.

6. *Time of Hearing.* The proposed rule (§ 882.216) states the cases in which an informal hearing is required, but does not specify when the hearing must be held. Comment from a legal aid office says that there should be a right to a hearing before the PHA terminates subsidy for a family. A PHA says that a hearing should not be required prior to "reduction" of subsidy (i.e., determination of the family contribution). A PHA comment contends that a PHA should not be required to take positive action for continuance of assistance pending the hearing.

Under the final rule (§ 882.216(b)(4)), the participant must be given opportunity for an informal hearing before an action or determination by the PHA if the PHA decides to terminate the ongoing flow of assistance payments under an outstanding assistance contract. Conversely, however, there is no regulatory requirement for an informal hearing before a determination of family rent, a determination to deny assistance on behalf of the family (refusal to issue a new Certificate when the family wants to move, to enter a Contract or to approve a lease), or a determination of the unit size on the Certificate issued to a participant who wants to move.

This distinction is based on an analysis of the structure and practical realities of the Section 8 Existing Housing Program in the light of the constitutional principles enunciated by the Supreme Court in *Matthews v. Eldridge*, 424 U.S. 319 (1976).

a. *When Prior Hearing is Required: Termination of Payments by the PHA Under an Assistance Contract.* If the PHA proposes to terminate the flow of assistance payments on behalf of a participant during the term of an outstanding assistance contract (and is required to provide an opportunity for informal hearing on the determination; see § 882.216(b)(1) and (2)), the PHA must provide the opportunity for informal hearing before the termination (§ 882.216(b)(4)). The PHA may stop assistance payments because of owner's breach of the contract without giving any administrative hearing for the participant (§ 882.216(b)(2)(iii)). However, if the PHA wants, for example, to terminate assistance payments for participant fraud, or for violation of family obligations (§ 882.210(d)), or because the family is residing in an oversized unit (§ 882.213), the PHA must give the family the opportunity for an informal hearing on

the PHA decision before the termination of assistance payments.

The interest of the participant family is greatest when the PHA is cutting off an ongoing stream of assistance payments under an outstanding assistance contract. The potential harm to the family is greater than where the PHA declines to enter into a new assistance commitment for the family, or when the PHA is merely adjusting the family contribution. Termination of the assistance payments may lead to eviction of the family from the unit if the family is unable to pay the unassisted rent.

b. *When Prior Hearing is Not Required.—(1. Time of Hearing on Rental Determination.* The regulation does not require a hearing before a change in the tenant share of rent. The PHA's determination of the family contribution is not an action to limit the section 8 subsidy paid, but is the means of ascertaining the amount of the subsidy under the statutory formula, i.e., the difference between the tenant share of rent (tenant rent) and the rent payment to the owner (contract rent). In almost all cases, the rent determination is made as part of the routine reexamination and redetermination for all families in the PHA's program, rather than as a special action solely affecting the individual participant family.

The regulation preserves the opportunity of the family for informal hearing to determine if the PHA has correctly applied the rules for calculation of the family share of rent. If there are mistakes, the mistakes can be identified and corrected. If the family contribution is reduced as a result of a hearing, any overpayment must be refunded to the family. In *Matthews v. Eldridge*, the Supreme Court states that "a claim to a predeprivation hearing as a matter of constitutional right rests on the proposition that full relief cannot be obtained at a postdeprivation hearing" (424 U.S. at 331). In section 8, an overpayment by the family can be compensated by a refund to the family.

A family should not be permitted to delay the implementation of the statutory rent computation by asserting a claim for an advance hearing. The establishment of a regulatory right to an advance PHA hearing (before the section 8 subsidy payment is adjusted to reflect the family contribution determined by the PHA) would encourage the abuse of the hearing mechanism to delay the payment by a family of amounts properly computed by the PHA, rather than as a vehicle for discovering and reversing PHA mistakes in applying the rules. Families may deliberately seek to postpone the

completion of a hearing in order to postpone the need to pay the proper share of the rent.

(2). *New Assistance Commitment for a Participant.* The final rule does not require the PHA to provide an opportunity for a hearing before the PHA denies a new Certificate and new assistance commitment for a participant family. The PHA should not be required to execute the administrative tasks needed for a new assistance commitment (e.g., inspection of new unit, examination of proposed lease), or required to enter an assistance contract with a new section 8 owner, until the PHA has had the opportunity to hold a hearing on the denial of assistance to the family.

(3). *Participant Moving to New Unit: Time of Hearing on Unit Size Stated on Certificate.* When a participant wants to move to another unit, the participant may request a hearing on the number of bedrooms entered on the Certificate (§ 882.216(b)(1)(iv)). The rule does not require a hearing on the unit size determination prior to issuance of the Certificate. A requirement for an advance determination, notice and hearing would unnecessarily complicate the routine process for extension of assistance to program families. It would also delay issuance of Certificates and the opportunity for the families to search for new units.

c. *Promptness of Hearing.* The PHA is not required to provide the opportunity for advance hearing in the cases noted in section VII C 6 b above. However, in all cases where a hearing is required, the PHA must proceed with a hearing in a reasonably expeditious manner upon the request of the participant (§ 882.216(b)(5)).

7. *Elements of Hearing.* The informal hearing procedures in the proposed rule (selection and hearings) were substantially the same as the hearing procedures prescribed in the HUD program handbook (paragraph 10—8 of the PHA Administrative Practices Handbook, Handbook 7420.7). Some comments recommend the adoption of a more elaborate hearing process, or of a process with all the elements of a *Goldberg* administrative hearing (*Goldberg v. Kelly*, 397 U.S. 254 (1970)). Other comments suggest that PHAs should have freedom to devise workable local variations in the hearing mechanism.

The final rule prescribes the minimum elements of a PHA hearing on a PHA decision which affects a participant (§ 882.216(b)(6)). In determining the minimum elements, HUD has balanced the interests of the participant, and the

interests of the PHA and program. The regulation procedures recognize that the interest of a current program participant in the assurance of continued subsidy is greater than the interest of an applicant seeking admission to the program.

The participant hearing procedures in the final rule give the participant the opportunity for a hearing to test whether a PHA decision is in compliance with applicable laws or rules, and the opportunity to present evidence bearing on the decision. At the same time, the procedures are designed to avoid burdening the PHA with elaborate and inflexible requirements which may be more appropriate to a judicial or other formal hearing process. The participant hearing requirements under this rule will give a full and fair administrative review. The imposition of a more elaborate procedure is unlikely to result in a substantial benefit in a significant number of cases and would be an unjustified administrative burden on the PHA.

The final rule provides that the PHA must adopt written procedures for the conduct of informal hearings for participants (§ 882.216(b)(5)), and must give each participant a general description of the procedures (§ 882.209(b)(4)(vii)). The hearing procedures used by the PHA must comply with the following (§ 882.216(b)(6)):

- The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of such person (§ 882.216(b)(6)(i)).
- The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures (§ 882.216(b)(6)(iii)).
- At its own expense, the participant may be represented by a lawyer or other representative (§ 882.216(b)(6)(ii)).
- The PHA and the participant shall be given the opportunity to present evidence and question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings (§ 882.216(b)(6)(iv)).
- The person who conducts the hearing shall issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the participant shall be based on the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the participant (§ 882.216(b)(6)(v)).

a. *Person Conducting Hearing.* A number of legal aid comments contend that the proposed rule does not guarantee use of an impartial hearing officer. The proposed rule (§ 882.216(c)(1)) would have allowed appointment of a PHA officer or employee "who did not participate in the PHA decision," or of an outside person designated by the PHA. Several of the comments object to the modification of the prior HUD handbook requirement for appointment of a PHA employee or other public official "who is not directly involved in the day-to-day administration of the program" (HUD handbook 7420.7, section 10—8b). Comment by a PHA supports modification of this requirement.

The final rule (§ 882.216(b)(6)(i)) provides that:

The hearing may be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of such person.

This provision retains in substance the restriction against using a person who participated in the original decision as the hearing officer. The provision is simplified by eliminating the unnecessary references to appointment of an officer or employee of the PHA or of an outside person. Under the final rule the PHA may designate "any person or persons," including a PHA employee or officer, or an outside person. The final rule also adds a provision that the person conducting the hearing may not be a subordinate of the person who made the original decision. By specifically prohibiting use of a subordinate of the original decision-maker, HUD seeks to relieve the concern that a person engaged in day to day administration will not possess the requisite impartiality. This new requirement is intended to assure that the hearing officer is not subject to the pressures of a superior, and therefore to enhance the independence and objectivity of the review procedure. The regulation also clarifies that a person who "approved" the original decision may not be used to conduct the informal hearing.

The standards in the rule are a sufficient guarantee of the impartiality of the PHA review in the context of the administrative review process for the Section 8 Existing Housing Program. The purpose of the informal hearing is to give the participant a chance for a review of a PHA decision, to see if the PHA has violated an applicable law or rule. In the administrative review, the participant gets the benefit of a second look at the challenged decision, by

someone other than a person who made or approved the original decision. Since the reviewer did not make or approve the original decision, the review is not prejudiced by the mind-set of the original decision maker. Through this review, prior error can be uncovered and rectified.

The reviewer may be a person with knowledge of the program, and of technical program requirements and procedures (for example, procedures for determination of the tenant share of rent in accordance with the U.S. Housing Act of 1937). This familiarity can assist in a more rapid, more economical and more accurate determination on the points at issue. The PHA hearing process should be able to benefit from the experience of the hearing officer, especially knowledge concerning programs requirements and procedures.

Comment by *Nichols* counsel claims that the proposed regulation violates the court order with respect to designation of a hearing officer. We do not agree. HUD believes that the court's concern in *Nichols* was with the lack of any enforceable regulations guaranteeing notice and hearing to persons whose section 8 subsidy is terminated or reduced due to changes in family size and composition. To correct this situation, the court directed HUD to publish the "the pertinent sections, from its Administrative Practices Handbook" (Handbook 7420.7, section 10—8), because such provisions, if incorporated into a formal regulation, would provide constitutionally adequate due process protections.

The court did not, however, express an intent to freeze the hearing requirements (for participants whose subsidy is reduced or terminated due to changes in family size) in the exact form of the old handbook requirements. Such an approach is inconsistent with accepted principles of regulatory publication for notice and public comment, and is not required in order to afford full due process protection to the participant. A hearing officer is sufficiently impartial for constitutional purposes so long as the hearing officer is not the person who rendered the challenged decision. The constitution does not prohibit use of a hearing officer involved in the day-to-day administration of the program (as the handbook provided), and such a prohibition could be detrimental to the section 8 participants, for example by depriving the hearing process of persons knowledgeable of technical requirements of the housing subsidy program, and by diverting scarce

program resources to hire outside persons as hearing officers.

Nothing in the *Nichols* order identifies the handbook hearing procedure as the only constitutionally acceptable procedure. The handbook procedure was merely the hearing process in effect at the time of the *Nichols* decision. By directing the agency to issue formal rules establishing notice and hearing procedures, the court required the initiation of a process which, by definition, contemplates review and revision of proposed regulatory language in the light of public comment (see 24 CFR 10.16). Thus the Department sees no impediment to modification of notice and hearing procedures in response to needs of the program, and HUD's analysis of the handbook procedure.

Comment from a PHA states that the regulation should permit the use of a hearing panel, instead of a single hearing officer. The language of the final rule (§ 882.216(b)(6)(i)) clarifies that the hearing may be by a "person or persons" designated by the PHA. Use of a hearing panel is permitted at the discretion of the PHA.

b. Conduct of Hearing and Presentation of Evidence. A number of legal aid comments object to the provision in the proposed rule (§ 882.216(c)(3)) that the right of the Certificate holder (or applicant) to offer and examine evidence and question any witnesses is "subject to the direction of the hearing officer." The comments appear to suggest that the right to offer and examine evidence should be absolute, and not subject to regulation by the hearing officer.

To establish a practical and orderly hearing machinery, the hearing officer must have authority to regulate the conduct of the hearing, including determinations on the relevance of proof that may be offered, and of the manner in which evidence is presented. The authority of a hearing officer or judge to regulate the conduct of the proceeding is a normal and necessary element of any hearing process. The proposed provision did not deny the participant a fair opportunity to present relevant proof in the informal hearing.

The final rule confirms that the hearing officer has authority to regulate conduct of the hearing in accordance with the PHA hearing procedures (§ 882.216(b)(6)(iii)) (in regard to the offer and examination of evidence, and in other respects), and separately states the right of the participant and the PHA to present evidence and question witnesses (§ 882.216(b)(6)(iv)).

Use of the formal rules of evidence applicable in a judicial proceeding is not suitable for the informal hearings

required under this regulation. A provision has been added in the final rule (§ 882.216(b)(6)(iv)) to clarify that evidence may be considered without regard to admissibility under the rules of evidence applicable in judicial proceedings.

Under the proposed rule (§ 882.216(c)(4)), the decision on "any issue of fact" must be exclusively based on evidence presented at the hearing. The final rule (§ 882.216(b)(6)(v)) provides that factual determinations "relating to the individual circumstances of the participant" must be based on evidence presented at the hearing.

c. Hearing Decision.—(1) *Form of Decision.* The proposed rule (§ 882.216(c)(4)) requires the hearing officer to issue a written decision "stating briefly the factual and other basis for the decision." Comment from a legal aid office asserts that the decision must declare both the legal and evidentiary grounds of the decision. Upon reexamination of this question, the Department believes that the requirements in the proposed rule are more elaborate than necessary. The final rule simply requires that the person conducting the hearing shall "issue a written decision, starting briefly the reasons for the decision" (§ 882.216(b)(6)(v)). A copy of the decision must be promptly furnished to the participant.

The statement of the decision required by the regulation tells the participant what was decided, and the reasons for the decision. A requirement for a legalistic statement of evidentiary and legal grounds for the decision would add little of benefit to the participant. The character of the decision is not more informative or comforting to the participant when stated as an enumeration of "evidentiary" and "legal" grounds.

The statement of decision required by the regulation must be truly informative as to the reasons for the decision. This would include a short statement of the elements of fact or law on which the decision is actually based. A bare and conclusory statement of the hearing decision, that does not let the participant know the basic reasons for the decision, will not satisfy the regulatory requirement. There is no reason to believe that a more formal statement of the decision will result in better decisions, or decisions satisfactory to more participants.

(2) *Effect of Decision.* Comments from a PHA and a legal aid office state that the decision in a PHA hearing should be binding on the PHA, or should be final subject only to HUD review.

The final rule specifies certain cases in which the PHA is not bound by a decision of the hearing officer (§ 882.216(b)(7)(i)):

- The PHA is not bound if the decision concerns a subject outside the scope of the required hearing process, or beyond the authority of the person conducting the hearing under the PHA hearing procedures (§ 882.216(b)(7)(i)(A)).
- The PHA is not bound by a hearing decision contrary to HUD regulations or requirements, or otherwise contrary to Federal, State or local law (§ 882.216(b)(7)(i)(B)).

The purpose of the hearing process is to give the participant the opportunity for a fair hearing, to ascertain whether a PHA decision is in accordance with law, HUD regulations and PHA rules. The PHA has the final responsibility to act in accordance with controlling Federal, State or local legal requirements, and this obligation may not be altered by any decision of the hearing officer.

If the PHA determines that it is not bound by a decision of the hearing officer, the PHA must promptly notify the participant of the determination, and of the reason for the determination (§ 882.216(b)(7)(ii)).

The final rule does not adopt the recommendation for HUD review of PHA hearing decisions. This recommendation is inconsistent with the basic responsibility of the PHA for day to day administration of the program.

d. Record of Hearing. Several legal aid comments claim that procedural due process requires that there must be a stenographic record of the informal hearing. The Department believes that in the context of the participant determinations covered by the section 8 existing housing informal hearing process, and given the nature of the public and private interests at stake, procedural due process does not require that the PHA incur the very substantial expense of a stenographic record (cf., e.g., *Neddo v. Housing Authority of the City of Milwaukee*, 335 F. Supp. 1397 (U.S. District Court, E.D. Wisconsin 1971)). A transcript of the administrative hearing is not necessary in order to provide a fair hearing. The notice of decision required by the regulation will be adequate to inform the participant of the reasons for the decision.

C. Administrative Fee

Comment from a PHA notes the administrative burden and cost for PHA hearings, and recommends that HUD reimburse PHAs for hearing costs outside the normal administrative fee

structure. The Department shares the PHA's concern with the expense of the administrative hearing process. By distinguishing between the review processes for applicants and participants, and by a specification of certain limitations on the hearing process for participants, the final regulation seeks to balance the benefits of adequate procedural safeguards against the drain on program resources.

The Department will not, however, provide separate reimbursement for PHA costs in implementing the hearing procedures. In general, PHA fees are paid as a formula reimbursement for all PHA costs of administration. The Department believes that this system tends to result in a more efficient administration of the program with less Federal interference in PHA management. The use of a separate compensation structure for PHA hearing costs would undercut the benefits of the flat-fee reimbursement, and would lead to demands for special reimbursement in other areas.

VIII. Tenancy

A. Form of Assisted Tenancy

The interim rule on termination of tenancy redefined major aspects of the subsidized tenancy. The interim rule removed the provision for termination of tenancy on 30 days notice by the owner or the tenant, and for automatic extension of assistance if a family continues in occupancy "on the same terms and conditions." Under the interim rule (§ 882.107(b)), the section 8 assisted tenancy is for a fixed term of one to three years. At the end of a term, the owner may not refuse to enter a new assisted lease except for cause. However, the interim rule (§ 882.215(b)) provided that the owner need not have good cause for termination of tenancy if the owner "decides not to enter a new Contract with respect to the unit" at the end of the lease term. The interim rule was issued to implement 1981 amendments to the program statute (sec. 8(d)(1)(B) of the U.S. Housing Act of 1937, 42 U.S.C. 1437f(d)(1)(B), as amended by sec. 328(e)(1) of the Housing and Community Development Amendments of 1981, Pub. L. 97-35).

Public Comments

Comments from PHAs and from the National Association of Housing and Redevelopment Officials emphasize that operation of the Section 8 Existing Housing Program depends on the voluntary participation of private landlords. The comments state that owner willingness to rent units to Certificate holders will be hurt by the

elimination of provision for termination by the owner on 30 days notice without cause, and by creation of a "perpetual tenancy" terminable only for cause.

PHA comments say that many owners will not sign assistance contracts which do not allow termination on 30 days notice, that allowing termination on notice is closer to local landlord tenant practice, and that owners want to preserve the ability to sell the unit or to terminate the tenancy for other reasons.

PHA comments claim that provision for termination by either party on notice benefits both the tenant and the PHA. The tenant can move after giving notice to the owner without breaking the lease. PHA comments say that this may be helpful if the tenant wants to move to another unit or to other employment. Termination on 30 days notice by the tenant avoids owner hostility, and also reduces the need for PHA payment of owner vacancy claims.

Two State agency PHAs support elimination of the provision for termination by either party on 30 days notice. One of the PHAs recommends clarification that there can be termination by mutual consent of the owner and tenant.

PHAs also criticize the requirement under the interim rule that an owner must have good cause for non-renewal of the lease at the end of the fixed term (unless the owner withdraws the unit). The comments say that the good cause requirement interferes with normal relationships between a landlord and tenant. The requirement may be appropriate for project-based assistance, but not for the finders-keepers program, where the family can move and receive assistance in a new unit. The good cause requirement is one-sided, since the tenant is not bound to enter a new lease. The requirements impose a permanent limitation on rent, and may complicate the owner's sale of the property. The regulations should reflect the requirements of the private rental market, and should recognize the right of the owner to terminate the tenancy without cause at the end of the lease. To avoid discouraging owner participation, the owner should be as free as the tenant not to renew the lease.

In addition, most comments by PHAs and legal aid offices object to the new regulatory requirement for execution of a new assistance contract and lease in order to extend the subsidized tenancy at the end of the term. Subsidy payments for the assisted family will be interrupted if the PHA, owner, and family do not complete the necessary steps for renewal of assistance before the end of the lease term. Where the

family wishes to move, it may not be able to find a new unit by the end of the term. The old regulatory system of automatic extensions gives a valuable flexibility, and provides a safety net where the PHA has not completed the renewal process. A break in the flow of assistance payments may damage owner confidence in the program, and the family may be evicted. A legal aid comment objects to termination of assistance where the landlord refuses to renew the lease without proper legal basis. Comments recommend that HUD provide for automatic extension of the assistance term, either until the tenancy is renewed or terminated, or during a grace period for special circumstances.

A few PHA comments support the regulation change requiring execution of a new lease and assistance contract for continuation of assistance. A PHA says that the regulatory change will have little impact on its operations, since the PHA already requires execution of a new assistance contract and lease at the time of tenant income recertification.

A number of PHAs recommend the use of a simple procedure for extension of the assisted tenancy, such as by execution of a simple renewal form.

A number of legal aid comments suggest the use of a procedure requiring advance notice by the PHA or owner of the upcoming end of the lease term, or of the owner's intention not to renew the assisted lease.

1. *Good Cause Requirement—Effect on Tenancy.* Public comments on the interim rule present in general a cogent critique of problems which result from the changes in the form of the assisted tenancy under the 1981 amendments and the interim rule. The Department shares the concern that a number of the changes could reduce the desire of private landlords to offer units for rental under the program, and could thus narrow the housing choices of assisted families. However, the program options open to the Department must accord with the 1981 statutory prohibition of a termination of tenancy in section 8 existing housing other than for statutory good cause grounds (U.S. Housing Act of 1937, sec. 8(d)(1)(B)(ii), 42 U.S.C. 1437f(d)(1)(B)(ii)).

The Department may not restore a provision for termination by the owner without cause, either on 30 days notice during the lease term, or at the end of the term. The present statutory good cause requirements for termination of tenancy apply both during the term of an assisted lease and at the end of the lease term. (For discussion of the new regulatory statement of certain cases that fall within the term "good cause,"

see section VIII B 2 below; for a discussion of good cause and owner withdrawal from the program, see section VIII B 3 below).

2. Assisted Lease and Contract.
a. New Regulation Provisions—

Description. In response to the consensus of public comments, the final regulation provides for automatic extension of the assisted tenancy. The regulation does not require the execution of a new lease or contract to accomplish an extension. The final regulation provides:

The term of the Lease shall begin on a date stated in the Lease, and shall continue until:
(1) A termination of the Lease, by the Owner (ii) a termination of the Lease by the Family in accordance with the Lease or by mutual agreement during the term of the Lease, or (iii) a termination of the Contract by the PHA. (§ 882.215(a)(1))

As under the interim rule (and the prior rule), the term of the assisted lease between the owner and the tenant is the same as the term of the assistance contract between the owner and the PHA which subsidizes occupancy under the lease:

The term of the Contract shall begin on the first day of the term of the Lease and shall end on the last day of the term of the Lease. (§ 882.215(b)(2))

Thus, as the lease extends automatically, unless terminated for one of the stated reasons, the term of the assistance contract will automatically track the term of the lease. The technical implementation of the requirement that the lease and the contract run for concurrent terms reverses the interim rule provision that the lease term follows the term of the assistance contract. Substantively the result is identical.

Under the interim rule, the length of the term of the assistance contract was fixed in advance, and could not extend beyond the remaining term of the Annual Contribution Contract ("ACC") between HUD and the PHA. Under the final rule (§ 882.215(a)(2)), the term of the lease must begin at least one year prior to the end of the remaining term of the ACC, and the term of the assistance contract and lease end if the ACC terminates. Although the final rule now provides for an automatic and indefinite extension of the initial one year lease and subsidy term, in practice the PHA can continue to make payments under the assistance contract only so long as the PHA receives the funds from HUD under the ACC.

To clarify the relationship between the assistance contract and the assisted lease, a new provision states that the term of the lease ends if the assistance

contract is terminated by the PHA (§ 882.215(a)(1)(iii)). A substantively provision was previously contained in the regulatory statement of required lease provisions (previously Part 882, Appendix I, section (g)(2), now deleted from the regulation, see section VIII G of this preamble), but was not previously stated in the body of the rule.

A new provision (§ 882.215(a)(5)) states:

The Lease shall permit a termination of the Lease by the Family without cause, at any time after the first year of the Lease term, on not more than sixty days written notice by the Family to the Owner (with copy to the PHA).

Another new provision (§ 882.215(a)(3)) has been added to state the relationship between the new provisions defining the term of the lease and assistance contract to the regulatory provisions on annual and special adjustments, and on determination of the family contribution:

During the term of the Lease, the Contract Rent shall be subject to adjustment in accordance with (§ 882.108 [rent adjustments]), and the Tenant Rent shall be subject to change in accordance with HUD regulations and requirements.

b. New Regulation Provisions—
Purpose and Operation. The new provision for automatic extension of the lease will resolve the problems, described in the public comments, stemming from the requirement in the interim rule for execution of a new assistance contract and lease to continue the flow of assistance. Under the final rule, the ongoing stream of assistance to the family is not interrupted because of inability to complete the administrative steps for continuation of assistance. The PHA is relieved of the administrative burden of processing a new assistance contract or lease, or even of the need to distribute and secure execution of simplified renewal documentation, as suggested by some PHAs.

The regulation will also avoid the possible problem, identified in the comments, of an interruption in assistance because of a wrongful refusal by the owner to execute a new lease and a new assistance contract (absent good cause for nonrenewal). Since there is no break in payments, the owner will not be able to rely on a hiatus in assistance payments as good cause grounds for termination of tenancy.

The new regulatory provision for automatic extension has been designed to avoid the legal uncertainties produced by the old regulatory provision (§ 882.107(b), before amendment by the interim rule) that the term of the

assistance contract continues in effect for the duration of the tenancy "if a Family continues in occupancy . . . on the same terms and conditions as the original Lease." To determine if the assistance contract remained in effect during a holdover after the original lease term, if was necessary to examine the legal incidents of the holdover tenancy under State and local law to ascertain if the holdover tenancy was on the same terms and conditions. However, this inquiry often yielded no clear answer as to the legal characteristics of a holdover tenancy, and consequently no clear answer on the continued existence of a subsidized tenancy. Many PHAs have apparently dealt with the need for extension under the old regulatory provision by routinely requiring execution of some form of extension documentation by the family and the owner. The old regulation provision was variously understood and implemented by different PHAs.

The existence or nonexistence of a subsidized tenancy should be legally well defined, and should be as clear as possible to the owner, tenant, and PHA. The mechanism for extension of the tenancy should involve the minimum administrative task for the PHA. The provision for automatic extension under the regulatory formula in the final rule gives greater clarity in definition of the assisted tenancy, and requires no administrative action by the PHA.

Since the term of the assisted tenancy is now indefinite, the family should not be permanently bound by the lease. HUD agrees with the public comments, as described above, observing that a provision for termination on notice can benefit the tenant, and that termination by the tenant can reduce the need for vacancy payments by the PHA. Under the regulation (§ 882.215(a)(5)), the lease must allow the family to terminate the lease without cause, on notice to the owner, at any time after the first year of the term. The tenant may not be required to give more than sixty days written notice of termination. A copy of the termination notice must be sent to the PHA.

Nothing in the rule prohibits inclusion of a unilateral lease provision allowing termination of the tenancy *by the tenant* (with or without cause) during the first year of the term, or on less than sixty days notice. The statutory good cause requirements for termination of tenancy apply only to a termination of tenancy by the owner. The Department recognizes that some owners may be unwilling to agree to a one-sided provision for termination on notice by the tenant alone, during or after the first

year of the term. Some owners may also be unwilling to rent to program families without the right to terminate the tenancy on short notice and without cause.

The regulation (§ 882.215(a)(1)(ii)) clarifies that the owner and the tenant may mutually agree, at any time during the term of the lease, to a premature termination of the lease term.

As the comments suggest, PHAs may have to pay vacancy claims (if a tenant vacates a unit in violation of the lease). However, as described in section III A of this preamble, the PHA may deny a new Certificate if the family fails to reimburse the PHA for section 8 owner claims paid by the PHA (§ 882.210(b)(2)). This provision should produce some incentive for families to try to minimize owner claims (e.g., by getting owner to agree to a release from the lease), or to pay the PHA back.

c. Offer of a New Lease by the Owner. Since the assisted lease as defined in this rule continues for an indefinite term, there is need for a procedure allowing modification of the lease terms from time to time. The Department believes that many owners will not wish to enter into a leasehold where the terms are frozen so long as the tenant remains in the unit. The final rule (§ 882.215(a)(4)) therefore provides that the owner may offer the family a new lease for execution by the family after approval by the PHA in accordance with program requirements, for a term beginning at any time after the first year of the lease term. The owner must give the tenant written notice of the offer, with a copy to the PHA, at least sixty days before the proposed beginning date of the new lease. The offer may specify a reasonable time limit for acceptance by the family. Failure by the family to accept the owner's offer of a new lease which has been approved by the PHA is good cause for termination of tenancy (§ 882.215(c)(2)).

d. Termination of Subsidy. Section 8 assistance payments to the owner stop when the statutory family share (Tenant Rent) covers the full contract rent (§ 882.212). The assistance contract terminates if a year has passed since the last PHA payment on behalf of the family (in order to free up the subsidy commitment for another family). A PHA asks for clarification that termination of the assistance contract because the tenant is paying the rent is not ground for termination of the lease. This recommendation has not been adopted. The lease term ends when the assistance contract is terminated by the PHA for any reason (§ 882.215(a)(1)(iii)). The landlord should not continue to be bound by lease provisions intended to

regulate the subsidized tenancy, including the requirement for a continuing tenancy terminable only for statutory cause. Landlord and tenant should have the opportunity to redefine their legal relationships free from the requirements and constraints of the Federal subsidy program. The interests of the assisted family are already sufficiently protected, since the family's rights under the lease are not affected for a full year after the cessation of the assistance payments (§ 882.212).

B. Grounds for Termination of Tenancy

Section 8(d)(1)(B)(ii) of the United States Housing Act of 1937 (42 U.S.C. 1437f(d)(1)(B)(ii)), as amended by sec. 326(e)(1) of the Housing and Community Development Amendments of 1981, Pub. L. 97-35 provides that in section 8 existing housing:

The owner shall not terminate the tenancy except for serious or repeated violation of the terms and conditions of the lease, for violation of applicable Federal, State, or local law, or for other good cause.

The interim rule stated the grounds for termination in the language of the statute without any regulatory elaboration.

The final rule contains two new provisions which provide regulatory guidance in application of the statutory provisions for termination of tenancy for violation of Federal, State, or local law, or for "other good cause."

1. Termination for Violation of Applicable Law. The statutory authority to terminate the tenancy because of a violation of applicable law by the tenant is restricted in the final rules (§ 882.215)(c)(1)(ii)) to a:

Violation of Federal, State, or local law which imposes obligations on the tenant in connection with the occupancy or use of the dwelling unit and surrounding premises

The Department believes that termination on this ground should be restricted to violations related to occupancy of the unit.

2. Termination for "Other Good Cause". By design, the interim rule did not contain any definition of "other good cause" for termination of tenancy. The preamble to the interim rule stated:

Application of the statutory standards to particular cases should be determined by the courts, normally in the course of the eviction proceeding brought by the owner. (47 FR 33479, 33499)

Several PHA and legal aid comments recommend that the regulation define good cause for termination of tenancy. A PHA and a legal aid office urge that the regulations follow the approach used in the HUD regulations governing tenant

eviction procedures (24 CFR Part 450, Subpart A) in project based housing subsidy programs. These regulations provide that conduct of a tenant cannot be "good cause" for termination of tenancy unless the landlord has served the tenant with prior written notice that such conduct shall "henceforth" constitute a basis for termination of occupancy (§ 450.3(b)).

It remains the view of the Department that a comprehensive regulatory definition of good cause in the Section 8 Existing Housing Program is neither possible nor desirable. The good cause category should remain open to case by case determination by the courts. It is a prime virtue of this statutory category that it permits termination by an owner in types of cases which cannot be readily foreseen.

The Department does not believe that the approach to good cause in the project subsidy programs is suitable for the finders-keepers program, where individual tenants are subsidized on a unit by unit basis, and where the subsidy commitment to the owner-ends if the family moves from the unit. Many finders-keepers landlords participate in the program only for a single unit or for a few units. Tenancy requirements should be as simple as possible, with minimal demands on the owner beyond the normal requirements of an unsubsidized tenancy. As applied in the context of the finders-keepers program, a requirement to give advance notices of conduct that will in future be good cause for termination places an excessive demand on the foresight of the owner in anticipating the kinds of tenant conduct for which the owner might wish to terminate a tenancy. Even the most extensive advance enumeration of good cause cases will inevitably omit circumstances that later occur, and which should be legitimately regarded as good cause for termination of tenancy.

The good cause concept should be flexible and open to application in concrete cases, but there is a critical need to provide explicit regulatory assurance to prospective section 8 owners that legitimate owner concerns will be recognized as grounds for termination of tenancy. With the provision for automatic and indefinite extension of the tenancy, without any predefined limit, this assurance may be essential to promote broad participation by owners.

The final rule (§ 882.215(c)(2)) provides:

The following are some examples of "other good cause" for termination of tenancy by the Owner: failure by the Family to accept the

offer of a new Lease * * * a Family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or property; criminal activity by Family members involving crimes of physical violence to persons or property; Owner's desire to utilize the unit for personal or family use or for a purpose other than use as a HUD assisted residential rental unit or a business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to rent the unit at a higher rental). This list of examples is intended as a non-exclusive statement of some situations included in "other good cause," but shall in no way be construed as a limitation on the application of "other good cause" to situations not included in the list.

The explicit regulatory statement that a business or economic reason is good cause for termination of tenancy should help PHAs in responding to owner concern, as described in the public comment, with the good cause requirement for termination of tenancy, and in particular with the elimination of the provision for termination on 30 day notice. It is likely that in most cases where an owner wants to terminate the section 8 existing tenancy there are either good cause grounds relating to behavior of the individual tenant, or good cause business reasons relating to use of the property. Several Federal court decisions have concluded that statutory "good cause" would include a business or economic reason for termination of the tenancy (e.g., *Mitchell v. U.S.*, 569 F. Supp. 701 (N.D. Cal., Aug. 1983)).

A legal aid office says that the failure to define good cause will cause a "vast" increase in administrative costs because of varying interpretation and administration of the good cause requirement. We do not agree. The degree of regulatory definition of good cause is unlikely to have any systematic or substantial effect on PHA costs, since good cause is determined in local landlord tenant courts, and there is no longer a statutory or regulatory requirement for PHA involvement in the process for termination of tenancy (for leases entered after promulgation of the interim rule on September 21, 1982).

3. *Withdrawal by the Owner from the Program—Exemption from.*

Good Cause Requirement

The Conference Report on the 1981 amendments states that: It is not the intention of the Conferees that these statutory provisions [on termination of tenancy] govern the relationship between a landlord and a tenant after a landlord has, in good faith, terminated his participation in the sec. 8 existing program. (H.R. Rep. No. 97-208, 97th Cong., 1st Sess. 695 (1981), reprinted in 1981

U.S. Code Cong. and Ad. News, 1010, 1053-54)

The interim rule (§ 882.215(b)(iii)) provided that an owner is not subject to the statutory good cause requirement for termination of tenancy if the owner elects not to enter into a new assistance contract "with respect to the unit."

a. *Public Comments.* PHA comments express a strong concern with the PHA's administrative burdens because of owner withdrawal from the program (withdrawal of the individual unit, under the terms of the interim rule). The comments observe that PHAs will have to maintain a list of units withdrawn from the program, and ask how long the PHA is barred from renting the unit to another finders-keepers tenant. PHA comments stress that it will be difficult or impossible for PHAs to monitor a bar on the use of units withdrawn from the program, and note that such a bar will hamper the search for housing by Certificate holders.

A number of comments by legal aid offices criticize the lack of a statement in the regulation that the owner's withdrawal must be "in good faith." Several comments suggest that exemption from good cause means that the owner must have a "good cause reason" for termination of tenancy, or that a legitimate *business* reason is the only basis for the exemption from good cause. Public comments state that the Conference Report does not allow the owner to avoid the need to show good cause for termination of tenancy by withdrawing a single unit from participation.

b. *Final Rule.* Since publication of the interim rule, a Federal district court decision (*Mitchell v. U.S.*, 569 F. Supp. 701 (N.D. Cal., Aug. 1983)) has stated that the HUD regulatory exemption from good cause where the individual unit is not to be leased to an assisted tenant is not consistent with the legislative intent. The court indicated its preliminary view that an owner's statutory obligation to comply with good cause for termination of tenancy ends only when the owner is terminating participation "in the *entire assisted housing program.*" The Department believes that other courts are likely to follow this analysis.

The reasoning of the court in *Mitchell* affords the Department only two choices: (1) To allow an exemption from good cause if an owner is withdrawing all units from participation in the program; (2) to require that in all cases the owner must have good cause for termination of tenancy, without authorizing any exemption. After full consideration of the public comment on the interim rule, the Department has

decided that the final rule will not provide or permit any exemption of the owner from the good cause requirement for termination of tenancy (with respect to contracts or leases entered after the rule is effective).

An exemption from good cause where the owner is withdrawing totally from participation in the program would leave the owner an all or nothing choice: the owner must either terminate participation for all tenants, or show good cause for termination of tenancy of any particular tenant. The election by section 8 owners to withdraw could result in the eviction of many section 8 tenants. Owner withdrawal from the program for all units will also reduce the supply of units which may be rented by Certificate holders. Thus, a provision for owner withdrawal could simultaneously increase the number of families looking for housing, as it reduces the number of units available to be rented. As noted in the comments, the exemption from good cause also would create serious problems for PHAs in administering a bar on owner participation in the program after an owner's withdrawal. The administrative difficulties remarked in the comments would be compounded by a requirement for application of the bar to all of an owner's units.

Finally, it appears that in most cases the good cause exemption is not necessary. An owner who is withdrawing all units in good faith from participation in the program for a business or economic reason has "other good cause" for termination of tenancy. Indeed the owner could withdraw even a single unit from the program for a good cause business or economic reason.

C. PHA Role in Termination of Tenancy; Requirement for Notice by the Owner to the PHA or Family

Before the interim rule, the HUD program regulation (§ 882.215) required an owner to obtain PHA authorization for eviction of a section 8 existing tenant. Before the 1981 amendments which added the statutory grounds for termination of tenancy, the PHA possessed by law the sole right to issue a notice to vacate to the tenant (U.S. Housing Act of 1937, sec. 8(d)(1)(B), 42 U.S.C. 1437f(d)(1)(B)). The 1981 amendments removed any statutory requirement for PHA participation in a termination of tenancy.

A number of legal aid offices recommend restoration of a requirement for PHA approval of an eviction, or for the PHA to issue an eviction notice. The comments assert that judicial review of a termination of tenancy does not give enough protection for the tenant; PHA

review would reduce the number of evictions, and is an opportunity for PHA mediation and resolution of disputes between the landlord and tenant; and elimination of PHA involvement will increase PHA administrative costs because of tenant moves.

A PHA urges that HUD state in the regulation text (as indicated in the preamble to the interim rule (47 FR 33499)) that there is no requirement for PHA involvement in a termination of tenancy, or in the decision whether a landlord can terminate the tenancy. However, a number of PHAs recommend that the owner should have to give notice of the termination proceeding to the PHA at the same time as the tenant. This notice could be given by furnishing the PHA a copy of the notice to vacate served on the tenant. The PHAs state that the notice by the owner to the PHA will allow the PHA to take steps to assist the family in finding another unit, that the PHA needs to know if there has been an interruption of assistance payments by the PHA because of PHA clerical or computer error, that notice avoids payments to the owner after the tenant has vacated the unit. A PHA comment suggests that PHAs need to know the grounds for termination, since family failure to perform obligations under the lease is grounds for termination of participation in the program (but see section II F of this preamble).

The final rule does not adopt the recommendation to require PHA approval of an eviction or termination of tenancy, or require that the PHA issue the eviction notice. The questions involved in a termination of tenancy are best resolved in the State judicial proceedings for eviction of a tenant. To assure the availability of the State judicial forum in a termination of tenancy, the final rule adds a provision (§ 882.215(c)(3)) that the section 8 owner may evict the tenant from the dwelling unit only by instituting a court action. This requirement furthers the policy embedded in the list of prohibited lease provisions (now at Part 882, Appendix I, see section VIII G of preamble) which prohibits the use of lease provisions which could foreclose the tenant's opportunity for a fair hearing in a State court eviction proceeding.

The substantive Federal good cause requirements under the statute and the HUD regulation are binding in the State judicial proceeding, and the State proceedings are subject to the due process requirement for a fair hearing under the Fourteenth amendment. To encourage participation by private owners, it is important to minimize the

procedural burdens on the owners. The approach in this rule is consonant with the 1981 amendments, which remove the old statutory requirement for PHA participation in eviction (by PHA issuance of the notice to vacate), but which require good cause for termination of the assisted tenancy.

A conforming amendment (removing § 882.215(p)) eliminates authorization of evictions from the listing of PHA responsibilities.

Although the final rule does not require any PHA approval of, or other involvement in, the termination of tenancy, the rule accepts the recommendation that the owner should be required to notify the PHA. The rule (§ 882.215(c)(3)) provides that the owner must notify the PHA in writing of the commencement of procedures for termination of tenancy. Notice to the PHA must be given at the same time that the owner gives notice to the tenant pursuant to State or local law (such as a notice to vacate or notice to quit). Notice to the PHA may be given by furnishing the PHA a copy of the notice to tenant.

When the PHA receives the notice from the owner, the PHA may try to resolve the dispute between the owner and tenant, thus avoiding the eviction. The PHA is not, however, required to play this role, and the owner is not required to seek the mediation of the PHA.

Several legal aid comments recommend a regulatory requirement for the owner to give notice of termination of tenancy to the tenant, and specifying the character of the owner notice. The final rule does not contain any requirement for a form of notice by the owner to the tenant. In the finders-keepers program, the owner is and should be subject only to the same tenant notice requirements which apply to an unassisted tenant.

D. Leases Entered Into Before October 1, 1981

Section 8 existing program leases entered before October 1, 1981 (effective date of the 1981 statutory amendments on termination of tenancy) remain subject to the old statutory requirement that the PHA has the sole right to issue a notice to vacate to the tenant (U.S. Housing Act of 1937, sec. 8(d)(1)(B), 42 U.S.C. 1437(d)(1)(B), as in effect prior to enactment of sec. 326(e) of the Housing and Community Development Amendments of 1981, Pub. L. 97-35). The provisions of the final rule governing such tenancies (see interim rule § 882.215(a), final rule § 882.215(d)) track the statutory requirement verbatim, and eliminate as unnecessary the interim rule provision that the PHA must give

the notice to vacate unless the grounds for eviction as stated in the owner's representation are not sufficient under the lease.

One PHA objects that the requirement for PHA issuance of the notice to vacate makes the PHA an agent of the owner. Another PHA objects to the different treatment of the section 8 tenancies under leases entered before and after October 1, 1981. We note only that the regulation follows a statutory distinction in treatment of program tenancies.

Legal aid comments recommend that the regulation specify that termination of tenancy under the old leases must be for cause, that the good cause grounds are the same as required for leases under the new statutory requirements, that sufficiency under the lease is not good cause, that the regulations should specify the procedure for PHA issuance of a notice to vacate, and that the tenant should have the right to a hearing before the PHA. One PHA asks that the regulations clarify the meaning of notice to vacate in relation to State law.

Issues concerning program leases entered before October 1, 1981, or concerning the construction of the special statutory requirements applicable to such leases, are of dwindling practical significance. The old statutory requirements would only be applicable if the terms and conditions of a pre-October 1, 1981 lease have continued in effect without any positive contractual act by the owner and the tenant to extend or amend the lease after that date.

Courts held that the prior HUD regulation (§ 882.215 before promulgation of the interim rule) did not comply with the statutory requirement for PHA issuance of a notice to vacate (e.g., *Brown v. Harris*, 491 F. Supp. 845 (N.D. Cal. 1980)). The final regulatory provisions are designed solely to correct this deficiency, not to rewrite program contracts after the fact. Little point would be served by attempting to further regulate tenancies under the old statutory requirements. The provision on the grounds for PHA refusal to issue a notice to vacate are not necessary, since the grounds are covered by the outstanding assistance contract between the PHA and owner (assuming there still exist program tenancies covered by the old statutory requirements).

E. Applicability and Implementation

By statute, the good cause grounds for termination of tenancy apply to section 8 existing leases entered after September 30, 1981 (Housing and Community Development Amendments of 1981, sec. 326(e)(2)). The interim rule

became effective September 21, 1982 (47 FR 41735). Comment by a legal aid office objects to application of the good cause grounds to leases entered between the effective date of the statute and the effective date of the regulation.

Comment by another legal aid office states that for leases entered during this period, tenants have a contractual right to PHA issuance of the notice to vacate, and that the regulation should so state.

Applicability of the statutory grounds for termination of tenancy enacted in 1981 is determined by the statute. The regulation follows the statutory requirement.

Leases entered after September 30, 1981, but before promulgation of the interim rule, require PHA authorization for an eviction. Therefore PHA authorization (but not PHA issuance of a notice to vacate) is a contractual right of the tenant under such leases. Nothing in the interim or the final rule affects this right. The right arises from the lease between the tenant and the owner, and there is no need to address this subject in the regulation.

A number of PHAs and the National Association of Housing and Redevelopment Officials object to retroactive application of new regulatory tenancy requirements to previously executed leases and assistance contracts. Several of the comments express a particular concern with the invalidation of 30-day termination clauses in leases entered before the interim rule. A PHA asks for clarification on the applicability of new eviction requirements for tenancies originally commenced before October 1, 1981.

Nothing in the interim or the final rule modifies the conditions of a program tenancy under an executed assistance contract and assisted lease except as necessary to conform to a statutory requirement in existence when the lease was entered. Under the interim rule (interim § 882.215(b)), the 1981 statutory grounds for termination of tenancy were made applicable to leases entered after October 1, 1981, as required by the legislation. However, the interim provisions on term of the assistance contract and lease (interim § 882.107 (b) and (c)) were not made retroactively applicable to tenancies under an assistance contract and lease entered before the effective date of the rule. These regulatory provisions applied prospectively only, to a lease and assistance contract entered between the owner and the tenant after the effective date. A provision for termination by owner without cause on 30 days notice (in a lease entered after September 30, 1981) is invalid because of the statutory

good cause requirement, not because of any retroactive application of the regulatory provisions governing the term of the assistance contract and lease.

The final rule specifies applicability of new regulatory provisions defining the assisted tenancy. Under the rule (§ 882.215(g)), the new provisions defining the term of the assisted lease and assistance contract (§ 882.215 (a) and (b)), stating certain cases included in "other good cause," and requiring the owner to notify the PHA of the commencement of proceedings for termination of tenancy (§ 882.215(c) (2) and (3)) are applicable in any case where the lease or assistance contract is entered after the effective date of the rule. These new regulatory provisions do not affect contract rights if the assistance contract and lease were entered before that date.

A PHA urges distribution of new assistance contracts before the effective date of the final rule. The Department expects to distribute a new form of assistance contract prior to the effective date.

F. Non Applicability of Regulation on Termination of Tenancy in Multi-family Subsidy Programs

Part 247, Subpart A (formerly in Part 450) establishes substantive and procedural requirements for termination of tenancy in projects assisted under certain FHA subsidy programs. A new provision in this rule (§ 882.215(f)) states that Part 247 is not applicable to a tenancy assisted under the Section 8 Existing Housing Program. This provision removes the overlap of requirements for termination of tenancy for finders-keepers tenant residing in a project otherwise covered under Part 247, Subpart A. Such a finders-keepers tenancy will be subject only to the termination of tenancy requirements in the section 8 finders-keepers program.

G. Lease Addendum

A legal aid comment recommends that the lease should specify that the landlord has the burden of proving good cause. This recommendation has not been adopted. While the substantive good cause requirement is controlled by Federal law, the procedural incidents of the possessory action should be left to determination under State and local law.

A PHA states that the required lease addendum should continue to be used to override provisions of owner leases not consistent with HUD requirements. As in the past, the required lease provisions will contain language stating that the minimum HUD required provisions will

override conflicting provisions in the lease.

The final rule deletes from Part 882 the text of the required lease provisions in the program (previously Part 882, Appendix I). This is in accordance with practice in the other section 8 programs. Key regulatory requirements relating to the lease (e.g., grounds for termination of tenancy) are covered in the text of the HUD rules and need not be duplicated by inclusion of the form of lease addendum in the codified rule. The revised rule (§ 882.209(j)(1)) states:

The Lease between the Owner and the Family shall be in accordance with § 882.215 [assisted tenancy], and any other applicable HUD regulations and requirements. The Lease must include all provisions required by HUD, and shall not contain any of the prohibited provisions in Appendix I.

H. Concurrent Notices

The regulation (§ 882.215(e)) specifies that required notices relating to the assisted tenancy (pursuant to § 882.215) may be combined with and run concurrently with any notices required under State or local law.

IX. Removal of Obsolete Provisions

Several obsolete provisions are removed from the regulation: (1) Alternative computation of annual adjustments for assistance contracts entered before January 29, 1979 (§ 882.108(a)(i)); (2) provisions on rent credit (in § 882.102, § 882.115, § 882.116(f)); and (3) transition provisions on applicability of regulations published in 1978 (§ 882.122). Since these provisions have no present applicability or effect on the public, notice and public procedure are unnecessary.

Other Matters

A Finding of No Significant Impact with respect to the environment is unnecessary since the Section 8 Existing Housing Program is categorically excluded from the National Environmental Policy Act procedures under 24 CFR 50.21(a)(4).

This rule does not constitute a "major rule" as that term is defined in Section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment,

productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The information collection requirements contained in this rule have been or will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. No person may be subjected to a penalty for failure to comply with these information requirements until they have been approved and assigned an OMB control number. The OMB control number, when it is assigned, will be announced by separate notice in the Federal Register.

Pursuant to 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities.

The rule was listed as items H-75-82 and H-23-80 in the Department's Semiannual Agenda of Regulations published on October 17, 1983 at 48 FR 47445 and 47452, pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.156 and title is Lower-Income Housing Assistance Program (Section 8).

List of Subjects in 24 CFR Part 882

Grant programs: Housing and community development, Housing; Rent subsidies.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

Accordingly, 24 CFR Part 882 is amended as follows:

1. In § 882.101, paragraph (a) is made an undesignated paragraph and the heading "General." is removed. Paragraphs (a)(1) and (a)(2) are redesignated paragraphs (a) and (b) respectively, and new paragraph (b) is revised to read as follows:

§ 882.101 Applicability and scope.

(b) For the purposes of this Part "Section 8 Existing Housing Program" means the program under this Part (except Subparts D and E of this Part). "Existing Housing" means housing that in Decent, Safe, and Sanitary condition, except that it does not include: (1) A unit which is covered by an Agreement to Enter into Housing Assistance Payments Contract or by a Housing Assistance

Payments Contract under any section 8 program other than the Section 8 Existing Housing Program, (2) a unit which is owned by the PHA administering the ACC under this Part, or (3) housing assisted under the Act other than under section 8 or section 17.

§ 882.102 [Amended]

2. Section 882.102 is amended by removing the term "Rent Credit. See § 882.115.", and by revising the definitions of "Existing Housing" and "Service Agreement" to read as follows:

§ 882.102 Definitions.

Existing Housing. See § 882.101(b).

Service Agreement. A written agreement approved by the State between the Owner (including an entity with the right to sublease) of an Independent Group Residence and the Service Agency and/or other entities providing the supportive services to the occupants of Independent Group Residences. The agreement shall specify the type and frequency of the supportive services to be furnished. (See §§ 882.109(n)(6) and 882.209(j)(2)).

3. In § 882.106, paragraphs (a)(1) and (c)(2)(ii) are revised to read as follows:

§ 882.106 Contract rents.

(a) (1) The Gross Rent for any existing housing unit approved pursuant to § 882.209(f) shall not exceed the Fair Market Rent applicable to such unit on the date of Lease approval, except as provided in this paragraph (a).

(c) (ii) The PHA shall issue a Certificate of Family Participation to each eligible Family which will reside in an Independent Group Residence. A separate Lease and Contract shall be executed for each such Family. A Resident Assistant who lives in the unit may be counted as a Family member in determining the appropriate number of bedrooms. However, the Resident Assistant's income shall be disregarded in determining the Total Tenant Payment, the Tenant Rent or the Family's income eligibility.

4. Section 882.107 is revised to read as follows:

§ 882.107 Term of ACC.

The initial term of the ACC shall be for five years. The term may be extended.

5. In § 882.108, paragraph (a)(1)(i) is revised to read as follows:

§ 882.108 Rent adjustments.

(1) Annual Adjustments. (i) Annual adjustments as of any anniversary date shall be determined by using the applicable Section 8 Annual Adjustment Factor (24 CFR Part 688) most recently published by HUD in the Federal Register.

§ 882.109 [Amended]

6. In § 882.109, paragraph (c) (2) is revised to read as follows:

§ 882.109 Housing quality standards.

(2) Acceptability Criteria. The dwelling unit shall contain a living room, kitchen area, and bathroom. The dwelling unit shall contain at least one bedroom or living/sleeping room of appropriate size for each two persons. Persons of opposite sex, other than husband and wife or very young children, shall not be required to occupy the same bedroom or living/sleeping room. Exterior doors and windows accessible from outside the unit shall be lockable.

§ 882.109 [Amended]

7. In § 882.109, paragraphs (n) (3), (n) (6) (iii) and (n) (7) are revised to read as follows:

§ 882.109 Housing quality standards.

(n) Independent Group Residence—Performance Requirement.

(3) The dwelling unit shall afford the Family adequate space and security. A living room, kitchen, dining area, bathroom, and other appropriate social, recreational or community space shall be within the unit, and the unit shall contain at least one bedroom of appropriate size for each two persons. Exterior doors and windows accessible from outside each unit shall be capable of being locked. An emergency exit plan shall be developed and occupants shall be apprised of the details of the plan. All emergency and safety features and

procedures shall meet applicable State and local standards.

(6) Supportive Services.

(iii) A written Service Agreement, approved by the State and in effect between the Owner and the Service Agency and/or the entities which provide the necessary supportive service, shall be submitted to the PHA with the request for Lease approval. The Lease between the eligible individual and the Owner shall set forth the Owner's obligation for and means of providing these services. If the lessor provides the supportive services, a Service Agreement is not required and the provision of these services shall be incorporated into the Lease and shall be approved by the State. (See § 882.209(j) (2).)

(7) State Approval. Independent Group Residences shall be licensed, certified or otherwise approved in writing by the State (e.g., Departments of Human Resources, Mental Health, Retardation, Social Services, etc.) prior to the execution of the Initial Contract. This approval shall be reexamined periodically based on a schedule established by the State. To assure that facilities and the supportive services are appropriate to the needs of the occupants, the State shall also approve the written Service Agreement (or Leases, if the provider of services is the lessor) for each Independent Group Residence. (See § 882.209(j) (2).)

§ 882.115 [Reserved]

8. Section 882.115 is deleted and reserved.

9. § 882.116, paragraph (p) is removed, paragraphs (q) and (r) are redesignated paragraphs (p) and (q) respectively, and paragraphs (l), (g) and (n) are revised to read as follows:

§ 882.116 Responsibilities of the PHA.

(f) Provision to each Certificate holder of basic information on applicable housing quality standards and inspection procedures, search for and selection of housing, owner and tenant responsibilities, and basic rules.

(g) Determination of the amount of the Total Tenant Payment and Tenant Rent.

(n) Adjustment of the amount of the Tenant Rent, Utility Reimbursement and housing assistance payment as a result

of an adjustment by the PHA of any applicable Utility Allowance.

10. Section 882.118 is revised to read as follows:

§ 882.118 Obligations of the Family.

(a) The Family shall: (1) Supply such certification, release, information or documentation as the PHA or HUD determine to be necessary in the administration of the program, including use by the PHA for a regularly scheduled reexamination or interim reexamination of Family income and composition in accordance with HUD requirements.

(2) Allow the PHA to inspect the dwelling unit at reasonable times and after reasonable notice.

(3) Notify the PHA before vacating the dwelling unit.

(4) Use the dwelling unit solely for residence by the Family, and as the Family's principal place of residence; and shall not assign the Lease or transfer the unit.

(b) The Family shall not:

(1) Own or have any interest in the dwelling unit (other than in a manufactured home assisted under Subpart F of this Part). If the Owner is a cooperative, the Family may be a member of the cooperative.

(2) Commit any fraud in connection with the Section 8 Existing Housing Program.

(3) Receive assistance under the Section 8 Existing Housing Program while occupying, or receiving assistance for occupancy of, any other unit assisted under any Federal housing assistance program (including any section 8 program).

§ 882.122 [Reserved]

11. Section 882.122 is deleted and reserved.

12. In § 882.204, paragraphs (a)(2), (b)(1) (i) and (ii), (b)(3)(ii), and (b)(4) are revised to read as follows:

§ 882.204 Submission of PHA applications.

(a) * * * (2) State by number of bedrooms the total number of units requested by the PHA (i.e., one bedroom units, two bedroom units), and the approximate number of units for elderly, handicapped, or disabled Families.

(b) * * * (1) * * * (i) The plan shall describe the PHA's policies and procedures for:

(A) Outreach to eligible Families, and satisfying the requirements of § 882.207;

(B) Achieving participation by Owners of units of suitable price and quality located outside areas of low income or minority concentration (and outside the local jurisdiction in any area where the PHA is not legally barred from entering into Contracts) and satisfying the requirements of § 882.208;

(C) Selecting Families for participation without discrimination because of age, race, color, religion, sex, handicap or national origin;

(D) Assisting Certificate holders who allege that illegal discrimination is preventing them from leasing suitable units.

(ii) The PHA should consider the possibility of subcontracting with a community-based organization, such as a fair housing organization that has had experience in assisting families which traditionally have encountered discrimination or other difficulties in finding housing in the locality.

(3) * * * (ii) The administrative plan shall state the PHA's policies and procedures for: performing outreach to eligible Families; contacting Owners; handling applications and determining Family eligibility; selecting Families for participation in the PHA's Section 8 program (including any selection preferences); computing the Total Tenant Payment and the Tenant Rent; briefing Families and issuing Certificates (including determination of the number of bedrooms entered on the Certificate); inspecting units for conformity to housing quality standards; approving Leases and executing Contracts; making payments to Owners; certifying and recertifying incomes; providing housing information and services to applicants and to Families participating in the program; reviewing and adjusting, as necessary, Utility Allowances; reinspecting units under Contract; adjusting Contract Rent payable to Owners; establishing informal review procedures for applicants for participation in the PHA program and informal hearing procedures for participants in the PHA program; monitoring program performance.

(4) A proposed schedule of Utility Allowances with a justification of the amounts proposed.

13. In § 882.206, paragraphs (a) and (b) are revised to read as follows:

§ 882.206 Annual Contributions Contract; schedule of leasing.

(a) Transmittal of ACC. After the HUD field office has prepared the ACC, the ACC shall be transmitted to the PHA

for execution by the PHA. The ACC shall be returned to HUD together with the PHA's estimates of its financial requirements on the prescribed forms, equal opportunity housing plan, administrative plan and proposed schedule of Utility Allowances, if these have not been previously submitted.

(b) *Execution of ACC by HUD.* After receipt of the PHA-executed ACC and HUD approval of the equal opportunity housing plan, administrative plan, financial estimates and the schedule of Utility Allowances, HUD shall execute the ACC. HUD shall then transmit to the PHA a fully executed copy of the ACC together with a leasing schedule in accordance with paragraph (c) of this section.

14. In § 882.207, the phrase "; waiting list" in the section heading is removed, paragraph (a) is made an undesignated paragraph and the paragraph (a) heading "Public Notice to Lower-Income Families." is removed, paragraphs (b) and (c) are removed, and paragraphs (a)(1) and (a)(2) are redesignated paragraphs (a) and (b) respectively, and new paragraph (a) is revised to read as follows:

§ 882.207 Public notice to lower-income families

(a) The notice shall state that occupants of housing assisted under the Act, and applicant on a waiting list for any such housing, must apply specifically for participation in the PHA's Section 8 Existing Housing Program if they wish to be considered for such participation. The notice shall also state that applicants for participation in the program will not lose their places on the public housing waiting list.

15. In § 882.209, the section heading is revised, paragraph (f) is removed, paragraphs (a), (b) and (c)(7) are revised, paragraph (e) is redesignated as paragraph (m) and new paragraph (m) is revised, and new paragraphs (e) to (l) are added, to read as follows:

§ 882.209 Selection and participation.

(a) *Selection for Participation in PHA's Section 8 Existing Housing Program.* (1) A Family becomes a participant in the PHA's Section 8 Existing Housing Program ("participant") when the PHA executes a Contract with an Owner for housing assistance payments on behalf of the Family.

(2) The PHA shall determine whether an applicant for participation qualifies as a Family, and is income eligible.

(3) The PHA's administrative plan or equal opportunity housing plan may provide for preferences in selection of applicants.

(4) The PHA may establish selection preferences for applicants living in the PHA jurisdiction. However, preferences may not be based on the identity or location of the housing which is occupied or proposed to be occupied by the applicant, nor upon the length of time the applicant has resided in the jurisdiction. Applicants who are working or who have been notified that they are hired to work in the jurisdiction shall be treated as residents of the jurisdiction.

(5) The PHA shall not establish selection criteria based on the applicant's suitability as a tenant or expected behavior as a tenant. The Owner will select the tenant. The PHA's selection of an applicant for participation is not a representation by the PHA to the Owner concerning expected behavior of the Family in tenancy of a unit, or concerning the Family's suitability for tenancy.

(6) If the PHA has selected an eligible Family residing in an Independent Group Residence to participate in the PHA's Section 8 program, the PHA may establish a preference for selecting eligible applicants who have indicated the desire to reside in an Independent Group Residence when a Section 8 Family in an Independent Group Residence moves. A Family given this preference shall select the unit of its choice and does not have to reside in the Independent Group Residence in which a vacancy has occurred.

(7) The PHA shall maintain a waiting list of income eligible Families which have applied for participation in the PHA's Section 8 program. The PHA shall select applicants for participation from the waiting list in accordance with policies and procedures (including any preferences) stated in the administrative plan or equal opportunity housing plan.

(8) If there is insufficient funding to admit all eligible applicants to participation in the PHA's Section 8 program, the PHA may at any time suspend the acceptance or processing of new applications, or the addition of new listings to the waiting list. Any such suspension shall be publicly announced by the PHA through publication in a newspaper of general circulation as well as through minority media and other suitable means.

(9) Nothing in this Part is intended to confer on an applicant for participation any right to be listed on the PHA waiting list, to any particular position on the waiting list, to receive a Certificate, or to participate in the PHA's Section 8

program. The foregoing sentence shall not be deemed to affect or prejudice any judicially-recognized cause of action.

(10) The PHA shall maintain records of applicants and participants which provide HUD with racial, gender and ethnic data.

(11) The PHA shall retain for three years a copy of the application, notices to the applicant, and the applicant's responses.

(b) *Issuance of Certificate of Family Participation and Certificate Holder's Packet.* (1) When the PHA determines there is sufficient funding, the PHA shall issue a Certificate to an applicant on the waiting list.

(2) The PHA shall enter on the Certificate the smallest number of bedrooms consistent with standards established by the PHA for determining the number of bedrooms for Families of different sizes and compositions. The PHA's standards shall provide for the minimum commitment of housing assistance payments while avoiding overcrowding and shall be consistent with the applicable housing quality standards (see § 882.109(c)). The PHA shall grant exceptions from the standards if the PHA determines the exceptions are justified by the relationship, age, sex, health or handicap of Family members, or other individual circumstances. For a Family renting a unit with a larger or smaller number of bedrooms than stated on the Certificate, see § 882.209(i).

(3) The PHA shall maintain a system to assure that the PHA will be able to honor all outstanding Certificates within the funding provided under the ACC, and that it will comply to the maximum extent feasible with the unit distribution specified in the ACC.

(4) When issuing a Certificate, the PHA shall give the Family a Certificate Holder's Packet, which includes:

- (i) Request for Lease approval;
- (ii) Required Lease provisions and prohibited Lease provisions (see § 882.209(j)(1));
- (iii) Information regarding lead-based paint poisoning hazards, symptoms and precautions;
- (iv) Fair housing information and housing discrimination complaint forms, as required by HUD;
- (v) Information on the Total Tenant Payment and the Tenant Rent;
- (vi) The PHA's schedule of Utility Allowances;

(vii) Information on the PHA's procedures for conducting informal hearings for participants. This information shall contain a general description of the procedures for conducting informal hearings for

participants in the PHA program; including a description of the circumstances in which the PHA is required to provide the opportunity for an informal hearing (pursuant to § 882.216 (b)(1) and (b)(2)), and of the procedures for requesting a hearing;

(viii) Such other items as the PHA may determine.

(c) * * *

(7) Function of Fair Market Rent, determination of Tenant Payment, Total Tenant Rent and of the housing assistance payment; and

(e) *Information to Owners and Requests to PHA for Lease Approval.* (1) The PHA will respond to inquiries from Owners who have been approached by Certificate holders by explaining major program procedures including Lease provisions, Lease approval procedures, housing quality inspections, Contract provisions and payment procedures and by furnishing copies of the pertinent forms.

(2) When a Family has found a unit it wants and the Owner is willing to lease, the Family shall submit to the PHA a Request for Lease Approval signed by the Owner of the unit and the Family. At the same time, the Family shall submit a copy of the proposed Lease (which shall be in accordance with § 882.209(j)). The proposed Lease shall be complete except for execution and entry of the amount of rent payable by the Family to the Owner (Tenant Rent).

(f) *Amount of Contract Rent to Owner.* (1) The PHA shall determine whether the requested Contract Rent is approvable in accordance with § 882.106. If the Family is to pay directly for any of the utilities or services, the PHA shall determine the amount of the Utility Allowance on account thereof. Inasmuch as the Fair Market Rents are established for a geographic area within which the rents for modest Decent, Safe, and Sanitary housing may vary substantially, the PHA shall make an analysis to determine the reasonable rent for the particular unit. If the requested Contract Rent plus any applicable Utility Allowance is at or below the reasonable rent and at or below the Fair Market Rent, it may be approved.

(2) If the otherwise approvable Contract Rent to Owner plus the applicable Utility Allowance, if any, is higher than the applicable Fair Market Rent, and if the PHA determines that such higher rent is justified, it shall take the action required by § 882.106 to have a higher rent approved.

(g) *Amount of Rent Payable by Family to Owner.* The amount of rent payable

by the Family to the Owner shall be the Tenant Rent. Where applicable, the Utility Reimbursement will be paid by the PHA directly to the Family, or, if the Family and the utility company consent, may be paid jointly to the Family and the utility company or directly to the utility company.

(h) *Decent, Safe, and Sanitary Condition of Unit.* (1) Before approving a Lease, the PHA shall inspect the unit for compliance with the PHA's housing quality standards as established in accordance with § 882.109, or cause it to be so inspected on the date on which the Owner indicates that the unit will be ready for inspection, or as promptly as possible thereafter.

(2) If there are defects or deficiencies which must be corrected in order for the unit to be Decent, Safe, and Sanitary, the Owner shall be advised by the PHA of the work required to be done. Before a Contract is executed, the unit must be reinspected to ascertain that the necessary work has been performed and that the unit is Decent, Safe, and Sanitary. Occupancy of housing which requires repairs in order to be made Decent, Safe and Sanitary may be assisted under this Part only after such repairs have been made.

(3) A report of every inspection and reinspection under this paragraph (h) shall be prepared and maintained in the files of the PHA. Each such report shall specify: (1) Any defects or deficiencies which must be corrected in order for the unit to be Decent, Safe, and Sanitary, and (ii) any other defects or deficiencies, a record of which shall be maintained for use in the event of a subsequent claim by the Owner that they were caused during the period of occupancy by the Family.

(i) *Size of Units.* (1) Regardless of the number of bedrooms stated on the Certificate, no otherwise acceptable unit shall be disapproved on the ground that it is too large for the Family, if the rent to Owner plus any Utility Allowance applicable to the actual larger size unit does not exceed the Fair Market Rent, or such higher rent as may previously have been approved by HUD under § 882.106(a) (3) or (4), for a unit with the number of bedrooms stated on the Certificate.

(2) The PHA may not prohibit a Family from renting a unit with fewer bedrooms than the number stated on the Certificate. However, the unit must meet the space requirement of § 882.109(c), or such variation as may have been approved by HUD, and the rent to Owner plus any applicable Utility Allowance must not exceed the Fair Market Rent, or such higher rent as approved by HUD pursuant to

§ 882.106(a) (3) or (4), for the actual smaller size unit.

(j) *Lease Requirements.* (1) *Required and Prohibited Provisions.* The Lease between the Owner and the Family shall be in accordance with § 882.215, and any other applicable HUD regulations and requirements. The Lease must include all provisions required by HUD, and shall not contain any of the prohibited provisions in Appendix I.

(2) *Independent Group Residences.* Leases for Independent Group Residences shall incorporate by reference the supportive services to be provided in accordance with the written Service Agreement between the Owner and the Service Agency and/or other entities providing the necessary supportive services. If the lessor provides the supportive services, a Service Agreement is not required and the provision of these services shall be incorporated into the Lease. This Service Agreement or pertinent Lease provisions shall be approved in writing by the State prior to PHA execution of the Contract (See §§ 882.102 and 882.109(n)(6)).

(k) *Approval of Lease and Execution of Related Documents.* (1) If the PHA determines that a unit which an Eligible Family wishes to lease is in Decent, Safe, and Sanitary condition, that the rent is approvable, and that the proposed Lease complies with the requirements of this Part, the PHA shall notify the Owner and the Family of its determination of Lease approval, and furnish two copies of the Contract to the Owner.

(2) After notification: (i) The Family and the Owner shall execute the Lease; (ii) the Owner shall sign both copies of the Contract, and shall furnish to the PHA a copy of the executed Lease, and both copies of the executed Contract; (iii) the PHA shall execute the Contract and return an executed copy to the Owner.

(3) The PHA shall retain the following in its files: The Request for the Lease Approval, the approved Lease, inspection report(s), the certification pursuant to § 882.106(b) that the rent is reasonable and not in excess of rents currently being charged by the Owner for comparable unassisted units, and the executed Contract.

(l) *Disapproval of Lease.* (1) If the PHA determines that the Lease cannot be approved for any reason, including the condition of the unit, the PHA shall notify the Owner and the Family that:

(i) The proposed Lease and/or the proposed dwelling unit are/is disapproved, for specified reasons; and

(ii) If the conditions requiring disapproval are remedied, and a Request for Lease Approval is resubmitted on or before a specified date, the Lease will be approved if the PHA determines that the conditions have been remedied to its satisfaction.

(2) The Certificate of Family Participation shall not expire before the date specified pursuant to paragraph (1)(1)(ii) of this section.

(3) The PHA shall retain in its files the following: the Request for Lease Approval, the inspection report(s), if any, and the notification of disapproval of the Lease.

(m) *Continued Participation When Participant Family Moves.* (1) If a participant in the PHA's Section 8 program notifies the PHA, during or at the end of the term of the Lease, that the Family wants another Certificate so that the Family can move to another dwelling unit within the area in which the PHA has determined that the PHA is not legally barred from entering into Contracts, the PHA shall (unless the PHA determines it does not have sufficient funding for continued Section 8 assistance for the Family) either: (i) issue another Certificate, or (ii) deny issuance of a Certificate in accordance with § 882.210.

(2) If a participant in the PHA's Section 8 program moves out of the area in which the PHA has determined that it is able to enter Contracts, the Family may obtain housing assistance under the Section 8 program only if the Family is admitted to participation in the Section 8 program of a PHA operating in the area to which the Family moves. The new PHA shall treat the Family either as a participant in the PHA's Section 8 program to whom the PHA is already providing assistance and who wants to move to another unit, or as a resident who has submitted an application for participation. In either case, the PHA shall not deny admission to the program on the ground that the Family income is above limits for admission in that jurisdiction.

18. Section 882.210 is revised, to read as follows:

§ 882.210 Grounds for denial or termination of assistance.

(a) This section states the grounds for denial of assistance to an applicant, or for denial or termination of assistance to a participant, because of action or inaction by the applicant or participant.

(b) The PHA may deny an applicant admission to participation in the program, may deny issuance of another Certificate to a participant who wants to move to another dwelling unit (see § 882.209(m)(1) and § 882.216(b)(1)(iv)),

and may decline to enter into a Contract, or to approve a Lease, where requested by a participant, in the following cases:

(1) If the applicant or participant currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the United States Housing Act of 1937.

(2) If the applicant (as a previous participant in the Section 8 program) or participant has not reimbursed the PHA or another PHA for any amounts paid to an Owner under a Contract for rent or other amounts owned by the Family under the Lease (see § 882.112(d)), or for a vacated unit (see § 882.105(b)).

(3) If the applicant or participant has committed any fraud in connection with any federal housing assistance program.

(4) If the applicant or participant has violated any Family obligation under the Section 8 Existing Housing Program as stated in § 882.118.

(5) If the applicant or participant has breached an agreement as described in § 882.210(c).

(c) In the cases described in § 882.210(b)(1) and (2), the PHA may at its discretion offer the applicant or participant the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an Owner by a PHA. If the PHA elects to make such offer, the agreement shall be on terms prescribed by the PHA. The PHA may at any time deny or terminate assistance for breach of such agreement.

(d) In the following cases, the PHA may terminate housing assistance payments which are being made on behalf of the participant under an outstanding Contract: (1) If the participant has committed any fraud in connection with any federal housing assistance program. (2) If the participant has violated any Family obligation under the Section 8 Existing Housing Program as stated in § 882.118. (3) If the participant has breached an agreement as described in § 882.210(c) above. The provisions of this paragraph (d) shall not affect or limit the right of the PHA to exercise any Contract remedy against the Owner under an outstanding Contract, including the termination of housing assistance payments to the Owner (see § 882.211(c) and § 882.216(b)(2)(iii)).

17. Section 882.211 is revised to read as follows:

§ 882.211 Maintenance, operation and inspections.

(a) *Maintenance and Operation.* The Owner shall provide all the services, maintenance and utilities which the Owner agrees to provide under the

Contract, subject to termination of housing assistance payments or other applicable remedies if the Owner fails to meet these obligations.

(b) *Periodic Inspection.* In addition to the initial inspection provided under § 882.209(h)(1), the PHA will inspect or cause to be inspected each dwelling unit leased to a Family at least annually and at such other times as may be necessary to assure that the Owner is meeting the obligation to maintain the unit in Decent, Safe and Sanitary condition and to provide the agreed upon utilities and other services. The PHA will take into account complaints and any other information coming to its attention in scheduling inspections. All complaints by Families concerning compliance by the Owner with the housing quality standards shall be retained in the PHA's files for three years.

(c) *Units Not Decent, Safe and Sanitary.* If the Owner fails to maintain a dwelling unit in Decent, Safe and Sanitary condition, the PHA may exercise any of its rights and remedies under the Contract, including termination of housing assistance payments (even if the Family continues in occupancy) and termination of the Contract. If the PHA determines to terminate the Contract, and the Family wants to move to another dwelling unit with assistance under the PHA's Section 8 program, the PHA shall issue another Certificate to the Family (unless the PHA denies issuance of a Certificate in accordance with § 882.210).

18. Section 882.213 is revised to read as follows:

§ 882.213 Overcrowded or oversized units.

The PHA shall issue a participant Family a new Certificate, and the Family and PHA shall try to find an acceptable unit as soon as possible, if: (a) The PHA determines that a Contract unit is not Decent, Safe and Sanitary because of an increase in Family size or a change in Family composition, or (b) The PHA determines that the Family is residing in a unit with a larger number of bedrooms than appropriate under the PHA standards (see § 882.209(b)(2)) because of a change in Family size or change in Family composition, and that the Gross Rent for the unit exceeds the Fair Market Rent for a unit with the number of bedrooms appropriate for the Family size and composition. (The PHA shall notify the Family that exceptions to the standards may be granted, and of the circumstances in which the grant of an exception will be considered by the PHA.) If an acceptable unit is found that is available for occupancy by the

Family, the PHA shall terminate the Contract in accordance with its terms.

19. Section 882.215 is revised to read as follows:

§ 882.215 Assisted tenancy.

(a) *Term of Lease.* (1) The term of the Lease shall begin on a date stated in the Lease, and shall continue until: (i) A termination of the Lease by the Owner in accordance with paragraph (c) of this section, (ii) a termination of the Lease by the Family in accordance with the Lease or by mutual agreement during the term of the Lease, or (iii) a termination of the Contract by the PHA.

(2) The term of the Lease shall begin at least one year prior to the end of the remaining term of the ACC. The Contract and the Lease shall end upon termination of the ACC.

(3) During the term of the Lease, the Contract Rent shall be subject to adjustment in accordance with § 882.108, and the Tenant Rent shall be subject to change in accordance with HUD regulations and requirements.

(4) The Owner may offer the Family a new Lease for execution by the Family after approval by the PHA in accordance with § 882.209(k), for a term beginning at any time after the first year of the term of the Lease. The Owner shall give the tenant written notice of the offer, with copy to the PHA, at least sixty days before the proposed commencement date of the new Lease term. The offer may specify a reasonable time limit for acceptance by the Family.

(5) The Lease shall permit a termination of the Lease by the Family without cause, at any time after the first year of the term of the Lease, or not more than sixty days written notice by the Family to the Owner (with copy to the PHA).

(b) *Housing Assistance Payments Contract.* (1) The Contract for a unit shall be in a form prescribed by HUD.

(2) The term of the Contract shall begin on the first day of the term of the Lease and shall end on the last day of the term of the Lease.

(c) *Termination of Tenancy (for Leases entered into on or after October 1, 1981).* (1) The Owner shall not terminate the tenancy except for:

- (i) Serious or repeated violation of the terms and conditions of the Lease;
- (ii) Violation of Federal, State, or local law which imposes obligations on the tenant in connection with the occupancy or use of the dwelling unit and surrounding premises; or
- (iii) Other good cause.

(2) The following are some examples of "other good cause" for termination of tenancy by the Owner: Failure by the

Family to accept the offer of a new Lease in accordance with paragraph (a)(4) of this section; a Family history of disturbance of neighbors or destruction of property, or of living or housekeeping habits resulting in damage to the unit or property; criminal activity by Family members involving crimes of physical violence to persons or property; the Owner's desire to utilize the unit for personal or family use or for a purpose other than use as a HUD assisted residential rental unit; or a business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, desire to rent the unit at a higher rental). This list of examples is intended as a non-exclusive statement of some situations included in "other good cause," but shall in no way be construed as a limitation on the application of "other good cause" to situations not included in the list.

(3) The Owner may evict the tenant from the unit only by instituting a court action. The Owner must notify the PHA in writing of the commencement of procedures for termination of tenancy, at the same time that the Owner gives notice to the tenant under State or local law. The notice to the PHA may be given by furnishing to the PHA a copy of the notice to the tenant.

(d) *Termination of Tenancy (for Leases entered into before October 1, 1981).* For Leases entered into before October 1, 1981, the PHA shall have the sole right to give the notice to vacate, with the Owner having the right to make representation to the PHA for termination of tenancy.

(e) *Concurrent Notices.* Any notices required under this section (see paragraphs (a)(4), (a)(5), (c)(3) and (d) of this section) may be combined with and run concurrently with any notices required under State or local law.

(f) *Non-applicability of Part 247—Evictions from Certain Subsidized and HUD-owned Projects.* Notwithstanding the provisions of 24 CFR 247.1, 24 CFR Part 247 shall not apply to a tenancy assisted under the Section 8 Existing Housing Program.

(g) *Applicability.* Paragraphs 882.215 (a), (b), (c)(2) and (c)(3) shall be applicable if a Lease or Contract is entered after May 10, 1984.

20. Section 882.216 is revised to read as follows:

§ 882.216 Informal review or hearing.

(a) *Informal Review of PHA Decision on Application for Participation in PHA Program.* (1) The PHA shall give an applicant for participation in the PHA's Section 8 Existing Housing Program prompt written notice of a decision denying assistance to the applicant

including a decision denying listing on the PHA waiting list, issuance of a Certificate of Family Participation, or participation in the program). The notice shall also state that the applicant may request an informal review of the decision, and shall describe how to obtain the informal review.

(2) The PHA shall give the applicant an opportunity for an informal review of the decision, in accordance with review procedures established by the PHA. The informal review shall be conducted by any person or persons designated by the PHA, other than a person who made or approved the decision under review or a subordinate of such person. The applicant shall be given an opportunity to present written or oral objections to the PHA decision. The PHA shall promptly notify the applicant in writing of the final PHA decision after the informal review, including a brief statement of the reasons for the final decision.

(3) The PHA is not required to provide an opportunity for an informal review in accordance with paragraph (a):

(i) To review discretionary administrative determinations by the PHA, or to consider general policy issues or class grievances;

(ii) To review the PHA's determination of the number of bedrooms entered on the Certificate under the standards established by the PHA (see § 882.209(b)(2));

(iii) To review the PHA's determination that a unit located by a Certificate holder does not comply with the PHA's housing quality standards established in accordance with § 882.109, or the PHA's determination not to approve the Lease for the unit;

(iv) To review the PHA's decision not to approve a request by a Certificate holder for an extension of the term of the Certificate.

(b) *Informal Hearing on PHA Decision Affecting Participant Family.* (1) The PHA shall give a participant in the PHA's Section 8 Existing Housing Program an opportunity for an informal hearing to consider whether decisions relating to the individual circumstances of the Family are in accordance with law, HUD regulations and PHA rules, in the following cases:

(i) A determination of the amount of the Total Tenant Payment or Tenant Rent (not including determination of the PHA's schedule of Utility Allowances for Families in the PHA's Section 8 program).

(ii) A decision to deny or terminate assistance on behalf of the participant.

(iii) A determination that a participant family is residing in a unit with a larger number of bedrooms than appropriate under the PHA standards (see § 882.209(b)(2) and § 882.213), and the PHA's determination to deny the family's request for an exception from the standards.

(iv) In the case of an assisted Family which wants to move to another dwelling unit with continued participation in the PHA program (see § 882.209(m)(1)), a determination of the number of bedrooms entered on the Certificate under the standards established by the PHA (see § 882.209(b)(2)).

(2) The PHA is not required to provide an opportunity for an informal hearing in accordance with paragraph (b):

(i) To review discretionary administrative determinations by the PHA, or to consider general policy issues or class grievances;

(ii) To review the PHA's determination that a unit does not comply with the PHA's housing quality standards established in accordance with § 882.109, that the Owner has failed to maintain or operate a Contract Unit to provide decent, safe and sanitary housing in accordance with the HQS (including all services, maintenance and utilities required under the Lease), or that the Contract unit is not decent, safe and sanitary because of an increase in Family size or change in Family composition;

(iii) To review a decision by the PHA to exercise any remedy against the Owner under an outstanding Contract, including the termination of housing assistance payments to the Owner (see § 882.211(c)); or

(iv) To review the PHA's decision not to approve a Family's request for an extension of the term of the Certificate issued to an assisted Family which wants to move to another dwelling unit with continued participation in the PHA's Section 8 program.

(3)(i) The PHA shall give the participant prompt written notice of a decision described in § 882.216(b)(1)(ii) or (iii). The notice shall contain a brief statement of the reasons for the decision. The notice shall state that, if the participant does not agree with the decision, the participant may request an informal hearing on the decision, and shall also state the time by which the request for an informal hearing must be made by the participant.

(ii) When the PHA determines the amount of the Total Tenant Payment or the Tenant Rent as described in § 882.216(b)(1)(i), or determines the number of bedrooms entered on the Certificate of an assisted Family which

wants to move to another dwelling unit as described in § 882.216(b)(1)(iv), the PHA shall notify the participant that the participant may ask for an explanation of the basis of the PHA determination, and that, if the participant does not agree with the determination, the participant may request an informal hearing on the decision.

(1) If the PHA has decided to terminate housing assistance payments on behalf of a participant under an outstanding Contract (and if the PHA is required to give the participant an informal hearing on the decision), the participant shall be afforded the opportunity for such informal hearing before the termination of housing assistance payments.

(5) In all cases where a hearing is required under paragraph (b), the PHA shall proceed with a hearing in a reasonably expeditious manner upon the request of the participant.

(6) The PHA shall adopt written procedures for conducting informal hearings for participants in the PHA's Section 8 program. The PHA hearing procedures shall comply with the following:

(i) The hearing may be conducted by any person or persons designated by the PHA; other than a person who made or approved the decision under review or a subordinate of such person.

(ii) At its own expense, the participant may be represented by a lawyer or other representative.

(iii) The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA hearing procedures.

(iv) The PHA and the participant shall be given the opportunity to present evidence, and may question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(v) The person who conducts the hearing shall issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the participant shall be based on the evidence presented at the hearing. A copy of the hearing decision shall be furnished promptly to the participant.

(7)(i) The PHA is not bound by a hearing decision: (A) Concerning a matter for which the PHA is not required to provide an opportunity for an informal hearing pursuant to § 882.216(b), or otherwise in excess of the authority of the person conducting the hearing under the PHA hearing procedures, or (B) Contrary to HUD regulations or requirements, or

otherwise contrary to Federal, State or local law.

(ii) If the PHA determines that it is not bound by a hearing decision, the PHA shall promptly notify the participant of the determination, and of the reasons for the determination.

Appendix I—[Removed]

21. In Part 882, Appendix I—Required Lease Provisions is removed and Appendix II is redesignated as Appendix I.

22. In § 882.504, paragraph (j) is revised to read as follows:

§ 882.504 Assistance to owners and selection of units.

(j) The Lease between the Owner and the Family must be in accordance with § 882.511 and any other applicable HUD regulations and requirements. The Lease must include all provisions required by HUD, and must not include any of the prohibited provisions in Appendix I.

Authority: Section 8, United States Housing Act of 1937 (42 U.S.C. 1437f); sec. 326(e) of the Housing and Community Development Amendments of 1981 (Pub. L. 97-35); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: March 21, 1984.

Maurice L. Barksdale,

Assistant Secretary for Housing, Federal Housing Commissioner.

(FR Doc. 84-1053; 29 FR 1700)
BILLING CODE 4210-27-4

Solar Energy and Energy Conservation Bank

24 CFR Part 1800

[Docket No. R-84-1053; FR-1700]

Financial Assistance Program of the Solar Energy and Energy Conservation Bank; Correction

AGENCY: Solar Energy and Energy Conservation Bank, HUD.

ACTION: Final rule; correction.

SUMMARY: The purpose of this document is to correct a table contained in a final rule that set forth the requirements for implementing the Solar Energy and Energy Conservation Bank's program which was published in the Federal Register on March 18, 1984 (49 FR 9865).

FOR FURTHER INFORMATION CONTACT: Dr. Richard Francis, Manager, Solar Energy and Energy Conservation Bank, Telephone number, (202) 755-7166. (This is not a toll-free number.)

Accordingly, the following is being made in FR Doc. 84-7024 appearing in

APPENDIX B:

A LIST OF THE STATES AND CITIES INCLUDED IN THE STUDY

A List of the States and Cities Included in the Study

REGION I

Connecticut

Bridgeport
Hartford
New Haven

Massachusetts

Springfield
Worcester

REGION VII

Missouri

St. Louis
Springfield
Independence
Kansas City

Nebraska

Omaha
Lincoln

Kansas

Wichita
Kansas City
Topeka

Iowa

Des Moines
Cedar Rapids
Davenport

REGION III

Pennsylvania

Allentown
Erie
Pittsburg

Virginia

Roanoke
Richmond
Alexandria
Chesapeake
Hampton
Newport News
Norfolk
Portsmouth

REGION IX

Arizona

Mesa
Tucson
Tempe

Nevada

Reno
Las Vegas

California

Berkeley
Long Beach
Oakland
Oxnard
Sacramento
Pasadena
Santa Ana

Hawaii

Honolulu

REGION V

Ohio

Cincinnati
Toledo
Akron
Dayton
Youngstown

Michigan

Grand Rapids
Warren
Flint
Lansing
Sterling Heights
Ann Arbor
Livonia

Indiana

Fort Wayne
Evansville
South Bend

Wisconsin

Madison

Minnesota

St. Paul

Illinois

Rockford
Peoria

APPENDIX C:
TRANSMITTAL AND FOLLOW-UP LETTERS

OWA STATE
UNIVERSITY

Community and Regional Planning
Ames, Iowa 50011

Telephone: 515-294-8958

January 7, 1984

Dear Sir/Madame:

I am a second year graduate student majoring in Community and Regional Planning. Currently, I am researching the present and past administrative procedures of Section 8 (Existing) Housing Assistance Program by Public Housing Authorities. To further my understanding of the program, a questionnaire was developed for program participants. It is hoped that this survey instrument will provide insight on the following:

1. The future of the program.
2. The present role of the program.
3. A comparison of participants.
4. The strengths and weaknesses of the program.
5. The political climate that leads to or influences program changes.

Your participation is greatly needed. Please complete the attached questionnaire and return by January 19th if at all possible. All information received will be privy only to the principal researcher. The completed analysis will be interpreted, bound, and submitted in thesis form as a partial requirement for completing the graduate program in Community and Regional Planning. Thank you for your assistance. If there are any questions, please feel free to contact me.

Sincerely

(

Jocelyn Vanessa Terry, Graduate Student
Department of Community and Regional
Planning
(515) 294-9815 or 294-8958

attachment

IOWA STATE
UNIVERSITY

Community and Regional Planning
Ames, Iowa 50011

Telephone: 515-294-8958

January 26, 1984

To: Public Housing Authority
From: Jocelyn Vanessa Terry
Subject: Section 8 (Existing) Housing Assistance Program

On January 7, 1984, a questionnaire was mailed to your office. As of today, your questionnaire has not been received. Because a representative sample is necessary to complete the project, a second questionnaire is enclosed. If the previous questionnaire has been returned, please disregard this letter.

Thank you for your cooperation.

Enclosure

IOWA STATE
UNIVERSITY

Community and Regional Planning
Ames, Iowa 50011

Telephone: 515-294-8958

January 26, 1984

To: HUD Housing Commissioner
From: Jocelyn V. Terry
Subject: Section 8 (Existing) Housing Assistance Questionnaire

On January 7, 1984, a questionnaire was mailed to your office. A similiar yet more detailed questionnaire was also mailed to Public Housing Authorities.

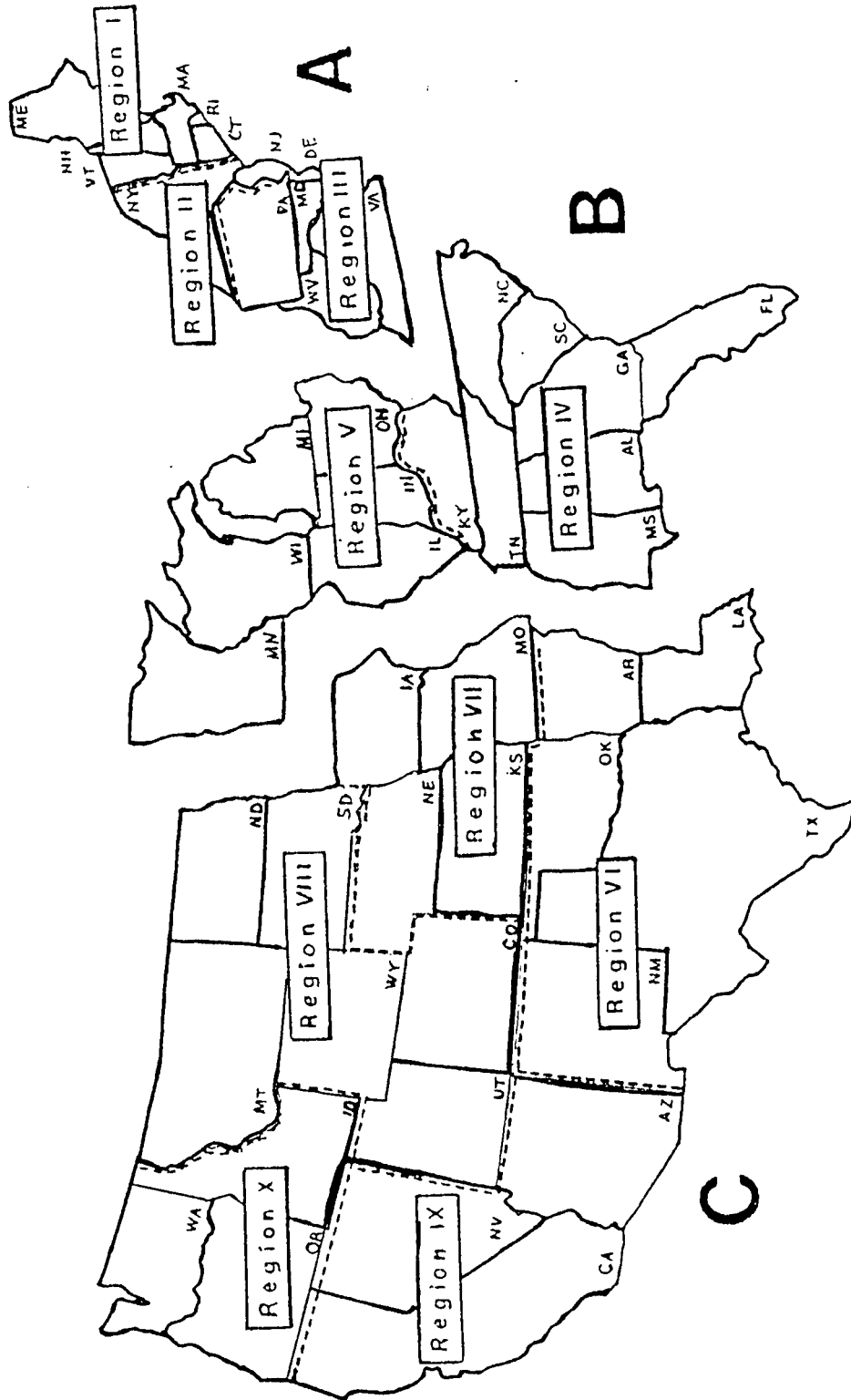
Although, your office does not administer the program, your insight on Section 8 programming is requested. Please complete the enclosed questionnaire, specifically items 7, and 9 through 15. Because a representative sample is necessary to complete the project, the questionnaire should be returned promptly.

Thank you for your cooperation.

Enclosure

APPENDIX D:
MAP OF SURVEY AREA

Map of survey area



APPENDIX E:
SURVEY INSTRUMENTS

SECTION 8 (EXISTING) HOUSING ASSISTANCE QUESTIONNAIRE

Agency Name _____

Municipality _____

1. Has this agency participated in the Section 8 Housing Assistance Program?
Yes No
2. How many years were you a participant?
Origination Date _____ Expiration Date _____
3. How long has this agency been established?
4. Was this agency established expressly to administer Section 8?
Yes No
5. What aspects of the Existing Program prompted your participation?
 Invitation by HUD
 Encouragement by local officials
 Encouragement by civic organizations
 Other _____
6. How many employees were assigned to administer the program prior to 1980?
7. What is the current number of persons assigned to administer the program?
8. What is the educational background of the person administering Section 8 programming?
 High School
 Bachelor's Degree
 Master's Degree
 Ph.D. Degree
 Other _____

9. How many housing units have been leased under section 8 during the following years?

1976	1977	1978	1979	1980	1981	1982	1983	Projected units 1984
------	------	------	------	------	------	------	------	-------------------------

10. What is the total population of your target area(s)?

11. How many households within the target area are in need of low-income housing?

12. What are the characteristics of your low-income clientele during the following years?

	1976-1979	1980-1983
White	_____	_____
Black	_____	_____
Hispanic	_____	_____
Elderly	_____	_____
Other	_____	_____

13. How much input do the following groups have in Section 8 programming?

	Minor Role		Major Role	
	1	2	3	
Chamber of Commerce	1	2	3	
Mayor	1	2	3	
Civic Groups	1	2	3	
Client Population	1	2	3	
Other _____	1	2	3	

14. Looking back, what was the amount of freedom granted by HUD to make major program decisions during the following years?

	1976-1979	1980-Present
More Freedom	_____	_____
Same Freedom	_____	_____
Less Freedom	_____	_____

15. How much input do the following groups have in making Section 8 programming decisions?

	Minor Role		Major Role
Public Housing Authorities	1	2	3
Civic Groups	1	2	3
Client Population	1	2	3
Chamber of Commerce	1	2	3

16. Of the money allocated by HUD for Section 8 Funding, how much has been allocated for the Existing Program during the following years?

1976	1977	1978	1979	1980	1981	1982	1983	Projected amount 1984

17. How effective has Section 8 been in achieving the following goals?

	Effective	Moderately Effective	Ineffective
a. Encouraging mobility among low-income families	—	—	—
b. Assisting special groups (elderly, handicapped, female-headed households)	—	—	—
c. Improving housing units	—	—	—
d. Stimulating the economy	—	—	—
e. Increasing the supply of low-income housing	—	—	—
f. Provide housing for moderate income families	—	—	—
g. Reduce housing costs	—	—	—
h. Improve neighborhood quality	—	—	—

18. What role does the Section Existing Program play in meeting the housing needs of your low-income population?

- a. Minor Role
- b. Moderate Role
- c. Major Role

19. Rank the degree to which the following changes caused the apparent revisions of Section 8.

	<u>Least Important</u>	<u>Moderately Important</u>	<u>Important</u>
Fair market rents too high	_____	_____	_____
Fair market rents too low	_____	_____	_____
Production cost too high	_____	_____	_____
Inefficient rent verification	_____	_____	_____
Ineffective administration at the national level	_____	_____	_____
Ineffective administration at the local level	_____	_____	_____
Level of support of the mayor	_____	_____	_____
Level of support of the council	_____	_____	_____
Inability to find low income families	_____	_____	_____
Other _____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

20. How has current changes in Section 8 programming influenced the provision of local low-income housing in your community?

21. What do you feel are the assets of Section 8?

- 1. _____
- 2. _____
- 3. _____

22. What are the limitations of the program?

- 1. _____
- 2. _____
- 3. _____

23. Does the state provide assistance in the provision of low-income housing? If so, what type of assistance is provided?

24. Has the state increased their low-income housing assistance since 1980?

25. In your opinion, what is the future of the Section 8 Existing Program?

- _____ It will be continued.
- _____ It will be altered.
- _____ It will be phased out.

Thank you for your assistance. If there are any questions, please
contact Jocelyn Vanessa Terry
College of Design
Department of Community and
Regional Planning
Ames, Iowa 50010
(515) 294-9815 or 294-8958

Jocelyn V. Terry
126 College of Design
Dept. of Community and Regional
Planning, ISU
Ames, Iowa 50011

SECTION 8 (EXISTING) HOUSING ASSISTANCE QUESTIONNAIRE

Agency Name _____

Municipality _____

1. How many employees were assigned to administer the program prior to 1980?
2. What is the current number of persons assigned to administer the program?
3. What is the educational background of the person administering Section 8 programming?

_____ High School

_____ Bachelor's Degree

_____ Master's Degree

_____ Ph.D. Degree

_____ Other _____

4. How many housing units have been leased under Section 8 during the following years?

1976	1977	1978	1979	1980	1981	1982	1983	Projected units 1984

5. What is the total population of your target area(s)?
6. How many households within the target area are in need of low-income housing?

7. How much input do the following groups have in making Section 8 programming decisions?

	Minor Role		Major Role
Public Housing Authorities	1	2	3
Civic Groups	1	2	3
Client Population	1	2	3
Chamber of Commerce	1	2	3

8. Of the money allocated by HUD for Section 8 Funding, how much has been allocated for the Existing Program during the following years?

1976	1977	1978	1979	1980	1981	1982	1983	Projected amount 1984

9. How effective has Section 8 been in achieving the following goals?

	Effective	Moderately Effective	Ineffective
a. Encouraging mobility among low-income families	—	—	—
b. Assisting special groups (elderly, handicapped, female-headed households)	—	—	—
c. Improving housing units	—	—	—
d. Stimulating the economy	—	—	—
e. Increasing the supply of low-income housing	—	—	—
f. Provide housing for moderate income families	—	—	—
g. Reduce housing costs	—	—	—
h. Improve neighborhood quality	—	—	—

10. What role does the Section Existing Program play in meeting the housing needs of your low-income population?

- Minor Role
- Moderate Role
- Major Role

11. Rank the degree to which the following changes caused the apparent revisions of Section 8.

	<u>Least Important</u>	<u>Moderately Important</u>	<u>Important</u>
Fair market rents too high	_____	_____	_____
Fair market rents too low	_____	_____	_____
Production cost too high	_____	_____	_____
Inefficient rent verification	_____	_____	_____
Ineffective administration at the national level	_____	_____	_____
Ineffective administration at the local level	_____	_____	_____
Level of support of the mayor	_____	_____	_____
Level of support of the council	_____	_____	_____
Inability to find low income families	_____	_____	_____
Other _____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

12. How has current changes in Section 8 programming influenced the provision of local low-income housing in your community?

13. What do you feel are the assets of Section 8?

1. _____
2. _____
3. _____

14. What are the limitations of the program?

1. _____
2. _____
3. _____

15. In your opinion, what is the future of the Section 8 Existing Program?

- It will be continued.
- It will be altered.
- It will be phased out.

Thank you for your assistance. If there are any questions, please contact

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