Sunshine Act Meetings

Federal Register
Vol. 53, No. 10
Friday, January 15, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 11:32 a.m. on Wednesday, December 23, 1987, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) The application of The Haysville State Bank, Haysville, Kansas, an insured State nonmember bank, for consent to merge, under its charter and title, with First Interim Corporation, Wichita, Kansas, a wholly-owned subsidiary of First Bancorp of Kansas, Wichita, Kansas; and (2) a recommendation regarding the Corporation's assistance agreement with an insured bank.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting pursuant to subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: December 23, 1987.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Assistant Executive Secretary (Operations).

[FR Doc. 88-881 Filed 1-13-88; 1:40 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, January 19, 1988, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda:

Memorandum regarding the Corporation's budget for 1988.

Recommendation regarding reserves for losses.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: January 12, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-882 Filed 1-13-88; 1:40 pm]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, January 19, 1988, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B), of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii).

Note.—Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Discussion Agenda:

Memoranda regarding the Corporation's corporate activities.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: January 12, 1988.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 88-883 Filed 1-13-88; 1:40 pm]

BILLING CODE 6714-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m.—January 20, 1988.

PLACE: Hearing Room One—1100 L Street NW., Washington, DC 20573.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Trans-Atlantic Amnesty Program.
2. Procedures for Compromise and Settlement of Civil Penalties.
3. Service Contracts Filed by the Asia North America Eastbound Rate Agreement.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Secretary (202) 523–5725.

Joseph C. Polking,

Secretary.

[FR Doc. 88–827 Filed 1–13–88; 10:24 am]

BILLING CODE 6730–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

January 11, 1988.

Change in Previously Announced Item

TIME AND DATE: 10:00 a.m., Wednesday, January 13, 1988.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: The following changes are noted for the meeting scheduled for January 13, 1988.

1. Oral argument in *Rushton Mining Company*, Docket No. PENN 86–44–R, etc. has been postponed until February 11, 1988. The Commission will also consider the case at that time.

2. *Harlan L. Thurman v. Queen Ann Coal Company*, Docket No. SE 86–121–D will be considered as previously announced.

It was determined by a unanimous vote of Commissioners that this change be made and no earlier announcement of the change was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/ (202) 566–2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 88–846 Filed 1–13–88; 8:45 am]

BILLING CODE 6735–01–M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, January 20, 1988.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 12, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88–869 Filed 1–13–88; 11:49 am]

BILLING CODE 6210–01–M

POSTAL RATE COMMISSION

TIME AND DATE: The Notice published in Vol. 53, No. 5, **Federal Register**, p. 596, January 8, 1988, is amended under "Time and Date" to read: 9:30 a.m. and 2:00 p.m. on January 14, 15, 20, 26, 27 and February 1, 2, 3, and 4; and 9:30 a.m. on January 21 and 28, 1988.

PLACE: Conference Room, 1333 H Street NW., Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: The Notice published in Vol. 53, No. 5, **Federal Register**, p. 596, January 8, 1988, is also amended under "Matter To Be Considered" to read: A series of 20 CLOSED meetings to discuss evidence in Docket No. R87–1.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 88–828 Filed 1–13–88; 10:24 am]

BILLING CODE 7715–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (53 FR 655 January 11, 1988).

STATUS: Closed meeting.

PLACE: 450 5th Street, NW., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Tuesday, January 5, 1988.

CHANGES IN THE MEETING: Additional meeting.

A following item will be considered at a closed meeting scheduled for Thursday, January 14, 1988, following the 10:00 a.m. open meeting.

Report of investigation.

Commissioner Cox, as duty officer, determined that Commission business required the above change.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Kevin Fogarty at (202) 272–3195.

Jonathan G. Katz,

Secretary.

January 13, 1988.

[FR Doc. 88–933 Filed 1–13–88; 4:00 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 53, No. 10
Friday, January 15, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 68

Petition for Modification; Terminal Equipment Line Power To Operate Continuity of Output Functions

Correction

In rule document 87-29812 appearing on page 49413 in the issue of Thursday, December 31, 1987, make the following correction:

In the third column, under **SUPPLEMENTARY INFORMATION**, in the second line from the bottom, "to" should read "too".

BILLING CODE 1505-01-D

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FPMR A-40, Supp. 26]

Federal Travel Regulations

Correction

In notice document 87-29142 beginning on page 48325 in the issue of Monday, December 21, 1987, make the following correction:

On page 48326, in the second column, in paragraph 2-6.2d.(1)(b)(1), in the second line, "prepared" should read "prepaid".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-050-4212-13; CA 20077]

Realty Action; Exchange; Public Lands and Private Lands in Butte County, Lake County, Mendocino County, Siskiyou County, Sonoma County, and Tehama County, CA

Correction

In notice document 87-29630 beginning on page 48882 in the issue of Monday, December 28, 1987, make the following corrections:

1. On page 48882, in the second column, under Tract 10 T. 42 N., R. 5 W., the land description should read:
Sec. 18, W½SW¼NE¼NE¼SE¼,
W½NE¼SE¼,
W½SE¼NE¼SE¼;

2. In the same column, under Tract 11 T. 9 N., R. 11 W., after " Sec. 26, S½ NW¼", insert "Containing 386.25 acres more or less."

3. In the same column, in the 21st line from the bottom,"Tract 13 N.," should read "T. 13 N.,".

NOTE: For a Bureau of Land Management correction to this document see the Notices section of this issue.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 87-150]

Customs Regulations Amendments Concerning Reporting Requirements for Small Vessels

Correction

In rule document 87-29181 beginning on page 48194 in the issue of Monday, December 21, 1987, make the following corrections:

1. On page 48195, in the first column, in the 25th line from the bottom, "Operations" should read "Operators".

2. On the same page, in the second column, in the 14th line, "Marine" should read "Marina".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8166]

Income Tax; Consent Dividends

Correction

In rule document 87-28635 beginning on page 47554 in the issue of Tuesday, December 15, 1987, make the following corrections:

§ 1.565-1T [Corrected]

1. On page 47555, in the first column, in § 1.565-1T(a), in the sixth line, "actual" was misspelled.

2. On the same page, in the third column, in § 1.565-1T(c)(3), in the fourth line, "if filed" should read "is filed".

§ 1.565-2T [Corrected]

3. On page 47556, in the second column, in § 1.565-2T(b)(2), *Example (1)*, in the second line, "high" should read "his".

4. On the same page, in the same column, in § 1.565-2T(b)(2), *Example (2)*, in the second line, "it" should read "its" and in the ninth line, "cash $5,000" should read "cash of $5,000".

BILLING CODE 1505-01-D

federal register

Friday
January 15, 1988

Part II

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 215 et al.

Preference in the Provision of Housing for Families Who Are Occupying Substandard Housing, Involuntarily Displaced, or Paying More Than 50 Percent of Family Income for Rent; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 215, 880, 881, 882, 883, 884, 886, 904, 905, and 960

[Docket No. R-88-1187; FR-1597]

Preference in the Provision of Housing for Families Who Are Occupying Substandard Housing, Involuntarily Displaced, or Paying More Than 50 Percent of Family Income for Rent

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements a statutory directive to give preference in the provision of housing assistance to families eligible for assistance under the Public and Indian Housing, Section 8, or Rent Supplement programs that are living in substandard housing, that are involuntarily displaced, or that are paying more than 50 percent of family income for rent. This rule helps to ensure that housing assistance under these programs is directed to those with greatest housing needs. This rule implements a proposed rule on this subject, published on September 26, 1984 (49 FR 37787).

EFFECTIVE DATE: Under Section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)(3)), this final rule cannot become effective until after the first period of 30 calendar days of continuous session of Congress which occurs after the date of the rule's publication. HUD will publish a notice of the effective date of this rule following expiration of the 30-session-day waiting period. Whether or not the statutory waiting period has expired, this rule will *not* become effective until HUD's separate notice is published announcing a specific effective date; Public Housing Agencies and owners must implement this rule no later than July 13, 1988.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Program Planning Division, Room 6182, Department of Housing and Urban Development, telephone (202) 426-3970 (for 24 CFR Parts 215, 880, 881, 884, and 886); Madeline Hastings, Existing Housing Division, Room 6124, Department of Housing and Urban Development, telephone (202) 755-6887 (for 24 CFR Part 882); and Nancy Chisholm, Office of Policy, Room 4118, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-6713 (for 24 CFR Parts 904, 905, and 960). (These are not toll-free numbers.)

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Statutory Basis

Section 206 of the Housing and Community Development Amendments of 1979 (Pub. L. No. 96-153, section 206, 93 Stat. 1108 (1979)) (the 1979 Act) amended the Public and Indian Housing and Section 8 programs under the United States Housing Act of 1937 (42 U.S.C. 1437 d and f, respectively) (the 1937 Act) to provide that the criteria used by project owners, Public Housing Authorities (PHAs) and Indian Housing Authorities (IHAs) to select applicants for housing assistance must give "preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking" housing assistance. Section 203 of the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. No. 98-181, section 203, 97 Stat. 1178 (1983)) (the 1983 Act) later amended these authorities to provide that the selection criteria used must give a preference to a third category of families—those that "are paying more than 50 percentum of family income for rent."

Section 203(a)(4) of the 1979 Act also amended section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) (Rent Supplement), by adding a new subsection (k) that provides:

> In making assistance available under this section, the Secretary shall give priority to individuals or families who are occupying substandard housing or are involuntarily displaced at the time they are seeking housing assistance * * *.

In addition, section 203(b)(3) of the 1983 Act amended section 101(e)(1)(B) of the Rent Supplement authority by including substantially identical language for families paying more than 50 percent of income for rent. As amended, section 101(e)(1)(B) reads in relevant part:

> * * * The Secretary shall issue * * * certificates as to * * * (B) whether the individual or family was occupying substandard housing, was paying more than 50 percentum of family income for rent, or was involuntarily displaced at the time it was seeking assistance under this section.

Although the rent burden preference is appropriately included in the Rent Supplement provision, the amendment adding the preference affected section 101(e)(1)(B) only, and not section 101(k), the section that Congress originally had enacted to created the preference for those persons occupying substandard housing or involuntarily displaced. (See section 203(a)(4) of the 1979 Act.) However, this rule extends the rent burden preference to persons who qualify for assistance under the Rent Supplement program. In doing so, the Department believes that the rule carries out the intent of Congress, notwithstanding the failure to include the language in section 101(k) of the Rent Supplement statute.

The amendments to the Public and Indian Housing and Section 8 programs made by section 206 of the 1979 Act provide for a "preference" to certain classes of families. The comparable amendment to the Rent Supplement program in section 203(a)(4) of the 1979 Act provides for a "priority" to the same classes of families. The Department has studied the legislative history to determine whether the Congress intended to impart a meaning to the word "priority" different from that intended by use of the word "preference". Research has shed no light on the legislative intent in this regard. In view of the apparent unified intent of the several amendments (notwithstanding that they affect different programs), the Department has treated the words synonymously. To

avoid ambiguity, the word "preference", and not "priority", is used throughout the rule.

Note.—For ease of reference, this rule refers to the three statutory preferences as the "Federal preferences" or "preferences."

Treatment of Certificates and Vouchers

Section 8(d)(1)(A) of the 1937 Act specifies that the *owner* is responsible for providing the preferences in the Section 8 Existing program—the Certificate, Moderate Rehabilitation, and Loan Management Set-Aside programs. In the Loan Management program, the owner is responsible for the entire tenant selection process, and the final rule requires that the owner give preference as provided in the statute.

In the Certificate and Moderate Rehabilitation program, however, the PHA (and not the private owner) plays the key role in the applicant selection process with respect to applying the preferences. In the Certificate program, the PHA selects those to whom it issues Certificates of Family Participation from its waiting list; the owner determines whether it will rent to the individual Certificate-holder. (See 24 CFR 882.209.) Similarly, the owner of a Section 8 Moderate Rehabilitation project generally determines the suitability of individual applicants that the PHA refers to the owner from its waiting list. (See 24 CFR 882.514(b).) Even in the unusual case where the PHA has no families on its waiting list interested in living in a rehabilitated project, and the owner itself solicits applicants, the owner refers all candidates to the PHA to determine their eligibility, which would include their qualification for a preference, if the families referred exceeded the units available. (See 24 CFR 882.514(c).)

In order to implement the preferences in the Certificate and Moderate Rehabilitation programs in a way that carries out the clear Congressional intent in enacting the preferences and is consistent with the implemention of the preferences in the other covered programs, the rule imposes the preference requirements at the point at which applicants are selected from the pool of applicants: *i.e.*, when the PHA, rather than the private owner, acts in the process.

Section 207 of the 1983 Act amended section 8 of the 1937 Act to establish the Housing Voucher program. Section 8(o)(3) of the 1937 Act requires the use of the three Federal preferences in selecting recipients of Housing Vouchers. The Department has been implementing the Housing Voucher program through Notices of Funding Availability (NOFAs) published in the **Federal Register**. (See 49 FR 28458 (July 12 1984); 50 FR 8196 (February 28, 1985); 50 FR 19475 (May 8, 1985); 51 FR 10932 (March 31, 1986); and 52 FR 5250 (February 19, 1987).) Housing Vouchers have been authorized in these editions on the **Federal Register** for the following uses: the Rental Rehabilitation Program, A Freestanding Housing Voucher Demonstration, a Small PHA/Rural Area Housing Voucher Demonstration, Section 8 "Opt-Out" Projects, Demolition or Disposition of Public Housing Units, and Formula Allocation to HUD Regional Offices. Readers should consult the NOFA of February 19, 1987 (52 FR 5250) for a full description of the current Housing Voucher program.

The Department published a proposed rule on August 14, 1987 (52 FR 30388) that would add a new 24 CFR Part 887 to codify the Housing Voucher program in the Code of Federal Regulations. The proposed rule seeks public comment on the February 19, 1987 NOFA, as modified by the proposed rule. Under the proposed rule, a PHA (to the extent it receives an additional allocation of Housing Vouchers) would have to provide Housing Vouchers or Certificates to lower income families that are displaced from rental rehabilition projects by physical rehabilitation activities. The application of the preferences would otherwise be substantially similar to the implementation of the Section 8 Certificate program, as discussed in this final rule, and the reader wishing to become generally familiar with the preference provisions for the Housing Voucher rule, should review the regulatory text and preamble discussion for the Certificate program. Following consideration of the public comments received on the proposed rule, the Department will publish final Housing Voucher program regulations, including provisions to implement the Federal preferences for that program.

It is important to note one change proposed by the Housing Voucher rule. In the past, a PHA could use the additional Housing Vouchers provided by HUD in connection with the Rental Rehabilitation program (RRP) for eligible families living in RRP projects if, after the rehabilitation, the families would have to pay more than 30 percent of their income for rent. These families could then use the Housing Voucher to remain in the project, or to move. However, the proposed Housing Voucher rule would make a substantial change in the rules under which Housing Vouchers allocated in connection with RRP can be used.

As noted above, the proposed rule would require PHAs to use their additional allocation of Housing Vouchers to provide rental assistance to eligible families that would be displaced from their project because of physical construction activities. These additional Housing Vouchers would no longer be provided to families that are not physically displaced, even if their rent increased. These families may be eligible for Housing Vouchers from a PHA's waiting list and, if their rent exceeds 50 percent of their income, they would qualify for a preference under today's final rule. Accordingly, an eligible family encountering an increased rent burden in its RRP unit, but who is *not* required by rent increases in the project to pay more than 50 percent of income for rent, would not qualify for preferential access to assisted housing under either the Housing Voucher proposed rule or this final rule (unless, of course, the family qualified for a preference on a basis other than rent burden). As discussed in more detail later, however, PHAs would have discretion to adopt local selection preferences to assist RRP families experiencing post-rehabilitation rent increases.

Section 882.209(a)(7) contains a clause not found in the comparable paragraphs for the other affected programs. This clause provides that the PHA's obligation to select a family from the waiting list is subject to any obligation the PHA may have to ensure the availability of a Certificate for a purpose specified in § 882.209(a)(4)(ii)(B). Under the Housing Voucher Program, a PHA immediately may use for general Housing Voucher program purposes (*i.e.*, for families on the Housing Voucher Program waiting list) Housing Vouchers that were allocated for Rental Rehabilitation purposes. See 52 FR 5250, February 19, 1987, the Housing Voucher Program Notice. That notice, in explaining the "immediate use" provision, requires that

> [A] PHA may use housing vouchers for general program purposes *before* they are used for rental rehabilitation projects.
>
> The PHA may use the housing vouchers for families on its Section 8 waiting list, if the PHA determines that it will have an adequate number of housing vouchers or Section 8 certificates available when needed in connection with a rental rehabilitation project. The PHA must develop a written plan to assure this availability. In determining whether this immediate use is feasible, the PHA must consult with the rental rehabilitation grantee.
>
> *Id.* at 5253.

As a condition to immediate use, however, a PHA must develop a plan to ensure the availability of Housing Vouchers *or Certificates* when the rental rehabilitation need arises. The purpose of the clause in § 882.209(a)(7) is to enable the PHA to provide a Certificate to a rental rehabilitation family to meet its obligation created by the previous "immediate use" of the Rental Rehabilitation allocation Housing Vouchers. The Rental Rehabilitation allocation is the only special allocation under either the Certificate Program or the Housing Voucher Program that includes the concept of immediate use for general program purposes, and the concommitant obligation to ensure the availability of Certificates (or Housing Vouchers) when needed for the purpose for which the Certificates [or Housing Voucher were specifically allocated. Nonetheless, the Department has drafted this clause to cover any such situation that may arise in the future.

When the pending Housing Voucher rule is promulgated, it will similarly recognize that, for purposes of ensuring the availability of vouchers allocated for Rental Rehabilitation where those vouchers were subjected to an earlier "immediate use" for other purposes, a PHA may require selection of families for Voucher assistance outside the normal waiting process.

The rent-burden preference is to be granted to a family paying more than 50 percent of its income for rent "at the time [the family] is seeking assistance." See, e.g., section 8(d)(1)(A) of the U.S. Housing Act of 1937. The Department construes this language to mean that the family must be rent-burdened at the point that a family is *offered* assistance for a unit, not only at the time that the family *applies* for assistance.

However, application of the cited statutory language could work a hardship on a family occupying a unit being rehabilitated under the Rental Rehabilitation Program (RRP), by requiring that the family first pay the increased post-rehabilitation rent before qualifying for the rent-burden preference. In HUD's view, such a family should not necessarily have to begin paying the increased rent before its preference status could be recognized. Such a requirement would be an unnecessary formalism—especially since the increased rent would have been occasioned by the improvements to the family's unit funded by RRP—a program administered by HUD.

To observe such formalism would work an intolerable hardship on an RRP family that has continued to occupy a unit during Rental Rehabilitation, anticipating continued occupancy of the same unit without housing assistance. Upon notification of the post-rehabilitation rent and discovery that the rent would exceed 50 percent of family income, the family might well conclude that continued occupancy would only be possible with assistance. Unless this family could apply for a preference based on the *anticipation* of increased rent, the RRP activity would have the effect of requiring the family to pay unaffordable rent for an indefinite period while it awaited qualification for a certificate, voucher, or other assistance.

Also, some eligible RRP families will qualify for a statutory preference by virtue of living in substandard housing. Upon being offered assistance on that basis, this rule's verification procedures would require the family to demonstrate that its unit *continued* to be substandard at the time assistance became available. If rental rehabilitation activity had caused the family's entitlement to the substandard housing preference no longer to be verifiable, it would be harsh to refuse a certificate to such a family when the family, in a short time, was clearly going to qualify for the rent burden preference.

To reduce these impacts on RRP families to the extent possible, the rule creates a limited exception, applicable to the Section 8 Existing Housing Certificate program (Part 882), with respect to the normal application and verification procedures associated with the rent burden preference. This exception, appearing in paragraphs (c) and (f) of § 882.219, provides that RRP families who have been advised that their post-rehabilitation rent for the same unit that they are currently occupying will be increased to more than 50 percent of the family's income will be considered as paying the higher rent from the date the family is offered assistance, as long as the family would become subject to the higher rent within sixty days of the offer of assistance. (When the pending Housing Voucher rule is promulgated, it will similarly treat the subject of the rent burden preference as it relates to Rental Rehabilitation tenants.)

The Department is limiting the period during which this presumptive rent burden preference would be operative to sixty days to be consistent with the requirement in section I.(f)(2)(ii) of Part III of the February 19, 1987 Housing Voucher NOFA (52 FR 5250, 5262) that "housing vouchers * * * must be issued * * * approximately 60 days before the estimated completion date for the rehabilitation work."

The Proposed Rule

On September 26, 1984 (49 FR 37787 (1984)), the Department published a proposed rule to implement the 1979 and 1983 statutory provisions. That rule amended regulations affecting 24 CFR Part 215 (Rent Supplement Payments); Part 880 (Section 8 Housing Assistance Payments Program for New Construction); Part 881 (Section 8 Housing Assistance Payments Program for Substantial Rehabilitation); Part 882 (Section 8 Housing Assistance Payments Program—Existing Housing), Subparts A and B (Section 8 Certificates), D and E (Section 8 Moderate Rehabilitation), and F (Manufactured Home Owners); Part 883 (Section 8 Housing Assistance Payments Program—State Housing Agencies); Part 884 (Section 8 Housing Assistance Program, New Construction Set-Aside for Section 515 Rural Rental Housing Projects); Part 886 (Section 8 Housing Assistance Payments Program—Special Allocations), both Subparts A (Loan Management) and C (Property Disposition); Part 904 (Low Rent Housing Homeownership Opportunities); Part 905 (Indian Housing); and Part 960 (Admission to, and Occupancy of, Public Housing).

The Proposed rule provided for a preference in selection for those applicants who otherwise were qualified for housing assistance under the program involved and who, at the time they were seeking assistance, were involuntarily displaced, living in substandard housing, or paying more than 50 percent of their family income for rent. PHAs and owners were required to inform prospective tenants (including those on the waiting list) of the availability of the preferences, and to give them an opportunity to show that they qualified for preferred status.

The three Federal preferences were given primacy over all local preferences and priorities. Thus, an applicant who qualified for any one of the Federal preferences would have been selected to receive housing assistance before non-preferred applicants, irrespective of their qualification for one or more non-Federal (*i.e.*, locally established) preferences or priorities, or their position on the waiting list. The preferences were coequal, and no ranking or cumulation of the preferences was permitted.

The proposed rule envisaged a two-step approach by which an applicant generally would qualify for a Federal preference. First, the applicant would *certify* that he or she was in one of the three preferred classes when he or she initially applied for housing assistance;

before receipt of assistance, however, the applicant had to provide appropriate documentation to the owner or PHA so that the applicant's status in a preferred class at that time could be *verified.*

The rule set forth definitions for each of the Federal preferences, and described the procedures that PHAs and owners would apply to verify that an applicant qualified for a preference. Verification was to be established principally by documentation supplied by the applicant from third-party sources. While private owners, and PHAs administering Rent Supplement and Section 8 programs (other than 24 CFR Part 882), were bound to follow the definitions and verification procedures set out in the rule, PHAs administering public and Indian housing programs, and the Section 8 Existing and Moderate Rehabilitation programs under Part 882, were given the discretion to adopt their own verification procedures, and, subject to HUD's approval, could apply their own definitions of the Federal preferences.

Public Comments

The Department received over 130 comments on the proposed rule. The majority of these comments was critical of the rule, or of one or more of its provisions. As a result of these comments and the Department's ongoing review of the statutory scheme governing the Federal preferences, the Department has made a number of revisions in the proposed rule, which are incorporated in today's final rule.

These revisions are discussed at length below, along with the Department's treatment of the public comments. Briefly, the significant revisions include the following. The final rule retains the requirement for the Rent Supplement and Section 8 programs (other than the Certificate and Moderate Rehabilitation programs) that Federal preference-holders will always be considered for housing assistance before families without a Federal preference, irrespective of the latter's qualification for one or more non-Federal preferences. Project owners under these programs will, however, have broad discretion (not provided under the proposed rule) to determine the weight to be assigned each of the Federal preferences vis-a-vis the other two. Thus, owners may aggregate or rank the three preferences or their definitional elements (or both), and use State or local preferences as a means of selecting among Federal preference-holders.

PHAs administering the Public and Indian Housing programs and the Section 8 Certificate and Moderate Rehabilitation programs will have the same discretion as project owners to determine the weight to be assigned among the Federal preferences. They will also be permitted, however, to make rental assistance available to families *without* a Federal preference *before* Federal preference-holders, for up to 10 percent of the families initially receiving assistance in any one-year period.

The definition of involuntary displacement has been clarified to include situations in which a landlord has decided not to renew a tenant's lease. Victims of domestic violence may qualify for a preference on grounds of involuntary displacement. Similarly, the definition of substandard housing has been expanded to include "homeless" persons. Finally, the rule adds language providing for administrative review of a decision denying an application for a preference.

For the convenience of the reader and to better organize the Department's responses, the comments are classified according to the general subject matter that they addressed, followed by the Department's response to each category of comments.

I. Application of the Federal Preferences

A. Primacy of the Federal Preferences

In the proposed rule, the Department gave the three preferences primacy over all non-Federal preferences. The Department stated its position as follows:

> * * * in the weighting process, an applicant qualifying for any one of these three preferences would outweigh, and therefore be chosen before, another applicant who does not qualify for one of the three preferences, regardless of the combination or aggregation of other (*i.e.*, State or locally created) preferences enjoyed by the other applicant, and without regard to which applicant applied first, or the length of time the first applicant was on the waiting list. [49 FR 37788–9.]

The Department specifically requested comment on the "effect and propriety of implementing the three preferences" in this manner. 49 FR 37788. This request elicited numerous respones, primarily from PHAs. The overwhelming majority of the commenters expressed strong opposition to the provision, particularly insofar as it had the effect of overriding local preferences for residents of the community in which the assisted housing is located.

One of the grounds for objection to the proposal to make the three preferences preeminent was that such a policy would be contrary to the Congressional intent expressed in the Conference Report accompanying the 1979 Act. H. Rep. No. 706, 96th Cong., 1st Sess. 55 (1979). Commenters emphasized language in that Report to the effect that the preferences are intended to *guide* the PHA in selecting tenants—not to permit HUD to direct the selection of certain tenants. Similarly, commenters argued that nothing in the legislation enacted in 1979 and 1983 creating the three preferences suggests that Congress intended to subordinate local discretion by granting primacy to the three preferences. One commenter contended that making the preferences preeminent would directly contravene the United States Housing Act of 1937, and that there should be no preemption of local priorities without specific direction from the Congress.

Some commenters noted their objection less on legal than on practical grounds. It was argued that preemption would cause an undue burden on the lower income residents of a jurisdiction, since the PHA, which was established to serve the low-income residents of that jurisdiction, would be forced to provide housing for residents of other jurisdictions. A commenter viewed the proposal as significantly reducing a PHA's ability to tailor housing assistance programs to suit local housing conditions. This commenter urged that PHAs be given maximum flexibility to accommodate the three preferences within the pattern of locally established priorities. The commenter stressed that local preferences should not be thought of as exclusionary; instead, argued the commenter, they facilitate the creation of assisted housing opportunities and accomplish the goal of assisting the needy, with strict adherence to affirmative marketing requirements.

Other commenters contended that preemption of local residency preferences would threaten the viability of the public housing program, cause participating communities to withdraw from HUD's housing assistance programs, and discourage non-participating communities from entering the programs. Commenters stated that local preferences are in the nature of a contract: *i.e.*, local communities agree to cooperate in the development of assisted housing in return for the assurance that their needy residents will be served. Commenters believed that the proposed rule violated that agreement. Finally, State Housing Finance Agencies admonished HUD to recall the special arrangement that exists between them and HUD with respect to the level of discretion that they were originally intended to have in carrying out Section 8 programs.

The Department has reviewed its original position on the primacy of the Federal preferences in light of the comments, and has determined that PHAs operating Public and Indian Housing programs and Section 8 Certificate and Moderate Rehabilitation programs may be given some flexibility to devise tenant selection systems that favor applicants without a Federal preference over Federal preference-holders.

As noted above, the statutory text in neither the 1979 nor 1983 Act sheds definitive light on how the preferences should be implemented. The Conference Report on the 1979 Act provides the following guidance:

> The conferees believe that during a period of reduced funding for assisted housing, the programs should be directed toward those families who have the most urgent housing needs. The priority is intended to guide the owner or PHA in determining which potential tenants to select. The priority is not intended nor should it be used to allow the Department to direct an owner or PHA to select certain tenants. It would be unacceptable and clearly not authorized by this provision for the Department to require a PHA or owner to select tenants from a list developed by the Department. This provision is not intended to alter the basic responsibility over tenant selection which, under current law, rests solely with the PHA and owner. It is simply intended to have owners and PHAs give priority to meeting the urgent housing needs of those families living in substandard conditions or being involuntarily displaced. [H. Rep. No. 706, 96th Cong., 1st Sess. 55 (1979).]
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> Note.—The House Report on the 1979 Act contains substantially similar language. See H.R. Rep. No. 154, 96th Cong., 1st Sess. 16 (1979).

The Department does not consider the language of either the statute or the Conference Report as *requiring* that the Federal preferences be implemented in a way that wholly preempts State or local tenant selection preferences. The statute and legislative history require only that "preference" be given to "families" in one of the three preferred categories. Use of the plural, "families," indicates that preference is to be accorded to a *class* of applicants, not to *each* individual applicant. The term "preference" can have a range of meanings—from providing some advantage in the selection process to guaranteeing preferred candidates the next available rental assistance. Providing preference to a class of applicants suggests a general mandate that, unless "preference" is construed in its most preemptive sense, may permit some individual non-preferred applicants to take precedence over preference-holders in the tenant selection process.

Given the commenters' overwhelming opposition to the proposed rule's "primacy of the preferences" approach, and the lack of legislative guidance on how to construe the preference provisions, the Department believes that the term "preference" should not be given such a prescriptive construction. Instead, we believe that the statutory mandate can be satisfied by giving *substantial preference to families in the preferred categories: i.e.*, by ensuring that substantially all preference-holders receive assistance ahead of non-preference-holders, but permitting some non-preference-holders to go before preference-holders. The Department believes that this approach is not only permissible under the statutory language, but also is responsive to the Congressional objective expressed in the Conference Report that HUD's rental assistance programs "should be directed toward those families who have the most urgent housing needs", as expressed by the preferences.

Accordingly, the Department has amended the final rule to permit PHAs operating Public and Indian Housing programs, and Section 8 Certificate and Moderate Rehabilitation programs, to establish tenant selection systems that permit applicants without a Federal preference to receive housing assistance ahead of those with a Federal preference. To ensure compliance with the statute and its legislative intent, however, the rule requires that not more than 10 percent of the families that are initially admitted to assistance in the Public and Indian Housing and Moderate Rehabilitation programs, or that initially receive a Certificate of Family Participation in the Certificate program, may be non-preference-holders that took precedence over families with a Federal preference.

The 10 percent limit applies only where the PHA has one or more applicants with a Federal preference, and permits assistance to be given first to a non-preferred applicant. It is possible, especially for smaller PHAs, that no applicant holding a Federal preference will be available when assistance is to be provided. In this situation, the PHA may make the assistance available to the non-preference-holder, without counting it against the 10 percent cap.

The 10 percent ceiling will be determined for each waiting list that the PHA maintains. This will permit PHAs that have "merged" waiting lists to avoid the administrative burden of ensuring compliance with the 10 percent standard for each program they operate.

Performance under the standard will be measured on an annual basis. Thus, PHAs will be responsible for administering their programs so that at the end of each one-year period, the 10 percent limit is not exceeded. Since some PHAs may not wish to begin the one-year period when the rule is implemented, but may prefer another starting date (such as the beginning of the PHA's fiscal year), the rule permits PHAs to select an initial reference period of less than one year before the start of the first full year under the rule.

Finally, in fashioning its own system, a PHA may employ the 10 percent exception to carry out preference objectives required by State law or those adopted by the PHA itself to advance local policy—for example, a local residency preference. Additionally, there would be no obstacle to a PHA's decision to adopt new local preferences to meet new program objectives. For example, a PHA could provide a local preference for tenants of Rental Rehabilitation projects who encounter increased rent burdens in their Rental Rehabilitation units, but whose rent burden doesn't reach a level to qualify the families for a Federal preference.

The Department wishes to stress that only the *initial* receipt of assistance for a *family* is counted toward the 10 percent limit. Thus, a family that moves from one public housing project to another in the same PHA's jurisdiction, or that moves from a unit assisted under the Certificate program and is given a Certificate for a new unit, is not subject to this rule.

As noted above, the 10 percent exception is only available for PHAs operating certain programs. Owners (including PHAs) participating in the other Section 8 programs must comply with the proposed rule's "primacy of the preferences" approach: *i.e.*, Federal preference-holders must be considered for housing assistance before those who do not qualify for a Federal preference.

The Department has two reasons for adopting this bifurcated approach. First, the vast majority of those who commented on the "primacy of the preferences" feature of the proposed rule were PHAs. Their comments voiced virtually unanimous and heated opposition to this aspect of the rule, especially insofar as this approach could override local residency preferences. As noted in the comment summary above, many PHAs view local residency preferences as an essential part of their programs—even as an implicit "contract" under which local communities agree to cooperate in the development of assisted housing in

return for the assurance that their needy residents will be served first.

In contrast, few owners under the rule's other programs commented on, or objected to, the "primacy of the preferences." Owners in these programs typically do not use local tenant selection preferences, including residency preferences, and, thus, do not have nearly the intense interest in this issue that PHAs do.

Second, PHAs and IHAs have traditionally been given a great deal of discretion in the administration of their local public housing programs. Indeed, one of the major policies of the 1937 Act is "to vest in local public housing agencies the maximum amount of responsibility in the administration of their housing programs * * *" Section 2 of the 1937 Act. Moreover, PHAs and IHAs are public bodies created by State, local, and tribal governments, and traditionally have jurisdiction over a broad area. Giving these entities greater responsibility for administering the preferences serves the goal of minimizing Federal control over matters of local concern that are within the competency of local governments. By contrast, for most purposes, the owners of projects under the other programs are not likely to receive guidance in the management of projects from non-mortgagee agencies of State or local governments.

In addition, the final rule continues the approach taken in the proposed rule of treating PHAs that administer Section 8 projects in the same way as other Section 8 owners. PHAs administering Section 8 projects have traditionally been viewed as project owners. Thus, they are commonly required to fulfill different regulatory requirements for the public housing and Section 8 programs. For example, Section 8 projects are not subject to a cooperation agreement requirement under section 5(e)(2) of the 1937 Act, are not exempt from State and local real and personal taxes under section 6(d) of the Act, are not eligible for operating subsidies under section 9 or for comprehensive improvement assistance under section 14 of the Act, and are not subject to requirements governing the demolition and disposition of housing under section 18 of the Act. Additionally, PHA public housing lease and grievance procedures under 24 CFR Part 966 differ from the termination of tenancy provisions under 24 CFR Chapter VIII that govern FHA-insured Section 8 projects.

For these reasons, the Department has determined that the 10 percent exception approach should only be extended to PHAs, and only the PHAs operating Public and Indian Housing programs and Certificate and Moderate Rehabilitation programs. We believe that this approach adequately responds to the commenters' concern that PHAs be given flexibility to tailor the Federal preferences to locally defined needs and requirements. The 10 percent "safety valve" provides PHAs with significant discretion to fashion their own tenant selection systems, while ensuring achievement of the statutory objective of directing housing assistance to those with the greatest need.

Finally, it should be noted that the position of the Federal statutory preferences under the rule vis-a-vis locally derived preferences may work a limited preemption of local preferences—including those that may have been established by State or local law. The Department believes that this result is a necessary concommitant of the statutory directive and is clearly appropriate under preemption doctrine pronounced by the U.S. Supreme Court in *Hillsborough County, Florida v. Automated Medical Laboratories, Inc.*, 471 U.S. 707 (1985). As the Court stated in that case at 713:

"Even where Congress has not completed displaced state regulation in a specific area, state law is nullified to the extent that it actually conflicts with federal law. Such a conflict arises when compliance with both federal and state regulations is a physical impossibility," *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142–143 (1963), or when state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," *Hines v. Davidowitz, supra*, at 67.

It is clear that in certain circumstances the Federal preferences may conflict with preferences established by State or local law. For example, the rule may require that assistance be provided to an applicant who holds only a Federal preference before another applicant who does not qualify for a Federal preference, but who holds a veterans' preference created by State law. Since only one candidate can "go first," the two requirements conflict; in the words of the Court, "compliance with both federal and state regulations is a physical impossibility," and "the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of the Congress * * *' ". In such a situation, the State law must yield to the Federal imperative.

It should be noted, however, that this conclusion does not mean that preferences created by State and local law are wholly preempted, and have no place in the talent selection process. Owners and PHAs may continue to use these preferences in their selection policies. Thus, PHAs and owners may use these preferences to rank Federal preference-holders, as well as to rank applicants who do not qualify for Federal preference. In addition, PHAs that qualify for the 10 percent exception discussed earlier, may favor applicants with State or local preferences over those with Federal preferences, consistent with the standards for using the 10 percent exception and applicable FHEO requirements. Where, however, the State or local preference conflicts with the Federal preferences, the State or local law must yield to the Federal statute implemented by today's final rule.

B. Use of Local Preferences to Select Among Federal Preference-Holders

As noted earlier, the proposed rule provided no role for local preferences to distinguish among applicants that held a Federal preference; the only issue was whether an applicant qualified for a Federal preference and, if so, he or she received consideration for assistance based solely on the *Federal* preference, irrespective of the number or type of *local* preferences that the applicant might hold. The final rule alters this rigid approach by permitting PHAs and owners in all of the programs subject to this rule to use State or local preferences as a means of selecting among Federal preference holders. For example, a PHA or owner could provide that an applicant who was living in substandard housing and had a local residence preference would receive assistance before another who only held a substandard housing preference. Another example of a local preference that a PHA or owner may use to distinquish among Federal preference-holders is a preference to select qualified candidates for a State or local program to move low-income families from welfare to employment and economic and social self-sufficiency.

In addition, according weights could reflect local concerns associated with ongoing housing assistance activity. For example, a PHA could provide that those paying more than 50 percent of family income for rent because their living units had increased in cost after Rental Rehabilitation activity should take precedence over those paying 50 percent of family income for rent where

other factors account for the high rent burden.

It should be noted that this approach is distinct from the 10 percent exception discussed in the previous section. The 10 percent feature permits PHAs to admit to assistance some families that have no Federal preference over those that do. The discretion accorded here enables PHAs and owners to use local preferences as a means of rank-ordering among those applicants that do have preference and, those without a Federal preference can receive assistance before those with such a preference. The Department believes that the ability to use local preferences in this way will augment the latitude given PHAs under the 10 percent exception features. It will also give other owners needed flexibility in administering their programs.

This approach also responds to commenters' concerns that PHAs and owners have the greatest possible flexibility to tailor housing assistance to meet local needs, and to commenters' fears that the rule would force them to accept non-resident Federal preference-holders before residents. As noted above, PHAs and owners may use local residency preferences as a way of ranking Federal preference-holders. Thus, at least among federally preferred applicants and to the extent such preferences do not conflict with applicable fair housing and equal opportunity requirements, PHAs and owners could ensure that local residents come first.

It is at least theoretically possible that a non-resident Federal preference-holder could take precedence over a resident, if no resident applicant held a Federal preference and, in the case of certain PHA programs, the 10 percent exception was unavailable. Although the Department has no data upon which to estimate the incidence of this situation, we do not expect it to occur with any frequency, especially for PHAs and owners that have sizable waiting lists. In any event, however, the Department believes that if the Federal preferences operate to furnish assistance to a non-resident Federal preference-holder before a resident without a Federal preference, this is a necessary concommitment to implementing the statutory mandate.

C. Aggregating and Ranking the Federal Preferences

As noted before, the proposed rule did not permit the Federal preferences to be aggregated or ranked. (See 49 FR 37789.) Thus, with respect to aggregation, a prospective tenant who qualified for two or more of the preferences could not take precedence over another who qualified for only one. With respect to ranking, qualification for a preference could be based on any permissible ground, and once obtained, each preference was coequal with the others: *i.e.*, determinations of the relative weight to be accorded the preferences or their bases for qualification (or both) were not permitted.

Commenters opposed this policy on grounds that it provided no means of determining who has the greatest need for housing assistance—a problem that is exacerbated if, as some commenters argued, qualification for at least one of the preferences would be nearly universal. The Department has reviewed the position taken in the proposed rule, and has decided to permit PHAs and project owners to rank the preferences or their components (or both), and to aggregate the preferences according to the PHA's or owner's determination of the relative need for housing that the preferences represent.

For example, *with respect to aggregating the preferences*, a PHA or owner may decide that a family that is paying more than 50 percent of its income to rent a substandard unit has a greater need for housing than one that is paying more than 50 percent of its income for a standard unit, and provide assistance to the former family before the latter. *With respect to ranking the preferences*, a PHA or owner may provide that those living in substandard housing have a greater need for housing than those paying more than 50 percent of family income for rent and, therefore, may accord the former preference greater weight in the selection process than the latter preference.

With respect to ranking the preferences' definitional elements, a PHA or owner may provide that those living in housing that is dilapidated or that has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family and, therefore, may accord the former circumstance greater weight in the selection process than the latter circumstance. Similarly, a PHA or owner may provide that those living in dilapidated housing or housing that has been declared unfit for habitation by an agency or unit of government have a greater need for housing than those paying more than 50 percent of family income for rent, but that those paying more than 50 percent of income for rent have a greater need for housing than those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family. In this case, PHAs and owners could accord appropriate weights reflecting these determinations of need.

Since PHAs and owners will meet the statutory requirement that preference be given the three categories of applicants, irrespective of the aggregation or ranking of the preferences chosen, the rule does not impose specific limits on PHA or owner discretion to rank or cumulate the Federal preferences. Paragraph (b) of today's rule contains these provisions.

Note.—This preamble makes a number of references to amendments to specific "paragraphs" of today's rule. Since this proceeding amends several Parts of 24 CFR, but uses essentially the same paragraph designations for each Part amended, this terminology means that the paragraph referred to has been amended in each Part covered by this rule.

D. Fair Housing and Equal Opportunity Considerations

Today's rule contains language in paragraph (b) to ensure that the Federal preferences and any non-Federal preferences and priorities are established and administered in a manner that (1) is consistent with HUD's affirmative fair housing marketing policies (see 24 CFR 200.610) and (if applicable) the owner's HUD-approved Affirmative Fair Housing Marketing Plan, and (2) is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended* at 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. These provisions are designed to ensure that the mandates of Title VIII of the Civil Rights Act of 1968, Title VI of the Civil Rights Act of 1964, and related civil rights authorities are met. (Part 905 of the rule contains modifications appropriate to the special status of Indians under civil rights laws.)

E. Advance HUD Approval of Federal Preference Systems

The final rule imposes no new requirements for advance HUD approval of owner or PHA preference systems. These systems, however, are subject to existing approval requirements, such as the requirement in the Section 8 Certificate and Moderate Rehabilitation programs that tenant selection

preferences be incorporated into the PHA's Administrative Plan.

For other programs covered by the rule, owners and PHAs must send HUD a copy of any preference system that proposes to use a local residency preference. This submission requirement does not affect the ability of the owner or PHA to implement the Federal preferences, but reflects the Department's concern that residency preferences be administered in accordance with HUD's fair housing and equal opportunity requirements.

F. Relationship to Other Federal Authorities

Several commenters requested guidance on the relationship between the three preferences and existing Federal preferences or requirements. Specific guidance was requested on the following:

—The requirement that PHAs select families eligible for assistance under the Section 8 Moderate Rehabilitation program that reside in units designated for rehabilitation, without requiring that they be placed on a waiting list. (24 CFR 882.514(b))

—The provision permitting PHAs to give a preference for admission to Independent Group Residences to families that express an interest in residing in such a Residence. (24 CFR 882.209(a)(6))

Preliminarily, it should be noted that the "primacy of the preferences" concept in the proposed rule involved only the relationship between the three Federal preferences and *locally created* (or non-Federal) preferences. The rule itself did not speak to the relationship between the three preferences and other *Federal* preferences or requirements. The preamble, however, contained the following guidance:

> The rule would not preempt those classes of tenants accorded specified preferential treatment under other Federal regulatory or statutory authorities. For example, sections 221(f) and 231(f) of the National Housing Act (NHA), 12 U.S.C. 1715*l*(f), and 1715v(f), respectively, authorize the Secretary to adopt procedures to assure that housing provided under these sections "is available to displaced families" (section 221(f)) or to prescribe procedures to secure for handicapped families "preference or priority of opportunity to rent the living units specially designed for their use and occupancy" (section 231(f)). These statutory requirements are implemented by regulatory provisions at 24 CFR 221.537(c), giving a preference to displacees, and at 24 CFR 231.9, giving a preference to elderly or handicapped persons.
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> * * * * *
>
> The statutory language is unambiguous that these [the Federal] preferences must be given to eligible applicants, but these preferences are not intended to be applied so as to vitiate other regulatory and statutory objectives. For example, 24 CFR 860.204(c) [now § 960.204(c)] makes it clear that tenant selection policies shall be in compliance with, among other things, "the nondiscrimination requirements of Title VI of the Civil Rights Act of 1964." Owners and PHAs are, thus, under a continuing obligation to observe all pertinent Federal regulatory and statutory requirements while giving the preferences to eligible applicants. See also 24 CFR 880.603(d), 881.603(b) and 883.704(b). (49 FR 37789)

The Department believes that this approach is correct, and has amended the proposed rule to make this relationship clearer, by requiring that the three Federal preferences be implemented in a manner that is "consistent with" other applicable Federal requirements. (See paragraph (b) of today's rule.) Because of the variety and complexity of the situations in which the three preferences may interact with other Federal preferences and requirements, and the confusion expressed by the commenters on this point, the Department believes that detailed discussion and guidance on how these authorities interrelate is appropriate.

In the Department view, the basic precept is that the three preferences and other Federal authorities should be read in a way that fully implements each provision to the maximum extent possible. Situations may occur, however, in which there is conflict between the preferences and the other authority: *viz.*: where one provision can be given effect only at the sacrifice of the other. The following guidance is intended primarily to address these situations.

1. *Preferences and Requirements in Federal Statutes*—(a) *Broad Range of Incomes.* Section 6(c)(4)(A) of the 1937 Act requires PHAs administering public housing programs to establish tenant selection criteria that both contain the three preferences and are designed "to assure that, within a reasonable period of time, the project will include families with a broad range of incomes * * *." This provision presents special issues, since the two requirements are coequal elements of the same subparagraph. The Department believes that PHAs are under an obligation to try to satisfy both requirements to the fullest extent possible. For example, each requirement can be met by applying the preferences to the income groups involved. Thus, if a higher income family is needed to satisfy the "broad range of incomes" requirement, a higher income family that qualifies for a preference would be chosen first; if a poorer family is the next to be chosen, a poorer family with a preference would be selected first. Similarly, PHAs may use the "broad range of incomes" requirement as a type of "local preference," by ranking Federal preference-holders according to the income categories involved.

Problems may arise, however, in situations where both the preferences and the "broad range of incomes" requirements cannot be satisfied, as for example, where the "broad range of incomes" policy requires a higher income family, but only poorer families hold a preference. In this situation, PHAs could satisfy the "broad range of incomes" requirement by using the 10 percent exception authority to admit to tenancy the non-preferred candidate ahead of the federally preferred applicant: in the example, the non-preferred higher income applicant before the preferred lower income applicant.

If, however, the 10 percent authority is not available, the Department believes that the preferences generally take precedence. In the example, the poorer family with the preference must be considered for assistance before the non-preferred, higher income applicant.

The Department believes that this conclusion is amply supported by the statute and its legislative history. As noted above, the preference portion of section 6(c)(4)(A) is categorical in its mandate: the PHA's tenant selection criteria "shall give preference." The legislative history referred to earlier is equally categorical. On the other hand, the portion of the statute dealing with range of incomes is far less categorical. Thus, the statute requires that the PHAs actions be designed to achieve the "broad range of incomes within a reasonable period of time." In implementing this authority, § 960.205(c) and (c)(8) require PHAs to establish selection criteria that (1) are "reasonably related to achieving the basic objective" and (2) "by preference or otherwise" will be "reasonably calculated to obtain the basic objective."

Since the preference language is expressed in far more direct and immediate terms, the Department believes that the preferences take precedence over the "broad range of incomes" requirement, where both of the requirements cannot be satisfied in a given instance.

(b) *Other Statutory Requirements.* Examples of other statutory provisions that contain preference and other requirements include the following National Housing Act authorities: section 221(f) (preference for displaced families—defines "displaced families"

more narrowly than "involuntary displacement" under the final rule); sections 231(a)(1) and (f) (not less than 50 percent of insured units must be specially designed for the use and occupancy of elderly persons, and preference for handicapped persons, respectively); section 250(c)(2) (priority for prospective section 8 tenants with the lowest income, where section 8 assistance is provided to forestall prepayment of insured, subsidized project mortgages); and section 207(b)(2) (prohibition of discrimination against families with children). Section 3(b)(3) of the 1937 Act gives preference in admission to assisted housing to elderly, handicapped, or displaced single persons before other single persons who are not in one of those categories.

Consistent with the basic precept described above, the three preferences and these provisions should be implemented so as to achieve the objectives of both the preferences and these authorities. For example, among applicants for Section 8 units in section 231 projects who qualify for one of the three preferences, elderly or handicapped applicants would be taken first. Where a conflict arises—such as if no elderly or handicapped applicants in the example hold a preference—*the program-specific requirement would prevail.* Thus, in the example, elderly or handicapped applicants without a preference would take precedence over other applicants with a preference. The rationale for this result is that where Congress has provided competing authorities, the more specific should take precedence. In the example, the section 231 preference prevails, since that preference inheres in the nature of the project itself, whereas the three preferences apply to Section 8 assistance generally.

2. *Preferences and Requirements in Regulatory Authorities*—(a) *No Apparent Conflict.* There are a number of regulatory authorities that provide for preferences or impose other requirements that can clearly be given full effect together with the three preferences. These authorities include:

—Fair housing and equal opportunity requirements, such as those contained in §§ 880.210, 882.111, and 960.203; and

—§ 882.209(a)(6), which allows a PHA to establish a preference for selecting an eligible applicant who has indicated a desire to reside in an Independent Group Residence, when a current Section 8 participant in an IGR moves.

Fair housing and equal opportunity requirements apply to the selection of all applicants for assisted housing, irrespective of whether they hold a Federal preference. Thus, these requirements do not conflict with the preferences.

In the Part 882 example, PHAs can satisfy the Federal preferences by offering Certificates first to those who are Federal preference-holders. The fact that no preference-holders wish to take advantage of these opportunities, or that there may not be a family on the waiting list that qualifies for a Federal preference, does not create a conflict under these regulatory provisions: the PHA has discharged its responsibilities by making the Certificates first available to Federal preference-holders on the waiting list.

(b) *Apparent conflict.* There are, however, several regulatory authorities that have the potential for conflict with the Federal preferences. For example, § 882.514(b) requires PHAs to select eligible families living in a project to be rehabilitated under the Section 8 Moderate Rehabilitation program "without requiring that these Families be placed on a waiting list." Subparts A (Loan Management) and C (Property Disposition) of Part 886 provide Section 8 assistance to otherwise eligible tenants who are occupying assisted projects when the Section 8 contract is executed. Section 882.209(a)(4)(ii)(B) provides for Certificates for eligible families living in:

(i) HUD-owned multifamily projects, when HUD decides to sell the project or to vacate units in the project;

(ii) HUD-held multifamily projects, when HUD forecloses, and a party other than HUD acquires the project at foreclosure; and

(iii) Section 8-assisted projects, in which the owner elects not to renew a Section 8 contract.

Each of these authorities can have the effect of targetting Section 8 Certificates to those who are eligible for Section 8 assistance, but who do not qualify for any of the Federal preferences. The Department has concluded, however, that the preference requirements should not be implemented in a way that vitiates these special Section 8 authorities.

Moderate Rehabilitation. The purpose of the Section 8 Moderate Rehabilitation program is "upgrading and thereby preserving the Nation's housing stock." (Section 8(e)(2) of the 1937 Act, 42 U.S.C. 1437f(e)(2)). The subsidy involves a 15-year Section 8 Housing Assistance Payments (HAP) contract that is attached to the structure. The Department does not believe that Congress intended that the program and the Federal preferences interact in a way that could result in the displacement of Section 8-eligible families from Moderate Rehabilitation projects, only to fill the vacancies created with other Section 8-eligible families.

In addition, in HUD's appropriation Acts, the Congress routinely approves the use of Section 8 authority for Moderate Rehabilitation. See, for example, the table of gross reservations for fiscal years 1984 and 1985 (H.R. Rep. No. 867, 98th Cong., 2d Sess. 9, 11 (1984)), fiscal year 1986 (H.R. Rep. No. 363, 99th Cong., 1st Sess. 6 (1985)), and fiscal year 1987 (H.R. Rep. No. 977, 99th Cong., 2d Sess. (1986)). The Department believes that this Congressional approval indicates clear Congressional intent that the Moderate Rehabilitation program continue, despite the fact that some of the tenants initially receiving Section 8 assistance may not qualify for a Federal preference. Thus, it is permissible to direct Section 8 Moderate Rehabilitation assistance to existing occupants who qualify under the program.

Loan Management/Property Disposition. The primary purpose of Part 886, Subpart A (Loan Management), is to reduce claims on the Department's insurance fund by aiding those FHA-insured or HUD-held projects with immediately or potentially serious financial difficulties. (§ 886.101(c)). The purposes of Part 886, Subpart C (Property Disposition), are to increase and maintain the amount of decent, safe, and sanitary housing affordable by lower income families; minimize displacement of tenants; preserve and revitalize residential neighborhoods; and dispose of projects in a manner consistent with HUD's disposition objectives. (§ 886.301.) The subsidy involves five- and 15-year, respectively, Section 8 HAP contracts that are attached to the structure.

As in the case of Moderate Rehabilitation, Congress regularly approves the use of Section 8 authority for Loan Management and Property Disposition. See, for example, the tables of gross reservations referred to above for fiscal years 1984 and 1985, fiscal year 1986, and fiscal year 1987. The Department believes that this legislative history provides adequate sanction for the use of Loan Management and Property Disposition authority for tenants in place when the Section 8 contract is executed, without regard to whether they qualify for a Federal preference at that time. In addition, to the extent that rents for these tenants were subsidized before their receipt of Section 8 assistance, they would not be considered to be "seeking assistance" as contemplated by the preference statute, but rather to be transferring directly

from one form of rental subsidy to another—an event that the Department believes is outside the purview of the preference authority.

HUD-owned/Held Multifamily Projects. Sections 882.209(a)(4)(B)(*2*) and (*3*) require that if HUD makes Section 8 Certificates available to a PHA for use in connection with (1) a HUD-owned multifamily project that HUD decides to sell or in which HUD wishes to vacate units, or (2) a HUD-held multifamily project that is acquired at foreclosure by a party other than HUD, and PHA must use them for these purposes. These uses of Certificates provide an alternative to the project-based subsidy approach for supporting HUD's Property Disposition program that is contemplated by Part 886, Subpart C.

Since these Certificates are funded from authority made available for Property Disposition, the same considerations mentioned above with respect to Congressional approval in appropriation Acts pertain to their use. In addition, as noted above, provision of Section 8 assistance to a tenant whose rent was subsidized before receipt of a Certificate is not subject to the preference provision.

Section 8 "Opt-outs." Certain project-based Section 8 contracts provide for an initial term not to exceed five years, and are renewable at the sole option of the owner for additional terms of up to five years, not to exceed a specified period. (See 24 CFR 880.109 (1979) and 24 CFR Part 1273, App. II (1975).) The regulatory scheme under § 882.209(a)(4)(B) (*4*) calls for PHAs to make Section 8 assistance available for eligible families residing in projects when the owner elects not to renew the contract for an additional term. Since provision of Section 8 assistance in these circumstances simply substitutes one form of rental assistance for another, the preference provisions are, as noted above, inapplicable.

Demolition/Disposition of Public Housing. Congress has regularly approved HUD's request to make Section 8 Housing Vouchers available to tenants of public and Indian projects that are to be demolished or disposed of. See, for example, the tables of gross reservations referred to above for fiscal years 1986 and 1987. Since receipt of a Voucher in these circumstances simply substitutes one form of assistance for another, the preference provisions are inapplicable.

3. *FH&EO Administrative and Judicial Remedies.* Where HUD makes a finding of discrimination in accordance with procedures under applicable civil rights law, and imposes a race-conscious remedy, imposition of the remedy takes precedence over the Federal preferences. That is, if the remedy calls for the next tenant to be a minority family and no minority families qualify for a preference, a non-preferred minority family would be selected for the unit over a non-minority family with a preference. Similarly, court-decreed civil rights remedies take precedence over the preferences. These types of remedies are necessary to redress specific instances of discrimination, and the Department does not believe the Congress intended the preferences to override them.

II. Discretion Accorded PHAs

The proposed rule permitted PHAs (including IHAs) operating public and Indian housing programs, and the Section 8 Existing and Moderate Rehabilitation programs under Part 882, to develop their own definitions for the three preferred categories (subject to HUD approval), and to devise their own verification procedures. (See the proposed rule's amendments to 24 CFR Parts 904 and 905 and §§ 882.209a(a), 882.514a(a), and 960.204a(a).) That rule required owners under all other programs (including PHAs and IHAs, where they own projects under those programs) to adopt the definitions and verification procedures prescribed in the rule. A commenter objected to this bifurcated approach on grounds that since applicants may apply for assistance under several of the programs covered by this rulemaking, it will be confusing to an applicant who has applied for assistance under both "PHA" and "owner" programs to find his or her eligibility not being defined or determined (or both) in a uniform manner.

As noted earlier, this bifurcated approach is amply justified by the statutory and programmatic differences between "PHA programs" and "project owner programs." In addition, the Department believes that any confusion that may be occasioned by this approach can be minimized by providing necessary information and instructions to prospective tenants—as required in paragraph (a) of the rule. Accordingly, the Department has retained the bifurcated approach in today's rule.

III. Definitions of the Federal Preferences

The definitions of the preferences used in the proposed rule elicited numerous comments and requests for clarification. The following summarizes the public comments, and gives HUD's responses, for each of the preference categories.

Before discussing this material, the Department wishes to emphasize two general points. First, the Department has attempted to draft the rule's difinitions broadly enough to ensure that those with the most urgent housing needs will be covered, yet narrowly enough that qualification for the preferences will not be so widespread as to dilute their effect. Second, as discussed above, the final rules governing the Public and Indian Housing programs (24 CFR Parts 904, 905, and 960), and the Section 8 Certificate and Moderate Rehabilitation programs (24 CFR Part 882, Subparts A and B, D and E, and F), differ from the rules for the other programs in serveral respects, including PHA (and IHA) discretion (subject to HUD approval) to develop their own definitions of the preferred categories. HUD's disposition of the public comments in based solely upon the definitions contained in the proposed rule, and does not address alternative definitions that PHAs or IHAs may propose.

A. *Involuntary Displacement*

One commenter asked whether a family that is evicted for non-payment of rent would be considered "involuntarily displaced," if the failure to pay the rent resulted from the loss of employment of a family member. Since paragraphs (d)(3) (A) and (B) of the proposed rule required the owner's action causing the displacement to be "beyond an applicant's ability to control or prevent" and to occur "despite an applicant's having met all previously imposed conditions of occupancy," respectively, the proposed rule did not consider a tenant displaced by eviction—irrespective of the reason—as "involuntarily displaced." The Department limited the definition in this manner to avoid imposing the further burden of PHAs and owners of having to determine why an applicant was evicted. The Department continues to believe that it is inappropriate to require PHAs and owners to assume this additional burden, and no change is made in this rule in this respect. It should be noted, however, that a family suffering a loss of income due to the unemployment of a wage earner may qualify for one or both of the other two preferences.

Paragraph (c)(1)(i) of the proposed rule provided that an applicant would qualify for the preference if "the applicant has been involuntarily displaced and is not living in standard replacement housing." Paragraph (c)(5) defined "standard replacement housing" as, among other things, "adequate for the family size." One commenter asked

what is to be considered "adequate for family size." Given the greater discretion accorded them under the rule, PHAs have discretion to fashion their own definition for the Public and Indian Housing programs, and for the Section 8 Certificate and Moderate Rehabilitation programs; the Department expects PHAs and project owners in the other programs to use the applicable occupancy standards contained in HUD Handbooks. Accordingly, the final rule does not contain a definition of this phrase.

Several commenters objected to the provision in paragraph (d) of the proposed rule that excluded from the definition of "involuntary displacement" a landlord's decision not to renew a lease or occupancy agreement. They argued that a tenant whose tenancy is terminated against his or her will is just as "involuntarily displaced" as tenants who are displaced because of other owner actions that meet the proposed rule's definition. They also argued that since landlords can use "laspe of time evictions" to terminate tenancy in lieu of giving notice of other owner actions that qualify under the definition, excluding such "evictions" from the definition could deprive tenants of the documentation necessary to qualify for a preference.

The Department agrees with these commenters, and has removed that limitation from the final rule. The Department notes, however, in response to other comments, that recognizing an owner's decision not to renew a lease as a possible ground for "involuntary displacement" would not lead to preferential treatment of "undesirable" tenants whose landlords opted to let their leases expire rather than pursue an eviction. Project owners and PHAs administering Public and Indian Housing projects remain obliged to determine whether prospective tenants' habits or practices make them unsuitable for tenancy in assisted projects; this rule in no way affects that responsibility.

One commenter thought it "unfair that a deserving family" would not get a preference on the basis that it was involuntarily displaced, if it was involuntarily displaced at one time, but it is living in standard replacement housing when its qualification for a preference is verified. The proposed rule excluded such a family because, as the comment itself states, the family is living in *standard* housing, and (assuming that the family is not paying more than 50 percent of its income for rent) no longer has the urgent need for housing assistance that the preferences are designed to address. Stated differently, the family has achieved the very state—occupancy of standard housing—that the granting of a preference would have helped them achieve. The final rule is unchanged on that point.

One commenter suggested that the preference for involuntary displacement should be limited to 30 days on either side of the displacing event. The Department does not agree with this suggestion. Paragraph (c)(1)(i) of the proposed rule conferred the involuntary displacement preference if the applicant had been involuntarily displaced and was not living in standard, replacement housing, or would have been involuntarily displaced within six months of certification or verification as to qualification for the preference. The Department does not believe that it makes sense to impose a time period after the displacement occurs: the only relevant inquiry at that point is whether the applicant is living in standard, replacement housing. Imposition of a 30-day limit for prospective displacements is too short a period, and would disqualify too many applicants that the statute—if given any reasonable interpretation—was intended to reach. Indeed, the intake process for housing assistance applications may itself take more than the 30 days suggested.

The Department rejects the comment that the preference for substandard housing and involuntarily displaced families should be limited to situations where a family's property is condemned—and then only if the condemned property complied with the applicable code when the applicant claiming a preference first occupied it. The Department believes that the standard suggested is far too narrow, and would inappropriately exclude many of the situations that a fair reading of the term "involuntary displacement" and Congressional intent would cover. In addition, limiting the preference to situations in which the property met code standards at initial occupancy would impose a unnecessary (and frequently impossible) administrative burden on prospective tenants, as well as on PHAs and owners.

One commenter recommended that where modernization of a project results in affected tenants being temporarily relocated, the tenants should be given an additional priority on the waiting list. Such tenants, insofar as this rule is concerned, would not be considered involuntarily displaced. They would not be "applicants for housing" to which the preferences apply, but tenants holding the right to reoccupy their units after rehabilitation, without any reference to a waiting list.

A commenter suggested that only government agencies whose functions involve public improvement and development should be authorized to verify that a family has been involuntarily displaced. This commenter argued that permitting verification of involuntary displacement on the basis of previous landlords' representations would encourage landlords to lie in order to use the availability of the preferences as a way of getting rid of "problem tenants."

This suggestion is impracticable, in the Department's view, because some jurisdictions may not have such agencies, or if they do, the agencies may not have the competency or resources to furnish the verification required. The Department believes that the proposed rule's approach of also permitting the previous landlord or agent to provide written notice of a prospective tenant's reason for displacement strikes an appropriate balance between protecting project owners and PHAs from "problem tenants" and ensuring tenants' access to reasonable means of verifying their qualification for a preference.

The Department does not believe, as a commenter argued, that private action is too broad and vague to serve as a ground for according a preference, or that verification of private action is excessively difficult. The Department has reviewed the legislative history surrounding enactment of the "involuntary displacement" basis for awarding a preference, and can find nothing to suggest that the term should be limited to displacement caused by governmental action. On the contrary, the solicitude in the legislative history that housing assistance be directed to those with the most urgent housing needs argues strongly for including both public and private displacement, since one's status of having been "involuntarily displaced" and need for housing turn on the *fact* of displacement, not the *nature* of the displacing action. In addition, HUD believes that the type of private action that is cognizable under the rule is clearly delineated and circumscribed, and that verification would generally be no more difficult than would be required for public action.

Paragraph (d) of the proposed rule contained an illustrative listing of occurrences that may constitute "involuntary displacement." Most of the examples on the list dealt with the project owner's withdrawal of the structure or the family's unit from the rental market. One commenter

recommended that this listing be deleted, because (in the commenter's view) it produces confusion and implies a narrower construction than the rest of the definition requires. The Department notes that the listing is only illustrative and is not intended (nor would it have the effect) of narrowing the types of displacements that may be cognizable under paragraph (d)(3). The final rule is unchanged on that point.

The final rule adds a provision including the victims of domestic violence among those who may qualify for a preference on grounds of involuntary displacement. (See paragraph (d)(2) of the rule.) The Department believes that according a preference for the victims of domestic violence recognizes their pressing need for a safe home environment for themselves and their families, and is entirely consonant with the preferences' objective of directing housing assistance to those with the greatest housing needs. Specifically, an applicant for housing assistance would be considered involuntarily displaced if the applicant leaves his or her dwelling as a result of actual or threatened physical violence directed against the applicant or a member of the applicant's family by his or her spouse or other member of the applicant's household. The Department does not believe that actual violence against the applicant should be a condition precedent to qualifying for the preference: the threat of violence against the applicant, or actual or threatened violence against the applicant's family, has the same effect of destroying the peaceful enjoyment of the family abode.

The final rule also considers as involuntarily displaced an applicant who lives in a unit with a spouse or other member of the applicant's household who engages in this type of violence. The Department does not believe that an applicant should be forced physically to vacate the unit before qualifying for the preference. Such a position would be wholly insensitive to the difficult and complex situation in which the victims of domestic violence often find themselves, and may result in additional, unnecessary physical and emotional damage to the applicant and his or her family.

The final rule amends paragraph (e) of the proposed rule to specify that a domestic violence situation is to be verified through written confirmation from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence. Although the final rule generally focuses on verification by objective arms of government to reduce the administrative burdens on PHAs and owners, the Department believes that reference to clergymen, physicians, and private operators of facilities for victims of domestic violence is appropriate, since many genuine instances of domestic violence may only be shared with private counselors and doctors, and may never come to the attention of government authorities. The final rule also provides that the instances of violence must be recent or of a continuing nature. This requirement is designed to ensure that a preference claim is based upon a current domestic violence condition. Paragraph (c)(5) of the rule contains a conforming change to make clear that in the domestic violence situation, "standard, replacement housing" does not include the dwelling shared by the victim and the assailant, or temporary shelters for the victims of domestic violence.

The Department wishes to emphasize that identification of victims of domestic violence (and, as noted later, "homeless families") among the types of applicants covered by the statutory preferences does not abrogate the responsibility of the PHA or owner to assure, on a case-by-case basis, that all potential tenants are able and willing to live up to the obligation imposed by the dwelling lease. In addition, the fact that these classes of individuals may have preferred status does not allow PHAs and owners to divert housing resources to purposes not contemplated by the statute, such as leasing assisted housing to entities other than income-eligible families, or for the purpose of providing transient housing facilities or temporary shelter.

The final rule also amends paragraph (c)(5) of the proposed rule to require that "standard, replacement housing" be "permanent" and occupied pursuant to a lease or occupancy agreement. This is a technical change to make clear that the type of replacement housing that can divest an applicant of the involuntary displacement preference must not be temporary in nature.

Paragraph (d)(2) of the proposed rule has been revised to add code enforcement as a potential public displacement action. This is a minor change to make clear that public displacement actions can include code enforcement actions that are not part of a public improvement or development program. (See paragraph (d)(1)(ii).)

Finally, the final rule amends paragraph (d)(3) to specify that an applicant who vacates a unit as a result of actions taken because of his or her refusal to comply with the applicable program occupancy policies and procedures with respect to the occupancy of underoccupied and overcrowded units is not to be considered "involuntarily displaced." (For examples of regulations containing these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.) This is a minor amendment designed to prevent an applicant who refuses to follow HUD's requirements for ensuring that assisted tenants are not overhoused from benefiting from the noncompliance, by attempting to establish qualification for a preference after any resulting displacement.

B. Substandard Housing

A commenter suggested that, to avoid PHA inspection of units, a "substandard" unit should be defined as one that does not meet the Section 8 Housing Quality Standards (HQS). The rule does not require PHAs or project owners to inspect applicants' units. Paragraph (g) of the proposed rule provided that verification of substandard housing would consist of a written statement or notice from a local government agency or from the applicant's present landlord as to the unit's condition. Since, as noted above, PHAs in some programs would have discretion to develop and use their own verification procedures, they may *elect* to inspect the unit involved as part of these procedures, but the rule does not *require* them to do so.

In addition, the Department does not believe that PHAs and project owners should have to use the Section 8 HQS to determine whether a housing unit is substandard. The HQS are designed to set minimum standards for determining whether a unit is eligible for Section 8 assistance, and are more prescriptive than the definition of "substandard housing" contained in paragraph (g). While the HQS are appropriate for determining minimum standards for federally assisted housing, the Department believes that the purpose of the Federal preferences—to target housing assistance to those with the greatest housing need—is better served by the approach taken in the proposed rule, of generally focusing the definition of substandardness on more serious indicators of inadequate housing quality. Thus, the final rule is unchanged on that point.

A housing authority recommended that a preference for living in substandard housing should only be given if the unit is so bad that (i) it is

actually condemned under the local housing code or (ii) repeated attempts to bring it into compliance with the code have failed. The Department does not believe that the rule should require use of such a narrow definition of "substandard." This definition would exclude from preferred treatment many applicants for housing assistance that have urgent housing needs and, thus, fit squarely within the class of individuals whom Congress intended to assist. In addition, the suggested definition would impose heavy administrative burdens on PHAs, owners, and applicants for tenancy in determining compliance with code requirements both before and after efforts to correct the deficiencies, and would force applicants to endure substandard conditions for perhaps lengthy periods, while any number of attempts to bring the unit up to code standards are made. The Department does not believe that the rule should mandate such a definition.

Another commenter suggested that verification of substandardness should require proof of an official inspection, rather than allowing the landlord to do it. This commenter contended that the landlord can certify to the presence or absence of certain basics, such as operable indoor plumbing or electricity, but not to their adequacy or safety.

The Department agrees that landlords may not possess the credentials necessary to make a professional determination that a housing unit is unsafe or inadequate. The Department believes, however, that landlord verification should be retained, even in cases requiring judgment as to the unit's condition.

The terms used in the regulation—such as the adequacy and safety of electrical service or heat, and whether the unit's condition endangers the health, safety, or well-being of the tenant's family—are not technical, and are readily comprehensible to the layman. Indeed, to the extent that the commenter fears that a landlord's judgment will err on the side of substandardness, the Department believes that the incentive runs the other way, since landlords will be inclined to characterize their units as substandard only when they in fact are. Depriving an applicant for housing assistance of this mode of verification, however, could impose additional delay and expense on the applicant, and in cases where there is no governmental unit qualified to provide the verification required, would render qualification for a preference on this ground impossible. The Department notes that under the rule, PHAs and owners could insist on a recitation of the facts underlying the alleged substandard condition of the unit to give them an adequate basis to make an informed judgment. In addition, as noted above, PHAs in certain programs (but not owners) would be free to propose their own means of verifying qualification for a preference on this ground.

Another commenter argued that the verification process should require a certain lapse of time to determine whether the landlord is willing to bring the unit into compliance with the applicable code, rather than using the unit's condition at a single given moment as the basis for the preference. This commenter stated that if the goal is to keep decent low-income housing stock on the market, there should be some pressure on the landlord to upgrade the unit and that tenants should not be encouraged to abandon the unit because of a preference system.

Preliminarily, it should be noted that the goal of this rule making is not to pressure landlords to bring their units up to code standard, but to target assistance to prospective tenants who have the greatest need for housing assistance. Requiring a period of time within which a housing owner can try to bring a unit up to standard would entail a considerable administrative burden on the PHA or project owner in monitoring and inspecting repair efforts, and could result in excessive delays during which tenants would be forced to live in substandard housing. Moreover, as a practical matter, the modes of verification contemplated by the rule would be unlikely to support a preference based on a single point in time: verification based on notice of substandard condition from a government agency would consume some time during which a unit can be repaired (if the landlord so intends) and the landlord would be unlikely to characterize the unit as substandard, unless he or she had decided not to make the needed repairs. The final rule is unchanged on that point.

Another commenter believed that the definition of "substandard" should be rooted in local housing codes, where available, rather than HUD regulations, because of the large differences among localities and regions of the country. For example, the commenter stated that in some jurisdictions, outdoor toilet facilities are commonplace and acceptable under local codes. In the commenter's view, to make all families without indoor toilets eligible for a preference would "wreak havoc" on the resources of PHAs in these areas.

The Department does not believe that this comment requires a change in the rule. As noted earlier, PHAs in certain programs may submit their own definitions of the preferences to make them more compatible with local codes. In addition, the final rule permits both PHAs and project owners to rank the preferences or their definitional elements (or both). Thus, for example, in areas where privies are common and accepted, the weight assigned a preference for this condition could be small. In any event, these factors ensure that implementation of the rule would not have the catastrophic effects suggested by the comments.

One commenter proposed that the definition of "substandard housing" should be changed, because it includes as substandard Single Room Occupancy (SRO) units that HUD subsidizes under the Section 8 program. These units are defined as units that contain no sanitary or food preparation facilities, or that contain one but not both types of facilities, and that are suitable for occupancy by a single individual who is capable of independent living. The Department agrees with the commenter, and has added language to paragraph (f) of the final rule to make clear that SRO housing is not substandard solely because it does not contain either or both of these facilities.

One commenter thought that the rule should first provide for an evaluation of the relative merits of similarly situated families living in substandard housing before it is determined which families should get the preference, because a family may choose to live in a substandard dwelling for personal reasons (*e.g.*, to live near an infirm relative, or emotional attachment to a particular neighborhood). The Department sees no need to require such an evaluation. To the extent that a family occupies a substandard dwelling for a particular personal reason, that family will not, presumably, apply for assisted housing, since it may entail relocating. More importantly, interposing evaluative criteria in the rule would add a significant administrative burden on PHAs and project owners in ferreting out the motives of applicants for assistance. (If, however, a PHA under 24 CFR Chapter IX or Part 882 wished to distinguish among applicants on this basis, the rule does not prohibit it from doing so.)

The final rule amends paragraph (f) to specify that "homeless" families are considered to be living in substandard housing for purposes of qualifying for a preference. This is a technical change to make clear that those whose need for

housing assistance is more pressing—those who have no permanent home at all—are living in "substandard" housing, and may qualify for preferred status. A "homeless family" is defined to include any person or family that:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

This definition is taken from section 103 of the Steward B. McKinney Homeless Assistance Act (Pub. L. 100-77, approved July 22, 1987). Use of this definition will enable the Department to target its housing assistance resources to the same general class of families and individuals that are eligible for the many housing and other initiatives contained in the McKinney Act. This coordinated approach brings the greatest amount of resources to bear on the homeless, and is clearly the most effective way of providing assistance to these individuals and families.

The Department again wishes to emphasize that identification of the homeless among the types of applicants covered by the statutory preferences does not abrogate the responsibility of the PHA or owner to assure, on a case-by-case basis, that all potential tenants are able and willing to live up to the obligation imposed by the dwelling lease. In addition, the fact that these classes of individuals may have preferred status does not allow PHAs and owners to divert housing resources to purposes not contemplated by the statute, such as leasing assisted housing to entities other than income-eligible families or for the purpose of providing transient housing facilities or temporary shelter. The final rule also amends paragraph (g) to specify that verification of homelessness consists of written confirmation of this status from a public or private facility that provides shelter for these individuals, or from the local police department or social services agency.

C. Fifty Percent of Income for Rent

The proposed rule provided a preference for those paying more than 50 percent of their income for rent. Paragraph (i) defined "rent" to include actual utility payments in the case of tenant-furnished utilities. Some commenters contended that inclusion of actual utility costs would encourage profligacy in energy consumption, rather than conservation, and would penalize the family that conserves energy, thereby paying less than 50 percent of its income for rent. It is unlikely, a commenter said, that Congress intended that the profligate family should get a preference at the expense of an energy-conservative family. Another commenter recommended that the utility allowance for the Section 8 Existing program be used in calculating "rent," with allowance for the use of actual utility bills in special circumstances.

The Department does not believe that the commenters' concern—that including actual utility expenses will encourage energy waste—is well-founded. It is the unusual family that will be wasteful in its use of energy and, thus, its disposable income in the hope of getting a preference. HUD believes that such premeditation is unlikely. The Department believes, however, that use of a utility allowance concept, except where the applicant prefers to use actual utility bills, is a good suggestion, and has amended the final rule accordingly. For PHAs and IHAs administering programs under 24 CFR Chapter IX, the allowance would represent the PHA's or IHA's estimate of the cost of utilities. For the other programs covered by this rule, the allowance would be the Section 8 Existing utility allowance. This change should relieve some of the administrative burdens on PHAs and project owners of verifying actual utility payments, while at the same time ensuring that the full amount of tenant-purchased utility costs are counted, where they exceed the utility allowance.

One commenter suggested that the rule be amended to exclude from "rent" amounts received by or on behalf of a family to help defray utility expenses. The commenter believed that the rent-burden determination should take into account only amounts actually paid by the family for shelter costs. The Department agrees with this comment, and has amended paragraph (i) to make clear that the utility component of "rent" is to be reduced by the amount of the subsidy under any energy assistance program, to the extent that this amount is not included in the family's income.

One commenter suggested that the rule be amended to permit third-party verification of an applicant's present rental and utility payments, for purposes of determining qualification for the rent burden preference. The commenter contended that third-party verification is more accurate and reduces the incidence of fraud. The Department agrees with this comment, and has amended the final rule specifically to permit owners and PHAs to verify present rental payments with applicants' present landlords and to obtain the required utility expense information directly from the utility provider. This form of direct verification also would make clear PHAs' and project owners' authority to fill in gaps in applicants' records of the required documentation.

One commenter asserted that by including utility costs in the definition or rent, higher income persons will qualify under the rent-burden preference. The Department is unsure of the point of this comment, but to the extent it questions inclusion of tenant-purchased utilities in the definition of rent, the Department rejects it. This treatment of tenant-supplied utilities is a long-standing departmental policy, reflecting the fact that utility costs are part of overall shelter costs and that tenants should not be treated differently based on whether their utility costs are included in the rent paid to the landlord or are paid separately.

One commenter suggested that in an effort to minimize collusion, the rent-burden preference should not be available where the tenant and the landlord are friends or are related. The Department rejects this suggestion, because it may unfairly exclude honest applicants by establishing an irrebuttable presumption of dishonesty based on consanguinity or friendship. Instead, the Department will depend on its investigative and enforcement efforts and those of PHAs and owners to disclose collusive acts intended to qualify an applicant for a preference improperly.

The second part of this comment argued that to qualify for the rent-burden preference, the rule should provide that the applicant must hold a lease with a term of 12 months or longer, and that the lease must have been entered into before the claim for a preference on this basis was made. The Department is not persuaded that the commenter's position should be adopted because in many instances, for reasons unrelated to attempts to qualify for a preference, applicants do not have 12-month leases. Thus, if this requirement were written into the rule, many qualified applicants would be unfairly

excluded from consideration for the grant of the rent-burden preference.

One commenter suggested that the defintion of "rent" be expanded to include payments to amortize the purchase of a manufactured home, where the family owns the home but rents the space on which it is located. The Department agrees with this comment. Although the rent-burden preference literally covers only "rental" situations, treating a manufactured homeowner who rents the home's pad as a "renter" is consistent with the existing coverage under section 8(j) of the 1937 Act. In addition, the final rule has been amended to make clear that members of a cooperative housing regime are "renters" for purposes of qualifying for the rent-burden preference. Like owners of manufactured homes who rent their pads, cooperative members are considered renters under the Section 8 program. (See section 8(f)(2).) Paragraph (i) of the rule contains these changes.

The final rule also expands the types of documentation that may be used to verify a tenant's rental payments, to include cancelled checks or money order receipts. This is a minor change designed to ease applicants' verification burdens while at the same time preserving the documentary nature of acceptable evidence of qualification for a preference.

Finally, the final rule adds a new paragraph (c)(6), specifying that an applicant may not qualify for a rent-burden preference if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance with respect to that unit has been terminated as a result of his or her refusal to comply with applicable program policies and procedures regarding the occupancy of underoccupied and over-crowded units. This provision is analogous to the amendment discussed earlier, prohibiting an applicant that refuses to follow these policies and procedures from claiming that any resulting displacement confers a preference on grounds of involuntary displacement

IV. Treatment of Waiting Lists

As noted earlier, the proposed rule envisioned a two-step process for awarding a Federal preference. (See paragraph (c).) Under this approach, applicants could claim a preference when they applied for housing assistance, simply by certifying that they met the required standards. Later, when they were to be offered housing assistance, their actual qualification for a preference at that time would be verified by appropriate documentation Under this system, it is possible for an applicant that qualified for a preference at the time of application to lose preferred status at the verification stage.

One commenter argued that it is unfair to take preferred status away from an applicant that qualifies for a preference while on the waiting list, but loses the preference at the time assistance is to be provided. The commenter believed that applicants would have difficulty understanding this situation, and that they are entitled to expect some degree of certainty with respect to their positions on the waiting list. The commenter recommended that verification be at the time of application to ensure that "cheaters" do not go to the top of the list. The commenter stated that because there is usually a long time between application and offer of assistance, "cheaters" may in fact be able to qualify for a preference before the verification stage.

The statute requires that preference be given to applicants who are in one of the three preferred categories "at the time they are seeking assistance." The Department believes that an applicant is "seeking assistance" during the entire period from application to receipt of assistance. To hold otherwise, would, in the Department view, undermine the statutory objective of directing housing assistance to those with the most urgent housing need, since (as in the commenter's example) the applicant does not qualify for a preference (and, thus, by definition, does not have an urgent need for housing assistance) at the time a unit is offered. Therefore, the Department believes that the statute does not permit, as the commenter urges, an applicant to retain a preference claimed at the time it applies for assistance, irrespective of later changes in the applicant's circumstances.

Further, the Department believes that any confusion that this two-step approach may cause should be minimized, if PHAs and project owners provide the information about how the preferences work that paragraph (a) of the final rule contemplates. Finally, the Department does not believe that the commenter's concern about "cheaters" abusing the two-step process justifies imposition of full-scale verification at both the application and offer of assistance stages. It should be noted, however, that paragraph (c)(2) of the rule specifically permits PHAs and owners to provide for such verification, at their option. It should be noted also that the paragraph (c)(2) permits applicants to claim a Federal preference at any time while they are on a waiting list. This is intended to ensure that applicants may claim preferred status at any point in the process, and should help assuage the commenter's fears that "cheaters" will falsely certify to qualification for a preference and gain an unfair advantage over *bona fide* applicants.

One commenter asked whether conventional public housing waiting lists still are to be arranged within a given priority by incoming rent ranges. As noted above, section 6(c)(4)(A) of the 1937 Act requires PHAs operating public housing programs to implement both the preferences and the "broad range of incomes" requirement. PHAs are expected to use whatever techniques are needed to meet the two requirements, including appropriate arrangement of waiting lists. Where both requirements cannot be satisfied, however, PHAs must give the preferences precedence.

A commenter suggested that the rule should allow PHAs to waive notification to applicants on the waiting list whose position is not affected by the adoption of the three Federal preferences. This suggestion raises serious issues of fairness, since PHAs and project owners may not know which families qualify for a preference without giving each family on the waiting list notice of the availability of the preferences and an opportunity to demonstrate the family's qualification for a preference. Without this information, PHAs and owners may not be able to guage the effect of implementation of the rule on individual families on the waiting list. On the other hand, where a waiting list is very long, notification of *all* applicants on the list could be prohibitively expensive and could hold little, if any, genuine benefit for many applicants, particularly those at the bottom of the list.

The Department has revised the final rule to give PHAs and owners some flexibility in implementing the notification requirement, while protecting the legitimate interests of applicants who may qualify for a Federal preference. The amendment reiterates the requirement that all applicants (including those on waiting lists at or after implementation of the rule) be notified of the availability of the Federal preferences and be given an opportunity to demonstrate their qualification for them. It permits, however, PHAs and owners to give notice to fewer than all applicants on a waiting list *at any given time*, where the PHA or owner determines that universal notice would be impracticable because of the list's length. The PHA or owner would instead be required to notify a sufficient number of applicants at any given time to ensure that, based on the

number of preference-holders already on the list and the expected availability of assistance, (1) there is an adequate pool of applicants on the waiting list who are likely to qualify for a Federal preference and (2) it is unlikely that, on the basis of the PHA's or owner's system for applying the preferences and the preferences claimed by applicants already on the waiting list, any applicant who has not been notified would qualify for assistance before other applicants whom the PHA or owner has notified.

The Department believes that this approach is responsive to the concerns raised by the commenter, as well as the interests of applicants. It should be noted that the degree of relief that this amendment will afford PHAs and owners will vary inversely with the complexity and number of gradations in the preference heirarchy they adopt. As noted earlier, PHAs and owners may use local preferences as a way of distinguishing among Federal preference-holders, and may aggregate or rank the preferences or their components. The higher the pyramid of preferences under these authorities, the less confidence a PHA or owner would have in reaching the required conclusion that it is unlikely that any applicant preference-holders who has not been notified would receive assistance before preference-holders who have been.

One commenter urged HUD to consider grandfathering all those on current waiting lists from the rule's implementation. The commenter urged that this be done in the interest of fairness to applicants that have been waiting for housing for a long time. In the Department's review of the statute and its legislative history, it has found no indication of Congressional intent to grandfather those on the waiting lists. Indeed, the Congressional solicitude for directing assistance to those most in need of housing assistance seems to cut the other way: implementation should not await the exhaustion of current waiting lists.

It should be noted, however, as stated in the preamble to the proposed rule (49 FR 37788), that the Department is delaying the rule's implementation date for 180 days after publication. This time is needed to permit PHAs and owners to take steps necessary for full implementation of the rule (including appropriate notice to those on waiting lists) and to give applicants on waiting lists who are notified an opportunity to gather material necessary to demonstrate their qualification for a preference. As a practical matter, the six-month delayed effective date has the effect of grandfathering many who are currently on waiting lists.

A commenter viewed the rule's provision for notification to applicants on waiting lists as leading to confusion about how their status is affected, because (in the commenter's view) it carries the implication that (a) their qualification is somehow now open to doubt, (b) they must take further steps to obtain verification or risk loss of their status, and (c) taking steps to obtain new verification will obtain for them a better position on the waiting list. The commenter viewed this last point as "most insidious," since, in the commenter's view, qualification for a preference will be almost universal.

The Department agrees that implementation of the preferences may cause applicants some confusion and concern over the effect of the preferences on their chances of receiving housing assistance. This is an inevitable consequence of implementing the statutory mandate. However, PHAs and project owners can minimize applicant concern and confusion by providing clear and complete information on the nature of the preferences, their effect, and how they may be obtained. As stated below, the Department does not believe that qualification for the preferences would be universal.

One commenter feared that implementation of the preferences would adversely affect individuals who need emergency housing. The Department believes that this fear is unfounded, since the preferences do not affect the provision of temporary, emergency housing and, in any event, most families in need of emergency housing would also qualify for one or more of the preferences, with whatever weight within the preference system PHAs and owners chose to give such housing.

Finally, a commenter argued that implementation of this rule would create public distrust of waiting lists and erode hard-earned public credibility for the assisted housing delivery system. The Department does not believe that the rule will have this effect, provided that it is implemented fairly and in a way that is comprehensible to applicants for assistance—results that are largely within the control of the PHAs and owners responsible for administering the preferences.

V. Degree of Targeting

A number of commenters asserted that the preference rule would have marginal impact, since virtually all very low-income applicants for housing assistance would qualify for at least one of the preferences. The Department does not agree with this assertion.

Based on 1983 American Housing Survey (AHS) data, the Department estimates that approximately 55 percent of very low-income families unserved by a housing assistance program may qualify for a preference, either because they are living in substandard housing or paying more than 50 percent of their income for rent. Very low-income families that may qualify for a preference solely because they are involuntarily displaced would be expected to constitute a very small percentage of preference-holders on currently unserved by housing assistance programs. While the percentage of prefrence-holders on current waiting lists may vary, it is clear that, on an overall basis, the preferences are responsive to the statutory objective of directing housing assistance to those unserved, very low-income families that have the most urgent housing needs. It should also be noted that use of the discretion accorded PHAs and project owners in today's rule to aggregate or rank the preferences and their definitional components would have the effect of further targeting assistance to the most needy *among* those who hold a preference. The Department intends to monitor carefully the incidence of preference qualification generally, as well as individual PHA and owner implementation of the preferences, to determine whether any additional statutory or regulatory changes are needed to ensure that the preferences carry out their intended targeting objective.

VI. Social Effects of the Federal Preferences

A number of commenters expressed concern about the effect that the Federal preferences would have on assisted housing projects and the assisted tenant populations. Some commenters stated that those paying more than 50 percent of their income for rent would always be welfare recipients. They believed that by giving the rent-burden preference, the working poor would be penalized. If the rule goes into effect, these commenters emphasized, projects would end up with welfare clients only. This would defeat PHAs' attempts to house a social and economic cross-section of tenants, and would result in management and maintenance problems. Other commenters saw the regulations as providing primarily minorities with a preference, thus assuring that public housing would become predominantly minority-occupied and "ghettoized." This would result, they argued, in

further burdens on housing authorities and city governments.

Another commenter stated that projects historically work best with a social and economic mix of all races, and that once projects become 50 percent minority-occupied, it is impossible to "turn them around." This commenter stated that most families that would qualify for a preference are minority, and a large percentage are on welfare and will stay there, "as long as HUD and Congress give them preferential treatment."

The Department takes issue with these comments. Analysis of American Housing Survey data suggests that, nationwide, neither black nor welfare households are likely to predominate as a result of the implementation of the rent-burden preference. For example, only 21 percent of the very low-income, unsubsidized households paying at least 50 percent of their income for rent are black. This is nearly equal to blacks' representation among all very low-income households (22 percent). The proportion (29 percent) of welfare households among all high rent-to-income households (family and elderly) is slightly greater than their overall proportion (24 percent) among very low-income households. However, neither the relative nor absolute share of welfare households is dominant.

It is possible that in different areas there would be different impacts as a result of the implementation of the preferences. Nonetheless, families that qualify for preferred status will receive a preference in the selection of tenants—without regard to race or source of income. Indeed, any system that attempted to discriminate on either of these grounds would raise grave legal and public issues.

Some commenters also specifically cited the rent-burden preference as destructive of a sound policy of housing a cross-section of income ranges. A tenant mix reflective of the surrounding neighborhood is vital, argued a commenter, to keep public housing desirable. These commenters thought that the rule would be a disincentive to the working poor, and would result in the working poor not being housed. Congress, the comments said, is reneging on an important aspect—income mix—that is necessary to eliminate pockets of poverty and reduce crime and vandalism.

As noted earlier, PHAs are required to implement both the preference provisions and the "broad range of incomes" requirement in section 6(c)(4)(A) of the 1937 Act, and must subordinate the range of incomes to the preferences only where both provisions cannot be satisfied. The Department does not believe that implementation of this rule would have the effects that the commenters fear.

VII. Tenant Mobility

Some commenters criticized the proposed rule on grounds that it would discourage residents or assisted housing from moving from one jurisdiction to another, since, as long as they lived in assisted housing, they would be unable to qualify for a preference and, therefore, would have to move to substandard housing or pay more than 50 percent of their income in rent in order to have a realistic chance of receiving housing assistance again. The commenter believed that this result conflicted with the goal of promoting housing choice and HUD's commitment to interjurisdictional transfers using Section 8 Existing assistance (the "portability" concept under the Housing Voucher program). Another commenter raised the same issue with respect to intrajurisdictional moves—for example, where an assisted family wants to move closer to a job, but remains within its current PHA's jurisdiction.

Some moves—both inter- and intra-jurisdictional—are not subject to this rule. An assisted family that moves within the same program administered by a PHA (such as from one public housing unit to another or from one unit to another with a Certificate, within the same PHA's jurisdiction), or within a project (one or more buildings managed as a single project) controlled by a private owner, generally is not subject to meeting the preference requirements, because the assisted family moves without losing its assisted status. The Department considers this type of move to be internal to the PHA or to the project owner's operation, and not to be an event that requires reapplication for assistance.

An assisted family that moves outside the program administered by a PHA may or may not be subject to the preference requirements, depending on the circumstances and as discussed below. As one commenter point out, the Department strongly encourages the interjurisdictional transfer (or "portability") of Section 8 Certificates and Housing Vouchers. Indeed, the Housing Voucher program requires "portability" between jurisdictions operating Housing Voucher programs, and encourages portability of Vouchers between Certificate and Housing Voucher jurisdictions. In addition, there are in place many voluntary mobility programs around the country. In all of these cases, when the assisted family actually brings the assistance with it, as is provided in the required Housing Voucher portability program, or as is provided in many of the voluntary mobility programs in which the PHAs exchange Certificates or Housing Vouchers, there is no reapplication for assistance; the assisted family is not subject to the preference rule.

However, in any case where the assisted family is placed on the waiting list (even though it may be at the bottom), the family is considered to be reapplying for assistance, and, therefore, is subject to the preference rule. As some of the commenters stated, application of the preferences to assisted tenants could severely restrict their ability to move among jurisdictions and housing programs, since assisted tenants, by definition, generally cannot qualify for a Federal preference. Commenters felt that, in many cases, literal application of the preference rule would impose a significant impediment to mobility that is not present in the current system.

The Department shares the concerns expressed by the commenters. Indeed, as a commenter noted, HUD has been a long and ardent advocate of mobility for assisted tenants.

On the other hand, most tenants receiving housing assistance under the programs subject to the rule have by definition achieved the very state that the preferences are intended to produce: residence in a standard unit with affordable rent. Providing these tenants a preference if they wish to move could place them ahead of other preferred tenants who must endure the conditions that qualified them for a preference for a longer period, before assistance can be made available for them. Arguably, this result is neither fair as a policy matter, nor significantly faithful to the Congressional concern that housing assistance be directed to those with the most pressing housing needs.

The Department believes that the issues involved in "mobility" for assisted tenants under the final rule are best addressed after a notice and comment rulemaking. Therefore, the Department will issue a proposed rule dealing with the interrelationship between the Federal preferences and assisted tenants whose admission to another program or project involves placement on a waiting list. The Department will attempt to make this rulemaking effective at or shortly after this final rule's implementation—180 days after publication. However, if the rule does not take effect until after implementation of this final rule, assisted tenants who wish to move to another project or program, but are first

placed on a waiting list, must demonstrate their qualification for a preference in the same way as unassisted applicants.

VIII. Potential for Fraud and Abuse in Qualifying for a Federal Preference

A general criticism of the proposed rule was that it would encourage families to create situations that would give them a preference and lead to manipulation and abuse to the disadvantage of the honest applicant. A further criticism was that the rule would encourage collusion between landlords and tenants since, by allowing the landlord to provide verification as to an applicant's status, the rule would put the landlord in a position to falsify facts to get rid of, or to help, individual tenants. It also was claimed that the rule would have the effect of encouraging applicants that live in substandard housing to remain there, so that they may gain a better position on the waiting list.

The Department agrees that there are those—both landlords and tenants—who may resort to fraud and abuse to further their own interests: no program is immune from such practices. With respect to this rule, however, the Department has had to balance fraud and abuse considerations along with a number of other factors, including the administrative costs to HUD, as well as to PHAs and project owners, of imposing more stringent verification and investigatory requirements, and the ability of applicants for assistance to demonstrate their qualification for a preference without unnecessary burdens or restrictions. The Department has reviewed the approach taken in the proposed rule in light of the public comments, and continues to believe that this approach strikes an appropriate balance among the considerations involved.

The Department has drafted the verification provisions of the rule to minimize the incidence of fraud and abuse. These provisions focus on objectively verifiable, independent sources to establish qualification for a preference. Thus, paragraphs (e) and (g) of this rule include, as appropriate means of verification, written notice from governmental entities as to claims of involuntary displacement or residence in substandard housing. Paragraph (j) requires PHAs and owners to verify a family's income in accordance with well-known, existing procedures for HUD's assistance programs, which (among other things) provide for the use of release and consent forms to assist verification. Paragraph (j) also provides for verification of an applicant's rent by production of pertinent lease documents or direct contact with the applicant's current landlord, and verification of an applicant's utility expenses, either by reference to a utility allowance concept in lieu of actual utility bills, or (where the applicant elects to use actual utility expenses) actual utility consumption data furnished by the applicant or by the utility provider.

It is true that landlords are permitted to provide verification for claims of displacement stemming from the landlord's actions or from the substandard nature of the dwelling. In addition, verification of involuntary displacement based on domestic violence may come from clergymen or physicians, and verification of domestic violence and homelessness could come from private shelters and other facilities. The Department believes that, in some cases, these types of verification may be the only timely and, perhaps the only, available means of verification. To disallow these means of verification because they may be subject to abuse could have the effect of denying applicants reasonable access to demonstrate qualification for a preference. Moreover, each of these forms of verification must be in writing, thereby creating a record that should both deter abuse and assist in prosecution in those instances in which abuse is found.

On the other hand, the Department does not believe that it would be cost-effective to impose additional verification requirements on PHAs and owners, and through them, on prospective tenants. For example, a number of the commenters argued that verification should include a finding as to an applicant's motivation for a given decision, such as a decision to move to (or to remain in) a substandard unit. Even though this inquiry might expose some cases of abuse, the Department does not believe that requiring such a staff-intensive effort is cost-effective. It is adequate, in the Department's view, simply to demonstrate the fact of substandard housing and to grant the preference upon that basis.

The Department intends to be sensitive to indications of fraud, waste, and abuse under this rule in the course of established, on-site monitoring reviews, and will take whatever regulatory or other action is appropriate in light of this experience. Finally, it should be noted that PHAs operating programs under 24 CFR Parts 882, 904, 905, or 960 are free to establish their own verification standards and procedures (which can be more stringent than those prescribed in this rule), at the PHAs' option.

IX. Administrative Burdens

A number of commenters expressed concern that conversion to, and maintenance of, a system for administering the preferences would impose on PHAs and owners considerable administrative and legal burdens for which HUD will not compensate them. Some considered the two-step certification/verification process to be wasteful, since they believed that it would, in effect, create a "revolving door," in which the same applicant would repeatedly make preference claims that are later denied. One commenter proposed an alternative system under which qualification for the preferences would be determined only at the point at which assistance is to be offered. Under this approach, families on the waiting list would be screened for qualification for a preference, with those not qualifying returned to the waiting list.

Others found the requirement that applicants for housing assistance (including those currently on waiting lists) be notified of the availability of the preferences to be excessively costly, and recommended alternatives, such as posting notice of the preferences in PHAs' offices. Still others found the PHA's or project owner's verification responsibilities to be onerous. Specifically, some indicated a belief that the proposed rule would require PHAs to make "home visits" to determine whether the unit is substandard; some believed that verification when assistance is offered would require verification of an applicant's status not only at that point, but also when the applicant originally certified to his or her qualification for a preference.

The Department recognizes that PHAs and owners have to carry out additional administrative tasks to implement and maintain the preference system. The rule has been drafted, however, to keep these burdens to the absolute minimum necessary to carry out the statutory mandate. Specifically, the Department continues to believe that the two-step certification/verification process contained in the proposed rule is the clearest and least burdensome way of administering the preferences. It focuses the verification of preference claims at the only time that verification is needed—when assistance is to be offered the applicant—and, through initial certification, narrows the pool of applicants that PHAs and owners must review at the verification stage. The Department believes that omission of

the certification stage in the alternative proposed by a commenter would often lead to a more burdensome procedure than that contemplated by the final rule, since a PHA or owner may have to contact and process a number of applicants before it even reaches an applicant claiming a preference.

It is true that some PHAs and project owners may incur some costs in contacting applicants currently on waiting lists. Since the Department believes that the statute was intended to cover those on waiting lists, there is no alternative to requiring individual notice. As discussed earlier, however, the Department has modified the proposed rule to permit notification of less than all applicants on the waiting list at any given time. This revision should enable PHAs and project owners to avoid the costs and administrative burdens associated with mass notifications. In any event, these costs are one-time, start-up expenses, and will not recur once the preference system is in place. Although the rule requires PHAs and owners to notify future applicants of the availability of the Federal preferences, this can be done in the same way that tenants are given notice of other tenant selection standards.

The Department has specifically drafted the verification procedures contained in today's rule to minimize administrative costs. As noted earlier, the rule relies on written documentation from agencies of government to the extent feasible. These documents should be readily verifiable, without the need for further investigation. Verification from other sources (such as landlords) must also be in writing, but may require further verification. As mentioned before, the Department believes that use of this form of verification is necessary to provide applicants a reasonable opportunity to show that they qualify for a preference.

With respect to the specific points raised in the comments, the rule does not require PHAs to make "home visits" to determine whether a unit is substandard. Only written verification from the local government or the applicant's present landlord is required. At the verification stage, the only inquiry is whether the applicant qualifies for a preference at that time. Neither this rule nor its predecessor contemplates a determination as to whether the applicant's earlier certification as to qualification for a preference was correct. The rule also makes clear that the applicant bears the burden of producing the required documentation, except in those cases where third-party verification is needed.

Finally, the Department believes that administrative costs associated with establishing and maintaining the preference system—including one-time, start-up costs—should be absorbed by the PHAs and project owners. The Department does not believe that administering the preferences will involve significant costs over the long term. Moreover, in a number of instances, PHAs and owners should be able to apply established procedures to their administration of the preferences. For example, paragraph (j) of the final rule specifically provides that owners and PHAs should verify "income" for purposes of the rent-burden preference in the same way as they do for initial determinations of eligibility and annual reexaminations of income under the program involved. Use of existing procedures should help to minimize PHA and owner administrative costs. Further, a number of PHAs already provide preferences analogous to those required under this rule, without (to the Department's knowledge) the kinds of excessive burdens that the commenters suggested. Thus, the Department does not anticipate a need to provide additional funding to enable PHAs and owners to administer the preferences.

X. Informal Review of Federal Preference Denials

Several commenters expressed uncertainty as to whether the proposed rule contemplated some form of informal review of the decision of a PHA or project owner to deny an applicant's qualification for a preference. In response to these comments, this rule contains a new paragraph (k) to make clear that the owner or PHA must provide prompt, written notice to the applicant of a determination denying a preference (including a brief statement of the reasons for the determination), and give the applicant an opportunity to meet with the PHA or owner (or its representative) to review the denial.

The Department believes that this "notice and opportunity for meeting" approach strikes an appropriate balance among the competing interests involved in the denial of a preference. On the one hand, this approach recognizes the importance of qualification for a preference in securing housing assistance at the earliest time, by establishing a mandatory mechanism for the prompt resolution of factual issues and concerns. On the other hand, use of this degree of informal procedure reflects the Department's belief that the denial of a preference—which has the effect of prolonging an applicant's wait for housing assistance—is not of such magnitude as to justify imposition of the administrative burdens on PHAs and project owners that are inherent in a more formal process.

The new paragraph (k) provides that the meeting is to be conducted by any person or persons designated by the owner or PHA, including an officer or employee of the PHA or project owner, or the person who denied or reviewed the denial of a preference, or his or her subordinate. The Department believes that permitting the individual who denied or reviewed the denial of a preference to conduct the meeting amply supports the fairness of the process, given the essentially factual focus of the inquiry, the effect on the applicant of a preference denial, and the need to minimize the administrative burdens on PHAs and project owners, particularly PHAs and owners with limited staff resources. The rule contains a provision found in the informal review provisions of the existing housing assistance regulations, stating that the availability of informal process for denial of a preference does not affect other rights that the applicant may have regarding discrimination on the basis of race, color, creed, religion, sex, national origin, age, or handicap. This provision makes clear an applicant's existing right to protection from unlawful discrimination. The final rule also amends the informal review procedures in the existing regulations to make clear that the special provisions contained in paragraph (k) apply in the case of preference denials.

Finally, the Department wishes to stress that the administrative review requirements contained in this rule apply only to the issue of whether the applicant meets the criteria for receiving a preference. They do not apply to matters such as the propriety of the PHA's or owner's system for applying the preferences or alternate definitions of the preference categories that PHAs in certain programs may establish. These matters reflect policy choices that are committed to the discretion of PHAs and project owners, consistent with HUD's requirements. The Department does not believe that the informal meeting contemplated by this rule is an appropriate forum for considering challenges to PHAs' or project owners' overall policies.

XI. Miscellaneous

A commenter asserted that there is currently no HUD handbook for State Housing Finance Agencies (HFAs). This led the commenter to inquire whether HUD intended that HFAs comply with

Handbook 4350.3, *Occupancy Requirements of Subsidized Multifamily Housing Program*, in light of the reference in paragraph (j)(1) of the rule that verification of income be in accordance with existing procedures.

HFAs are subject to Handbook 4350.3. This was explicitly stated in the Handbook revisions issued as Change–1 on March 7, 1985, and later clarified in a memorandum to State Agency Directors on April 17, 1985. Paragraph 1–6.b. of Handbook 4350.3 CHG–1 states that HFAs may enforce State requirements, in addition to the Handbook requirements, if the State requirements do not conflict with the Handbook or with HUD regulations. Paragraph 1–6.b.(2) further states that, if any HFA policies conflict with the Handbook, the Agency must certify that the policies do not conflict with applicable statutes and regulations.

One commenter recommended that language similar to §§ 880.603(b)(2), 881.603(b)(2), and 883.704(b)(2) of the proposed rule be added in Parts 882, 884, and 886. These sections of the proposed rule provided that, if a family is entitled to a preference, the owner must accept the family's application and place the family on the waiting list, notwithstanding that there already exists a 12-month waiting period for all or some applicants. This was an exception to the existing provision that states:

> If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason.

The Department agrees with this comment, and has extended the provisions of the proposed rule (with some modifications) to all the Parts covered by this rule making. Specifically, this rule provides that, notwithstanding the fact that a project owner or PHA is not accepting applications because of the length of the waiting list, it may not refuse to accept an application from an applicant who claims qualification for a preference or to place the applicant (if otherwise eligible) on the waiting list, unless it determines, on the basis of the number of applicants who are already on the waiting list and claim a preference, and the anticipated turn-over of assistance, that: (1) There is an adequate pool of applicants on the list who are likely to qualify for a Federal preference and (2) it is unlikely that, on the basis of the PHA's or owner's system for applying the programs, the preference the applicant claims, and the preferences claimed by applicants already on the waiting list, the applicant would qualify for assistance before those who are on the waiting list. This provision is designed to ensure that there is an ample supply of preferred applicants on the waiting list, despite the fact that the waiting list may be closed to those who do not claim a preference. The Department recognizes that maintaining a waiting list that is heavily weighted towards applicants with a preference may operate effectively to preclude applicants without a Federal preference from assisted housing, especially where housing resources are severely limited; however, in the Department's view, this possibility is an unavoidable result of the statute.

The Department has also amended the proposed rule to make clear that the preferences apply to the selection of tenants to receive assistance under the Rent Supplement and Section 8 programs, rather than the selection for admission to a project assisted under these programs. This is a technical change, to reflect the fact that projects under these programs may be partially subsidized and that the preferences apply to the selection of tenants to receive rental assistance, not to the admission of tenants to units without such assistance. (This issue does not arise in the Section 8 Certificate or public housing programs, since there are no "partially subsidized" projects under these authorities.)

The Department also wishes to note the following regarding partially subsidized Rent Supplement and Section 8 New Construction and Substantial Rehabilitation projects. Under current practice, a family that is seeking rental assistance and that qualifies for a preference may, because of the unavailability of subsidy, move into a partially assisted project without rental assistance, with the express understanding that the family will receive a subsidy when it becomes available. If the housing owner verifies that the family qualifies for a Federal preference when it is admitted to the project, the Department believes that the owner may honor this understanding, without requiring the family to demonstrate independent qualification for a preference when the rental assistance is in fact offered. The Department views the admission without subsidy in these circumstances as an interim measure, and does not believe the admission should have the potential effect of divesting the family of the preferred status for which it has qualified.

As a related matter under the Section 8 and Rent Supplement programs, a tenant's eligibility for assistance continues until the rent payable by the tenant equals the full market rent for the unit. The termination of eligibility at this point does not "preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the contract." (See §§ 215.55(c), 880.603(c)(3), 881.603(c)(3), 882.212(c), 882.515(e), 883.704(c)(3), 886.124(c), and 886.324(c).) The Department believes that resumption of payments in these circumstances occurs without regard to whether the tenant qualifies for a preference at the time of resumption. A tenant who once establishes eligibility for rental assistance does not lose his or her right to receive assistance solely because the actual receipt of assistance may be interrupted.

Finally, the final rule contains a number of technical modifications to the proposed rule. Chief among these are the following. The proposed rule would have made only a few conforming changes to the existing regulatory framework. The final rule is fully woven into the existing regulations. In addition, the proposed amendment to 24 CFR Part 905 (Indian Housing) only covered the Mutual Help Homeownership Opportunity program. This rule extends the applicability of the preferences to all of Part 905, as contemplated by the preference statute and the original proposed rule.

Findings and Certifications

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, DC 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. 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.

Under 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. As noted in detail in the earlier discussion on "Administrative Burdens", the Department has taken great care to minimize the rule's burdens on all PHAs and project owners (including small entities), and does not believe that administering the preferences would involve significant costs over the long term.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The assigned OMB control number will be announced by separate Notice in the **Federal Register.**

This rule was listed as sequence number 985 under the Office of Housing, in the Department's Semiannual Agenda of Regulations published on October 26, 1987 (52 FR 40358, 40381) in accordance with Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program numbers are 14.103, 14.105, 14.149, and 14.156.

List of Subjects

24 CFR Part 215

Grant programs: Housing and community development, Rent subsidies.

24 CFR Part 880

Grant programs: Housing and community development, Rent subsidies, Low and moderate income housing.

24 CFR Part 881

Grant programs: Housing and community development, Rent subsidies, Low and moderate income housing.

24 CFR Part 882

Grant programs: Housing and community development, Housing, Manufactured homes, Rent subsidies.

24 CFR Part 883

Grant programs: Housing and community development, Rent subsidies, New construction and substantial rehabilitation.

24 CFR Part 884

Grant programs: Housing and community development, Rent subsidies, Rural areas, Low and moderate income housing.

24 CFR Part 886

Grant programs: Housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Parts 904, 905, 960

Public housing.

Accordingly, the Department amends 24 CFR Parts 215, 880, 881, 882, 883, 884, 886, 904, 905, and 960 as follows:

PART 215—RENT SUPPLEMENT PAYMENTS

1. The authority citation for 24 CFR Part 215 continues to read as follows:

Authority: Sec. 101(g), Housing and Urban Development Act of 1965 (12 U.S.C. 1701s); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In Part 215, a new § 215.22 is added, to read as follows:

§ 215.22 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this part, housing owners must give preference to applicants who are otherwise qualified for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent. Only qualified tenants, as defined in § 215.20, are eligible to receive a preference.

(2)(i) The housing owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include those on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the housing owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would qualify for admission to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection policies. The owner must apply the Federal preferences in a manner that is consistent with the provisions of this section and other applicable requirements (including applicable limitations on the use of local residency requirements and preferences).

(2) The housing owner must establish a system for applying the preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit

for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's HUD-approved Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3), but HUD approval is not required before the owner may implement the system.

(5) Local residency requirements are prohibited. Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with HUD's affirmative fair housing objectives and (if applicable) the owner's HUD-approved Affirmative Fair Housing Marketing Plan. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment must be treated as residents.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section, or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this part (or thereafter until the time that they are offered assistance) by certifying to the owner that they qualify for preferred status under paragraph (c)(1) of this section. An owner must accept this certification, unless the owner verifies that the applicant is not qualified for preferred status.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a Federal preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change for one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, the owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) that the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or under this part with respect to the unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result

in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or famly who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilitites (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f)(1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is one twelfth of Annual Income, as determined in accordance with § 215.21.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the avarage monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify the family's income in accordance with the provisions of this part and applicable HUD handbook provisions.

(2)(i) The owner must verify the amount due to the family's landlord (or

cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's administrative instructions. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Closure of waiting list.* Notwithstanding the fact that the housing owner may not be accepting additional applications for assistance under this part because of the length of any waiting list, the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance under this part and claims that he or she qualifies for a Federal preference as provided in paragraph (c)(2) of this section, unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that—

(1) There is an adequate pool of applicants on the list who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

(m) *Additional verification for applicants receiving Rent Supplement payments.* An owner may request the Secretary (or in the case of a State Agency Project the Secretary's designee) to issue a certificate that a family qualifies for a Federal preference under this section. HUD will issue this certificate only if the owner requests it.

(n) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

3. The authority citation for 24 CFR Part 880 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

4. In § 880.601, paragraph (b) is revised to read as follows:

§ 880.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 880.613, selection of tenants, reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

5. In § 880.603, the introductory text of paragraph (b), and paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 880.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter. The owner is also responsible for the selection of families, including giving a Federal selection preference in accordance with §880.613.

* * * * *

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, except that the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 880.613(c)(2), unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that—

(i) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(ii) It is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission to the project before other applicants on the waiting list.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to

request HUD review of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, religion, sex, or national origin. The informal review provisions for the denial of a Federal preference under § 880.613 are contained in paragraph (k) of that section.

* * * * *

6. In Part 880, a new § 880.613 is added, to read as follows:

§ 880.613 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this part, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection standards. The owner must apply the Federal preferences in a manner consistent with the provisions of this section, the equal opportunity and other requirements of §§ 880.210, 880.601 and 880.603 (including limitations on the use of local residency requirements and preferences contained in § 880.603(b)(1)), and other applicable requirements.

(2) The housing owner must establish a system for applying the preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference, as provided by paragraph (c)(2) of this section;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's HUD-approved Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the owner may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntary displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this part (or thereafter until the time that they are offered assistance) by certifying to the owner that they qualify for a preference under paragraph (c)(1) of this section. An owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph

(c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units; or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" in living is substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtacted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payment.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify the family's income in accordance with the standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienhold directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by any person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

7. The authority citation for 24 CFR Part 881 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

8. In § 881.601, paragraph (b) is revised to read as follows:

§ 881.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 881.613, selection of tenants, reexamination of family incomes, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

9. In § 881.603, the introductory text of paragraph (b), and paragraphs (b)(2) and (b)(3) are revised to read as follows:

§ 881.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter. The owner is also responsible for the selection of families, including giving a Federal selection preference in accordance with § 881.613.

* * * * *

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, except that the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 881.613(c)(2), unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that—

(i) There is an adequate pool of applicants who are likely to qualify for a Federal preference and,

(ii) It is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission before other applicants on the waiting list.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or that the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request HUD review of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, creed, religion, sex or national origin. The informal review provisions for the denial of a tenant selection preference under § 881.613 are contained in paragraph (k) of that section.

* * * * *

10. In Part 881, a new § 881.613 is added, to read as follows:

§ 881.613 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this part, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preference in its tenant selection standards. The owner must apply the Federal preferences in a manner that is consistent with the provisions of this section, the equal opportunity and other requirements of §§ 881.210, 881.601, and 881.603 (including limitations on the use of local residency requirements and preferences contained in § 881.603(b)(1)), and other applicable requirements.

(2) The housing owner must establish a system for applying the preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, placed on any waiting list, or the time of submission of his or her application for admission to an assisted project. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify or claim qualification for a Federal preference;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964,

42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3), but HUD approval is not required before the owner may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this part (or thereafter until the time that they are offered assistance) by certifying to the owner that they qualify for preferred status under paragraph (c)(1) of this section. An owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disater, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where;

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's houshold; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violenece must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2), from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f)(1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers:

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify the family's income in accordance with the standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the owner. Those designated may be an officer or employee of the owner, incluing the person who made or reviewed the determination or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

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

11. The authority citation for 24 CFR Part 882 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

12. In § 882.116, paragraph (c) is revised to read as follows:

§ 882.116 Responsibilities of the PHA.

* * * * *

(c) Receipt and review of applications for Certificates of Family Participation, provision of a Federal preference in selecting applicants for participation in accordance with § 882.219, verification of family income and other factors relating to eligibility and amount of assistance, and maintenance of a waiting list in accordance with this part;

* * * * *

13. In § 882.209, paragraphs (a)(2) and (a)(7) are revised to read as folows:

§ 882.209 Selection and participation.

(a) * * *

(2) The PHA shall determine whether an applicant for participation qualifies as a Family, and is income-eligible. The PHA shall also give a preference in selecting applicants for participation (in accordance with § 882.219) to eligible Families that, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

* * * * *

(7) The PHA shall maintain a waiting list of income-eligible Families that have applied for participation in the PHA's Section 8 program. Subject to any obligation to use Certificates to ensure the availability of assistance under one of the uses prescribed in paragraph (a)(4)(ii)(B) of this section, the PHA shall select applicants for participation from the waiting list in accordance with policies and procedures (including any Federal preferences under § 882.219) stated in the administrative plan or equal opportunity housing plan. Notwithstanding the fact that the PHA may not be accepting additional applications for participation because of the length of the waiting list, the PHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualfies for a Federal preference as provided in § 882.219(c)(2), unless the PHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of Certificates to be issued, that—

(i) There is an adequate pool of applicants who are likely to qualify for a Federal preference and,

(ii) It is unlikely that, on the basis of the PHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

* * * * *

14. In §882.216, a new paragraph (a)(4) is added, to read as follows:

§ 882.216 Informal review or hearing.

(a) * * *

(4) The informal review provisions for the denial of a Federal preference under § 882.219 are contained in paragraph (k) of that section.

* * * * *

15. In Part 882, a new § 882.219 is added, to read as follows:

§ 882.219 Federal selection preferences.

(a) *General.* (1) In selecting applicants for a Certificate of Family Participation under § 882.209, a PHA must give preference to families that are otherwise eligible for assistance and that, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The PHA must inform all applicants for a Certificate of Family Participation of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list for a Certificate of Family Participation maintained by the PHA when this section is implemented or thereafter.

(ii) If the PHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the PHA may provide this notification to fewer than all applicants on the list at any given time. The PHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the PHA's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of Certificates to be issued:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the PHA's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be issued a Certificate before those who have received notification.

(3) PHAs must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing"; "homeless family"; "family income"; and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively of this section, unless the PHA submits alternative definitions for HUD's review and approval. PHAs may apply the verification procedures contained in paragraphs (e), (g), and (j) of this section or they may, in their own discretion and without HUD approval, adopt verification procedures of their own.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each PHA must include the Federal preferences in its policies and procedures for selecting applicants for participation under § 882.209. The PHA must apply the Federal preferences in a manner that is consistent with the provisions of this section, the nondiscrimination requirements of § 882.111, the selection and participation provisions of § 882.209 (including limitations on the use of local residency requirements and preferences contained in § 882.209(a)(4)(i)), and other applicable requirements.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the PHA must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the Federal preferences is to be issued a Certificate of Family Participation before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for a Certificate.

(ii) The PHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference are issued a Certificate of Family Participation before other applicants who are so qualified. Not more than 10 percent of the applicants who are initially issued a Certification of Family Participation in any one-year period (or such shorter period selected by the PHA before the beginning of its first full year under this paragraph (b)(2)(ii)) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the PHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities as a way of ranking applicants who qualify for a Federal preference (*e.g.*, provide that applicants who qualify for a Federal preference and a local residency preference take precedence over non-resident Federal preference-holders; or provide that applicants whose rents were increased beyond 50 percent of their incomes after completion of Rental Rehabilitation activities are ranked higher than those who meet the rent burden standard because of other reasons);

(B) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a PHA must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowancy for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 965, Subpart E.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or (iii) the applicant is paying more than 50 percent of family income for rent.

In the case of an applicant occupying a unit that has been or is being rehabilitated under the Rental Rehabilitation Program (see 24 CFR Part 511), the applicant will be considered as paying more than 50 percent of its income for rent if the applicant has been notified that following completion of rehabilitation its rent will be increased, and the applicant in fact would be required, no later than 60 days from the date the applicant is issued a Certificate of Family Participation assistance under this part, to pay more than 50 percent of its income to continue renting the rehabilitation unit.

(2) Applicants may claim qualification for a Federal preference when they apply for a Certificate of Family Participation (or thereafter until a Certificate is issued) by certifying to the PHA that they qualify for preferred status under paragraph (c)(1) of this section. The PHA must accept this certification, unless it verifies that the applicant is not qualified for preferred status.

(3) Before issuing a Certificate of Family Participation to an applicant who qualifies for one on the basis of a Federal preference, the PHA must require the applicant to provide verification that he or she qualifies for Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a Federal preference between the certification under paragraph (c)(2) of this section and the issuance of a Certificate, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, the PHA need not require the applicant to verify such qualification again, unless, as determined by the PHA, such a long time has elapsed since verification as to make reverification desirable, or the PHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of its refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph, the actual or threatened violence must, as determined by the PHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units; or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit or government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in § 882.102) is not substandard solely because it

does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers:

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period, or if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income and rent.* The PHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The PHA must verify a family's income in accordance with the standards and procedures that it uses to verify income for the purpose of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The PHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

The PHA must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount a family paid for utilities and other housing services, the PHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

In the case of an applicant occupying a unit that has been or is being rehabilitated under the Rental Rehabilitation Program (see 24 CFR Part 511), the applicant will be considered as paying more than 50 percent of its income for rent if the applicant has been notified that following completion of rehabilitation its rent will be increased, and the applicant in fact would be required, no later than 60 days from the date the applicant is issued a Certificate of Family Participation under this part, to pay more than 50 percent of its income to continue renting the rehabilitated unit.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the PHA determines that an applicant does not meet the criteria for receiving a Federal preference, the PHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the PHA's designee to review it. If requested, the meeting must be conducted by any person or persons designated by the PHA. Those designated may be an officer or employee of the PHA, including the person who made or reviewed the determination or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* PHAs must implement the provisions of this section no later than July 13, 1988.

16. In § 882.514, paragraphs (a)(1), (b), and (f) are revised to read as follows:

§ 882.514 Family participation.

(a) *Initial determination of Family eligibility.* (1) The PHA is responsible for receipt and review of applications and determination of Family eligibility for participation, in accordance with HUD regulations (see Parts 812 and 813). The PHA is responsible for verifying the sources and amount of the Family's income and other information necessary for determining eligibility and the amount of the assistance payments. The PHA is also responsible for giving a Federal selection preference in accordance with § 882.517.

* * * * *

(b) *Selection of Families for participation.* When vacancies occur, the PHA will refer to the Owner one or more appropriate size Families on its waiting list. The PHA must select Families for participation in accordance with the provisions of the Program and in accordance with the PHA's application, including any PHA requirement or preferences as approved by HUD. The PHA must select Families eligible for housing assistance payments currently residing in units that are designated for rehabilitation under the Program without requiring that these Families be placed on the waiting list. Notwithstanding the fact that the PHA may not be accepting additional applications for participation because of

the length of the waiting list, the PHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for partcipation and claims that he or she qualifies for a Federal preference as provided in § 882.517(c)(2), unless the PHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions under this part, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the PHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

* * * * *

(f) *Families determined by the PHA to be ineligible.* If a Family is determined by the PHA to be ineligible in accordance with the PHA's HUD-approved application, either at the application stage or after assistance has been provided on behalf of the Family, the PHA must promptly notify the Family by letter of the determination and the reasons for it and the letter must state that the Family has the right within a reasonable time (specified in the letter) to request an informal hearing. If, after conducting such an informal hearing, the PHA determines that the Family is ineligible, it must so notify the Family in writing. The procedures of this paragraph do not preclude the Family from exercising its other rights if it believes it is being discriminated against on the basis of race, color, religion, sex, handicap, or national origin. The informal review provisions for the denial of a Federal selection preference under § 882.517 are contained in paragraph (k) of that section.

17. In Part 882, a new § 882.517 is added, to read as follows:

§ 882.517 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this subpart, a PHA must give preference to families that are otherwise eligible for assistance and that, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The PHA must inform all applicants for assistance under this subpart of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list for assistance under this part maintained by the PHA when this section is implemented or thereafter.

(ii) If the PHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the PHA may provide this notification to fewer than all applicants on the list at any given time. The PHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the PHA's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions under this part:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the PHA's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted before those who have received notification.

(3) PHAs must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing"; homeless family"; "family income"; and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively, of this section, unless the PHA submits alternative definitions for HUD's review and approval. PHAs may apply the verification procedures contained in paragraphs (e), (g), and (j) of this section, or they may adopt verification procedures of their own.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the preferences.* (1) Each PHA must include the Federal preferences in its tenant selection standards. The PHA must apply the Federal preferences in a manner that is consistent with the provisions of this section, the equal opportunity and other requirements of §§ 882.407 and 882.514, and other applicable requirements (including limitations on the use of local residency requirements and preferences).

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the PHA must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for a Certificate.

(ii) The PHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference are admitted to a project assisted under this subpart before other applicants who are so qualified. Not more than 10 percent of the applicants who are initially admitted to such a project in any one-year period (or such shorter period selected by the PHA before the beginning of its first full year under this paragraph (b)(2)(ii)) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the PHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities as a way of ranking applicants who qualify for a Federal preference (*e.g.*, provide that applicants who qualify for a Federal preference and a local residency preference take precedence over non-resident Federal preferenceholders; or provide that applicants whose rents were increased beyond 50 percent of their incomes after completion of Rental Rehabilitation activities are ranked higher than those who meet the rent burden standard because of other reasons);

(B) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (*e.g.*, provide that that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitional element (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise

that are used by a PHA must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives.

(4) The PHA may establish selection preferences for applicant living in the area where the PHA determines that it is not legally barred from entering into Contracts. However, preferences may not be based 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 must be treated as residents of the jurisdiction.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if:

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this subpart (or thereafter until they are offered assistance) by certifying to the PHA that they qualify for preferred status under paragraph (c)(1) of this section. The PHA must accept this certification, unless it verifies that the applicant is not qualified for preferred status.

(3) Before selecting an applicant for participation, the PHA must require the applicant to provide verification that he or she qualifies for Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a Federal preference between the certification under paragraph (c)(2) of this section and the PHA's selection of the applicant for participation, including a change from one Federal preference category to another).

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, the PHA need not require the applicant to verify such qualification again, unless, as determined by the PHA, such a long time has elapsed since verification as to make reverification desirable, or the PHA has reasonable grounds to believe that the applicant no longer qualifies for Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) that the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of his or her refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if:

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the PHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2), from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit or government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in § 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f)(1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent;

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The PHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The PHA must verify a family's income in accordance with standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The PHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The PHA shall verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the PHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the PHA determines that an applicant does not meet the criteria for receiving a Federal preference, the PHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the PHA's designee to review it. If requested, the meeting must be conducted by any person or persons designated by the PHA. Those designated may be an officer or employee of the PHA, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* PHAs must implement the provisions of this section no later than July 13, 1988.

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

18. The authority citation for 24 CFR Part 883 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

19. In § 883.702, paragraph (b) is revised to read as follows:

§ 883.702 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including provision of Federal selection preferences in accordance with § 883.714, selection of tenants, reexamination of family incomes, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

20. In § 883.704, the introductory text of paragraph (b), and paragraphs (b)(2) and (3) are revised to read as follows:

§ 883.704 Selection and admission of tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for determining whether the applicant is eligible, in accordance with Parts 812 and 813 of this chapter. The owner is also responsible for the selection of families, including giving a Federal preference in accordance with § 883.714.

* * * * *

(2) If the owner determines that the family is eligible and is otherwise acceptable and units are available, the owner will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit is available, the owner will place the family on a waiting list for the project and notify the family of when a suitable unit may become available. If the waiting list is so long that the applicant would not be likely to be admitted for the next 12 months, the owner may advise the applicant that no additional applications are being accepted for that reason, except that the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 883.714(c)(2), unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that: (i) There is an adequate pool of applicants who are likely to qualify for a Federal preference and (ii) it is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission to the project before other applicants on the waiting list.

(3) If the owner determines that an applicant is ineligible on the basis of income or family composition, or if the owner is not selecting the applicant for other reasons, the owner will promptly notify the applicant in writing of the determination and its reasons, and that the applicant has the right to meet with the owner or managing agent in accordance with HUD requirements. Where the owner is a PHA, the applicant may request an informal hearing. If the PHA determines that the applicant is not eligible, the PHA will notify the applicant and inform the applicant that he or she has the right to request a review by the Agency and HUD of the PHA's determination. The applicant may also exercise other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, religion, sex, or national origin. The informal review provisions for the denial of a Federal preference under § 883.714 are contained in paragraph (k) of that section.

* * * * *

21. In Part 883, a new § 883.714 is added, to read as follows:

§ 883.714 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this part, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project.

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection standards. The owner must apply the Federal preferences in a manner consistent with the provisions of this section, the equal opportunity and other requirements of §§ 883.312, 883.702, and 883.704 (including limitations on the use of local residency requirements and preferences contained in § 883.704(b)(1)), and other applicable requirements.

(2) The housing owner must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify or claim qualification) for a Federal preference;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applciant paying more than 50 percent of income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the owner may implement the framework.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this Part (or thereafter until the time that they are offered assistance) by certifying to the owner that they quality for a preference under paragraph (c)(1) of this section. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragrph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a Federal preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, the owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size, and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a

public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does ot include any individual imprisoned or otherwise detained pursuant to an Act of the Congress of a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify a family's income in accordance with the standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupany agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payments receipts (which may include cancelled checks or money order receipts) of a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

22. The authority citation for Part 884 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

23. In § 884.118, paragraph (a)(3) is revised to read as follows:

§ 884.118 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; selection of families, including verification of income, provision of Federal selection preferences in accordance with § 884.220, and other pertinent requirements; and determination of eligibility and amount of tenant rent in accordance with HUD-established schedules and criteria;

* * * * *

24. In § 884.214, paragraphs (b)(1) and (2) are revised, and a new paragraph (b)(7) is added, to read as follows:

§ 884.214 Marketing.

* * * * *

(b) *Eligibility, section and admission of families.* (1) The owner is responsible for determination of eligibility of applicants, selection of families from among those determined to be eligible (including provision of Federal selection preferences in accordance with § 884.226), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with schedules and criteria established by HUD: *Provided,* That in establishing criteria for the selection of applicants, no local residency requirements or priority systems relating to place of residence may be applied to applicants who are working in the community.

(2) For every family that applies for admission, the owner and the applicant will complete and sign the form of application prescribed by HUD. However, if there are no vacant units and the owner's waiting list is such that there would be an unreasonable length of time before the applicant could be admitted, the owner may advise the applicant that the owner is not accepting applications for that reason, except that the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 884.226(c)(2), unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that:

(i) There is an adequate pool of applicants who are likely to qualify for a Federal preference, and

(ii) It is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or the preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission before other applicants on the waiting list.

The owner must retain copies of all completed applications together with any related correspondence for three years. For each family selected for admission, the owner must submit one copy of the completed and signed

application to the HUD field office (in the case of private-owner/PHA projects, the owner simultaneously must send a copy of the form to the PHA). Housing assistance payments will not be made on behalf of an admitted family unit after this copy has been received by the HUD field office (or, in the case of private-owner/PHA projects, until the copy has been received by the PHA with a certification by the owner that the owner has sent a copy to HUD).

* * * * *

(7) The informal review provisions for the denial of a Federal selection preference under § 884.226 are contained in paragraph (k) of that section.

25. In Part 884, a new § 884.226 is added, to read as follows:

§ 884.226 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this part, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection standards. The owner must apply the Federal preferences in a manner that is consistent with the provisions of this section, the equal opportunity and other requirements of §§ 884.113 and 884.214 (including limitations of the use of local residency requirements and preferences contained in § 884.214(b)(1)), and other applicable requirements.

(2) The housing owner must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the preferences under this section is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), an owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference, as provided by paragraph (c)(2) of this section;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweight one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the owner may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this Part (or thereafter until they are offered assistance) by certifying to the owner that they qualify for a preference under paragraph (c)(1) of this section. An owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the

applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2), does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing asistance under the United States Housing Act of 1937or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To Accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Cerfification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit or government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family"

is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section, will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify the family's income in accordance with the standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

26. The authority citation for 24 CFR Part 886 continues to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

27. In § 886.119, paragraph (a)(3) is revised to read as follows:

§ 886.119 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications; selection of Families, verification of Income, provision of Federal selection preferences in accordance with § 886.132, and other pertinent requirements; and determination of eligibility and amount

of Tenant Rent in accordance with Part 813 of this chapter;

* * * * *

28. In § 886.121, paragraph (b) is revised to read as follows:

§ 886.121 Marketing.

* * * * *

(b) In taking applications, selecting families, and all related determinations, the owner must comply with the applicable provisions of the Contract and of this subpart.

29. In Part 886, a new § 886.132 is added, to read as follows:

§ 886.132 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this subpart, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection standards. The owner must apply the Federal preferences in a manner that is consistent with the provisions of this section, the equal opportunity and other requirements of §§ 886.114 and 886.121 and other applicable requirements (including limitations on the use of local residency requirements and preferences).

(2) The housing owner must establish a system for applying the preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this part before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference, as provided by paragraph (c)(2) of this section;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the owner may implement the system.

(5) Local residency requirements are prohibited. Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with HUD's affirmative fair housing marketing objectives and the owner's HUD-approved Affirmative Fair Housing Marketing Plan. With respect to any residency preference, persons expected to reside in the community as a result of current or planned employment will be treated as residents.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this subpart (or thereafter until they are offered assistance) by certifying to the owner that they qualify for a preference under paragraph (c)(1) of this section. An owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a

preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household, or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit of agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient

number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The owner must verify the family's income in accordance with standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include canceled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include canceled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the owner or the owner's designee to review it. If requested, the meeting must be conducted by any person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Closure of waiting list.* Notwithstanding the fact that the owner may be refusing additional applications because of the length of the waiting list, the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualifies for a Federal preference as provided in paragraph (c)(2) of this section, unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that (1) there is an adequate pool of applicants who are likely to qualify for a Federal preference and (2) it is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or

preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission to the project before other applicants on the waiting list.

30. In § 886.318, paragraph (a)(3) is revised to read as follows:

§ 886.318 Responsibilities of the owner.

(a) *Management and maintenance.*

* * * * *

(3) Performance of all management functions, including the taking of applications; selection of families in accordance with the owner's tenant selection factors approved by HUD and the Federal preferences in accordance with § 886.337; verification of income and other pertinent requirements; and determination of eligibility and amount of tenant rent in accordance with Part 813 of this chapter;

* * * * *

31. In § 886.321, paragraphs (b) (1), (2), and (6) are revised to read as follows:

§ 886.321 Marketing.

* * * * *

(b)(1) HUD will determine the eligibility for assistance of families in occupancy before sales closing. The owner will be responsible for determination of eligibility of applicants for tenancy after sale, selection of families from among those determined to be eligible (including provision of Federal preferences in accordance with § 886.337), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with the Gross Rent and the Total Tenant Payment computed in accordance with 24 CFR Part 813. The owner shall pay any utility reimbursement to each family each month it is due. Local residency requirements are prohibited. Local residency preferences are discouraged and may be applied in selecting tenants only to the extent that they are not inconsistent with HUD's affirmative fair housing marketing objectives and the owner's HUD-approved Affirmative Fair Housing Marketing Plan. With respect to any residency preferences, persons expected to reside in the community as a result of current or planned employment must be treated as residents.

(2) For every family that applies for admission, the owner and the applicant must complete and sign the form of application prescribed by HUD. When the owner decides no longer to accept applications or to accept applications only from families that claim a Federal preference under § 886.337, the owner must publish a notice to that effect in a publication likely to be read by potential applicants. The notice must state the reasons for the owner's refusal to accept additional applications. When the owner agrees to accept applications again, a notice to this effect must also be published. Notwithstanding the fact that the owner may not be accepting additional applications for tenancy because of the length of the waiting list, the owner may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualifies for a Federal preference as provided in § 886.337(c)(2), unless the owner determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to the project, that (i) there is an adequate pool of applicants who are likely to qualify for a Federal preference and (ii) it is unlikely that, on the basis of the owner's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admissions before other applicants on the waiting list. The owner must retain copies of all completed applications together with any related correspondence for three years. For each family selected for admission, the owner must submit one copy of the completed and signed application to HUD. Housing assistance payments will not be made on behalf of an admitted family until after this copy has been received by HUD.

* * * * *

(6) If the owner determines that an applicant is not eligible, or, if eligible, not selected, the owner must notify the applicant in writing of the determination, the reasons upon which the determination is made, and inform the applicant that the applicant has the right within a reasonable time (specified in the letter) to request an informal hearing if the applicant believes that the owner's determination is based on erroneous information. The procedures of this paragraph (b)(6) do not preclude an applicant from exercising his or her other rights if the applicant believes that he or she is being discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap. The owner must retain for three years a copy of the application, the letter, the applicant's response, if any, the record of any informal hearing, and a statement of final disposition. The informal review provisions for the denial of a tenant selection preference under § 886.337 are contained in paragraph (k) of that section.

* * * * *

32. In Part 886, a new § 886.337 is added to read as follows:

§ 886.337 Federal selection preferences.

(a) *General.* (1) In selecting applicants for assistance under this subpart, housing owners must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The owner must inform all applicants for assistance under this part of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list maintained by the owner for the project when this section is implemented or thereafter.

(ii) If the owner determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the owner may provide this notification to fewer than all applicants on the list at any given time. The owner must, however, have notified a sufficient number of applicants at any given time that, on the basis of the owner's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the owner's framework for applying the preferences under paragraph (b) of this section and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to the project before those who have received notification.

(3) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each housing owner must include the Federal preferences in its tenant selection standards. The owner must apply the Federal preferences in a manner consistent with the provisions of this section, the equal opportunity and

other requirements of §§ 886.313 and 886.321 (including limitations on the use of local residency requirements and preferences contained in § 886.321(b)(1)), and other applicable requirements.

(2) The housing owner must establish a system for applying the preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance under this subpart before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on any waiting list, or the time of submission of his or her application for assistance. In applying the preferences under this paragraph (b)(2), the owner may determine the relative weight to be accorded the Federal preferences, through means such as:

(i) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference, as provided by paragraph (c)(2) of this section;

(ii) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweight one and three outweight two);

(iii) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent income for rent); or

(iv) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfair for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it dose not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities under this section or otherwise that are used by a housing owner must be established and administered in a manner that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD regulations and requirements issued under these authorities. Such preferences and priorities must also be consistent with HUD's affirmative fair housing objectives and (if applicable) the owner's Affirmative Fair Housing Marketing Plan.

(4) The owner must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the owner may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for assistance under this subpart (or thereafter until the time that they are offered assistance) by certifying to the owner that they qualify for a preference under paragraph (c)(1) of this section. The owner must accept this certification, unless the owner verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease or occupancy agreement with an applicant who has been offered assistance on the basis of a Federal preference, the owner must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an owner need not require the applicant to verify such qualification again, unless, as determined by the owner, such a long time has elapsed since verification as to make reverification desirable, or the owner has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the houshold who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units. (For examples of these policies and procedures, see §§ 215.65, 880.605, 881.605, 882.213, 882.509, 883.706, 884.219, 886.125, and 886.325.)

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local of governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant is also involuntarily displace if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the housing owner in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section.

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agency that an applicant had to, or will have to, vacate a unit by a date certain because or an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, or displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of the government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination or intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, or adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f) (3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 813.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The utility allowance (if any) determined for the Section 8 Existing Housing program under 24 CFR Part 882, Subparts A and B, for tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise

applicable rental amount, to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of an applicant who resides within the jurisdiction of an Indian Housing Authority (IHA) that is not administering a Section 8 Existing Housing program, the applicable utility allowance for purposes of calculating rent under paragraph (i)(1)(ii)(A) of this section will be determined under 24 CFR Part 965, Subpart E.

(5) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The owner must verify that an applicant is paying more than 50 percent of family income, as follows:

(1) The owner must verify a family's income in accordance with standards and procedures that it uses to verify income for purposes of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 813.

(2)(i) The owner must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy aggreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord or its agent directly.

(ii) The owner must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the owner must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the owner determines that an applicant does not meet the criteria for receiving a Federal preference, the owner must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet the owner or the owner's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the owner. Those designated may be an officer or employee of the owner, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* Housing owners must implement the provisions of this section no later than July 13, 1988.

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

33. The authority citation for 24 CFR Part 904 continues to read as follows:

Authority: United States Housing Act of 1937 (42 U.S.C. 1437–1437q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

34. In § 904.104, paragraphs (c), (f)(1), and (g)(2) are revised to read as follows:

§ 904.104 Eligibility and selection of homebuyers.

* * * * *

(c) *Determination of eligibility and preparation of list.* The LHA, without participation of a recommending committee (see paragraph (e)(1) of this section), will determine whether each applicant family is income-eligible for the development, and will assign each eligible applicant his or her appropriate place on a waiting list for the development, in sequence based upon the date of the application, suitable type or size of unit, qualification for a Federal preference in accordance with § 904.122, and factors affecting preference or priority established by the LHA's regulations. Notwithstanding the fact that the LHA may not be accepting additional applications because of the length of the waiting list, the LHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for participation and claims that he or she qualifies for a Federal preference as provided in § 904.122(c)(2), unless the LHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of admissions to housing under Turnkey III, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the LHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for admission before other applicants on the waiting list.

* * * * *

(f) * * *

(1) Selection procedures that do not automatically deny admission to a particular class; that ensure selection on a nondiscriminatory and nonsegregated basis; that give a Federal preference in accordance with § 904.122; and that facilitate achievement of the anticipated results for occupancy stated in the approved Affirmative Fair Housing Marketing Plan.

* * * * *

(g) * * *

(2) Applicants who are not selected for a specific Turnkey III development will be so notified in accordance with HUD-approved procedure. The notice will state the reason for the applicant's rejection (including a nonrecommendation by the recommending committee, unless the applicant has previously been so notified by the committee) and that the applicant will be given an informal hearing on such determination, regardless of the reason for the rejection, if the applicant makes a request for such a hearing within a reasonable time (to be specified in the notice) from the date of the notice. The informal review provisions for the denial of a Federal preference under § 904.122 are contained in paragraph (k) of that section.

35. In Part 904, a new § 904.122 is added, to read as follows:

§ 904.122 Federal selection preferences.

(a) *General.* (1) In selecting applicants for admission to housing under Turnkey III, each LHA must give preference to applicants who are otherwise eligible and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The LHA must inform all applicants for admission to housing under Turnkey III of the availability of the Federal preferences, and must give

all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list for admission maintained by the LHA when this section is implemented or thereafter.

(ii) If the LHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the LHA may provide this notification to fewer than all applicants on the list at any given time. The LHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the LHA's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of admissions to the project:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the LHAs framework for applying the preferences under paragraph (b) and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would be admitted to housing under Turnkey III before those who have received notification.

(3) An LHA must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing" and "homeless family"; "family income"; and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively, of this section, unless the LHA submits alternative definitions for HUD's review and approval. An LHA may apply the verification procedures found in paragraphs (e), (g), and (j) of this section, or they may, in its own discretion and without HUD approval, adopt verification procedures of its own.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each LHA must include the Federal preferences in its selection policies and procedures. The LHA must apply the Federal preferences in a maner that is consistent with the provisions of this section, the nondiscrimination and other requirements of § 904.104, and other applicable requirements.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the LHA must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the Federal preferences is to be admitted to housing under Turnkey III before any other applicant who is not so qualified, without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for assistance.

(ii) The LHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference are admitted to housing under Turnkey III before other applicants who are so qualified. Not more than 10 percent of the applicants who are initially admitted in any one-year period (or such shorter period selected by the LHA before the beginning of its first full year under this paragraph (b)(2)(ii) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the LHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference;

(B) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitions elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than and, take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Requirements or preferences for those living in the jurisdiction of the LHA at the time of application are permissible, subject to the following: no requirement or preference may be based upon the identity or location of the housing that 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 will be treated as residents of the jurisdiction.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(1) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for admission (or thereafter until they are selected for a Turnkey III development) by certifying to the LHA that they qualify for preference under paragraph (c)(1) of this section. An LHA must accept this certification, unless the LHA verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a Homebuyers Ownership Opportunity Agreement with an applicant who has been selected on the basis of a Federal preference, the LHA must require the applicant to provide verification that he or she qualifies for a preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of a Homebuyers Ownership Opportunity Agreement, including a change from one Federal preference category to another).

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an LHA need not require the applicant to verify such qualification again, unless, as determined by the LHA, such a long time has elapsed since verification as to make reverification desirable, or the LHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or

temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units.

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where;

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant also is involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the LHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 913.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility provides,

(A) The LHA's reasonable estimate of tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The LHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The LHA must verify a family's income in accordance with the standards and procedures that it uses to verify income for the purpose of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 913.

(2)(i) The LHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The LHA must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the LHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the LHA determines that an applicant does not meet the criteria for receiving a Federal preference, the LHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the LHA's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the LHA. Those designated may be an officer or employee of the LHA, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* LHAs must implement the provisions of this section no later than July 13, 1988.

PART 905—INDIAN HOUSING

36. The authority citation for 24 CFR Part 905 continues to read as follows:

Authority: Secs. 3, 4, 5, 6, 9, 11, 12, and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, and 1437n); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

37. Section 905.302 is amended by revising paragraphs (b)(2) (ii) and (iii), and by adding a new paragraph (b)(2)(iv), to read as follows:

§ 905.302 Admission policies.

* * * * *

(b) * * *

(2) * * *

(ii) To avoid concentrations of the most economically and socially deprived families in any one or all of the IHA's Projects;

(iii) To achieve compliance with the applicable provisions of Part 913 of this chapter, including, but not limited to, §§ 913.103 through 913.105, which specify the requirements concerning income levels of families who would otherwise qualify; and

(iv) To give a preference in the selection of tenants and Homebuyers (in accordance with § 905.313) to families that at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

38. In Part 905, a new § 905.313 is added, to read as follows:

§ 905.313 Federal selection preferences.

(a) *General.* (1) In selecting applicants for admission to its projects, each IHA must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The IHA must inform all applicants for assistance of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list for assistance maintained by the IHA when this section is implemented or thereafter.

(ii) If the IHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable

because of the length of the list, the IHA may provide this notification to fewer than all applicants on the list at any given time. The IHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the IHA's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of project admissions:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the IHA's framework for applying the preferences under paragraph (b) and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(3) An IHA must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing" and "homeless family"; "family income"; and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively, of this section, unless the IHA submits alternative definitions for HUD's review and approval. An IHA may apply the verification procedures found in paragraphs (e), (g), and (j) of this section, or it may, in its own discretion and without HUD approval, adopt verification procedures of its own.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each IHA must include the Federal preferences in its tenant selection policies and procedures. The IHA must apply the Federal preferences in a manner that is consistent with the provisions of this section, and other applicable requirements.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the IHA must establish a system for applying the Federal preferences that provides than an applicant who qualifies for any of the Federal preferences is to receive assistance before any other applicant who is not so qualified without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for assistance.

(ii) The IHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference receive assistance before other applicants who are so qualified. Not more than 10 percent of the applicants who initially receive assistance in any one-year period (or such shorter period selected by the IPH before the beginning of its first full year under this paragraph (b)(2)(ii) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the IHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference;

(B) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) To the extent that HUD has determined that Title VI of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968 apply to a tribal government, any selection preferences or priorities used by an IHA within such a tribe's jurisdiction must be established and administered in a manner that is consistent with HUD's affirmative fair housing objectives and that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07; or HUD's regulations and requirements issued under these authorities.

(4) The IHA must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the IHA may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for admission to a project (or thereafter until they are offered a unit in the project) by certifying to the IHA that they qualify for a preference under paragraph (c)(1) of this section. An IHA must accept this certification, unless the IHA verifies that the applicant is not qualified for a Federal preference.

(3) Before an applicant is admitted to a project on the basis of a Federal preference, the IHA must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and admission to a project, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, an IHA need not require the applicant to verify such qualification again, unless, as determined by the IHA, such a long time has elapsed since verification as to make reverification desirable, or the IHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of

domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2), of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occpancy of underoccupied and overcrowded units.

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant also is involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the IHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal (i) to comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or (ii) to accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings. A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in 24 CFR 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of

government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 913.102.

(i) *Definition of rent.*

(1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The IHA's reasonable estimate of tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The IHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The IHA must verify the family's income in accordance with the standards and procedures that it uses to verify income for the purpose of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 913.

(2)(i) An IHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family 's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) An IHA must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the IHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the IHA determines that an applicant does not meet the criteria for receiving a Federal preference, the IHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the IHA's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the IHA. Those designated may be an officer or employee of the IHA, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Closure of waiting list.* Notwithstanding the fact that the IHA may not be accepting additional applications because of the length of the waiting list, the IHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference under this section, unless the IHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of project admissions, that—

(1) There is an inadequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the IHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

(m) *Effective date.* IHAs must implement the provisions of this section no later than July 13, 1988.

39. In § 905.406, paragraph (d) is revised to read as follows:

§ 905.406 Selection of MH homebuyers.

* * * * *

(d) *Making the selections.* Promptly after HUD approval of the application for a Project, the IHA must proceed with selection of as many Homebuyers as there are homes in the Project. Selection of Homebuyers must be made from the MH waiting list in accordance with the date of application, qualification for a Federal preference in accordance with § 905.313, and other pertinent factors under the IHA's admissions regulations established in accordance with § 905.302. Selection of a Homebuyer will be made only after the site for that Homebuyer has received HUD final site approval and the form of MH contribution to be made by that Homebuyer has been determined. Notwithstanding the fact that IHA may not be accepting additional applications because of the length of the waiting list, the IHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 905.313(c)(2), unless the IHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of homes available, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the IHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance

before other applicants on the waiting list.

40. In § 905.407, paragraph (a) is revised to read as follows:

§ 905.407 Notification to applicant families.

(a) *Notification to families not meeting admission requirements.* When an IHA determines that a family does not meet the admission requirements, the IHA must give the family prompt written notice of this determination. The notice must state the basis for the determination, and that the family is entitled to an informal hearing by the IHA on the determination, if a request for such hearing is made within a reasonable time (as specified in the notice). The informal review provisions for the denial of a Federal preference under § 905.313 are contained in paragraph (k) of that section.

* * * * *

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

41. The authority citation for 24 CFR Part 960 continues to read as follows:

Authority: Secs. 3, 5, 6, and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437d, 1437n); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

42. In § 960.204, paragraph (b) is revised to read as follows:

§ 960.204 PHA tenant selection policies.

* * * * *

(b) Such policies and procedures must be designed to—

(1) Avoid concentrations of the most economically and socially deprived families in any one or all of the PHA's public housing projects;

(2) Preclude admission of applicants whose habits and practices reasonably may be expected to have a detrimental effect on the tenants or the project environment;

(3) Subject to the requirements and limitations of Part 913 of this chapter, attain, within a reasonable period of time, a tenant body in each project composed on families with a broad range of incomes and rent-paying ability that is generally representative of the range of incomes of lower income families in the PHA's area of operation, as defined in State law; and

(4) Give preference (in accordance with § 960.211) to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

* * * * *

43. In § 960.206, paragraph (a) is revised to read as follows:

§ 960.206 Verification procedures.

(a) *General.* Adequate procedures must be developed to obtain and verify information with respect to each applicant. (See Part 913 of this chapter.) Information relative to the acceptance or rejection of an applicant, or the grant or denial of a Federal preference under § 960.211, must be documented and placed in the applicant's file.

* * * * *

44. Section 960.207 is revised to read as follows:

§ 960.207 Notification to applicants.

(a) The PHA must promptly notify any applicant determined to be ineligible for admission to a project of the basis for such determination, and must provide the applicant upon request, within a reasonable time after the determination is made, with an opportunity for an informal hearing on such determination. The informal review provisions for the denial of a Federal preference under § 960.211 are contained in paragraph (k) of that section.

(b) When a determination has been made that an applicant is eligible and satisfies all requirements for admission, including the tenant selection criteria, the applicant must be notified of the approximate date of occupancy insofar as that date can be reasonably determined. Notwithstanding the fact that the PHA may not be accepting additional applications for tenancy because of the length of the waiting list, the PHA may not refuse to place an applicant on the waiting list if the applicant is otherwise eligible for assistance and claims that he or she qualifies for a Federal preference as provided in § 960.211, unless the PHA determines, on the basis of the number of applicants who are already on the waiting list and who claim a Federal preference, and the anticipated number of project admissions, that—

(1) There is an adequate pool of applicants who are likely to qualify for a Federal preference and

(2) It is unlikely that, on the basis of the PHA's system for applying the Federal preferences, the preference or preferences that the applicant claims, and the preferences claimed by applicants on the waiting list, the applicant would qualify for assistance before other applicants on the waiting list.

45. In Part 960, a new § 960.211 is added, to read as follows:

§ 960.211 Federal selection preferences.

(a) *General.* (1) In selecting applicants for admission to its projects, each PHA must give preference to applicants who are otherwise eligible for assistance and who, at the time they are seeking housing assistance, are involuntarily displaced, living in substandard housing, or paying more than 50 percent of family income for rent.

(2)(i) The PHA must inform all applicants for assistance of the availability of the Federal preferences, and must give all applicants an opportunity to show that they qualify for a preference. For purposes of this paragraph (a)(2)(i), applicants include families on any waiting list for assistance maintained by the PHA when this section is implemented or thereafter.

(ii) If the PHA determines that the notification to all applicants on a waiting list required by paragraph (a)(2)(i) of this section is impracticable because of the length of the list, the PHA may provide this notification to fewer than all applicants on the list at any given time. The PHA must, however, have notified a sufficient number of applicants at any given time that, on the basis of the PHA's determination of the number of applicants on the waiting list who already claim a Federal preference, and the anticipated number of project admissions:

(A) There is an adequate pool of applicants who are likely to qualify for a Federal preference; and

(B) It is unlikely that, on the basis of the PHA's framework for applying the preferences under paragraph (b) and the preferences claimed by those already on the waiting list, any applicant who has not been so notified would receive assistance before those who have received notification.

(3) The PHA must apply the definitions of "standard, permanent replacement housing"; "involuntary displacement"; "substandard housing" and "homeless family"; "family income"; and "rent" set forth in paragraphs (c)(5), (d), (f), (h), and (i), respectively, of this section, unless the PHA submits alternative definitions of HUD's review and approval. The PHA may apply the verification procedures found in paragraphs (e), (g), and (j) of this section or it may, in its own discretion and without HUD approval, adopt verification procedures of its own, as provided in § 960.206.

(4) For purposes of this section, the term "Federal preference" means a tenant selection preference provided under this section. The term "preference" means a Federal

preference, unless the context indicates otherwise.

(b) *Applying the Federal preferences.* (1) Each PHA must include the Federal preferences in its tenant selection policies and procedures. The PHA must apply the Federal preferences in a manner that is consistent with the provisions of this section, the nondiscrimination requirements of § 960.203, the requirements with respect to tenant selection policies and procedures and standards and criteria under §§ 960.204 and 960.205 (including limitations on the use of residency preferences and requirements contained in § 960.204(e)), and other applicable requirements.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, the PHA must establish a system for applying the Federal preferences that provides that an applicant who qualifies for any of the Federal preferences is to receive assistance before any other applicant who is not so qualified without regard to the other applicant's qualification for one or more preferences or priorities that are not provided by Federal law, place on the waiting list, or the time of submission of an application for assistance.

(ii) The PHA's system for applying the Federal preferences may provide for circumstances in which applicants who do not qualify for a Federal preference are provided assistance before other applicants who are so qualified. Not more than 10 percent of the applicants who initially receive assistance in any one-year period (or such shorter period selected by the PHA before the beginning of its first full year under this paragraph (b)(2)(ii)) may be applicants referred to in the preceding sentence.

(iii) In applying the preferences under this paragraph (b)(2), the PHA may determine the relative weight to be accorded the Federal preferences, through means such as:

(A) Applying non-Federal preferences or priorities (such as local residency preferences) as a way of ranking applicants who qualify (or claim qualification) for a Federal preference;

(B) Aggregating the Federal preferences (*i.e.*, two Federal preferences outweigh one and three outweigh two);

(C) Ranking the Federal preferences (*e.g.*, provide that an applicant living in substandard housing has greater need for housing than (and, therefore, would be considered for assistance before) an applicant paying more than 50 percent of income for rent); or

(D) Ranking the Federal preferences' definitional elements (*e.g.*, provide that those living in housing that is dilapidated or has been declared unfit for habitation by an agency or unit of government have a greater need for housing than, and take precedence over, those whose housing is substandard only because it does not have a usable bathtub or shower inside the unit for the exclusive use of the family).

(3) Any selection preferences or priorities used by a PHA must be established and administered in a manner that is consistent with HUD's affirmative fair housing objectives and that is not incompatible with Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title VIII of the Civil Rights Act of 1968, 42 U.S.C. 3601–19; Executive Order 11063 on Equal Opportunity in Housing, 27 FR 11527 (1962), *as amended*, 46 FR 1253 (1980); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794; the Age Discrimination Act of 1975, 42 U.S.C. 6101–07, or HUD's regulations and requirements issued under these authorities.

(4) The PHA must submit to HUD any selection preference system that uses a local residency preference, for review for consistency with the requirements of paragraph (b)(3) of this section, but HUD approval is not required before the PHA may implement the system.

(c) *Qualifying for a Federal preference.* (1) An applicant qualifies for a Federal preference if—

(i) The applicant has been involuntarily displaced and is not living in standard, permanent replacement housing, or, within no more than six months from the date of certification under paragraph (c)(2) of this section or verification under paragraph (c)(3) of this section (as appropriate), the applicant will be involuntarily displaced;

(ii) The applicant is living in substandard housing; or

(iii) The applicant is paying more than 50 percent of family income for rent.

(2) Applicants may claim qualification for a Federal preference when they apply for admission to a project (or thereafter until they are offered a unit in a project) by certifying to the PHA that they qualify for a preference under paragraph (c)(1) of this section. A PHA must accept this certification unless the PHA verifies that the applicant is not qualified for a Federal preference.

(3) Before executing a lease with an applicant who has been offered a unit on the basis of a Federal preference, the PHA must require the applicant to provide verification that he or she qualifies for a Federal preference under paragraph (c)(1) of this section by virtue of the applicant's current status. The applicant's current status must be determined without regard to whether there has been a change in the applicant's qualification for a preference between the certification under paragraph (c)(2) of this section and execution of an occupancy agreement, including a change from one Federal preference category to another.

(4) If an applicant's qualification for a Federal preference under paragraph (c)(1) of this section has once been verified, a PHA need not require the applicant to verify such qualification again, unless, as determined by the PHA, such a long time has elapsed since verification as to make reverification desirable, or the PHA has reasonable grounds to believe that the applicant no longer qualifies for a Federal preference.

(5) For purposes of this paragraph (c), "standard, permanent replacement housing" is housing—

(i) That is decent, safe, and sanitary;

(ii) That is adequate for the family size; and

(iii) That the family is occupying pursuant to a lease or occupancy agreement.

Such housing does not include transient facilities, such as motels, hotels, or temporary shelters for victims of domestic violence or homeless families, and in the case of domestic violence referred to in paragraph (d)(2) of this section, does not include the housing unit in which the applicant and the applicant's spouse or other member of the household who engages in such violence live.

(6) An applicant may not qualify for a Federal preference under paragraph (c)(1)(iii) of this section if the applicant is paying more than 50 percent of family income to rent a unit because the applicant's housing assistance under the United States Housing Act of 1937 or section 101 of the Housing and Urban Development Act of 1965 with respect to that unit has been terminated as a result of the applicant's refusal to comply with applicable program policies and procedures with respect to the occupancy of underoccupied and overcrowded units.

(d) *Definition of involuntary displacement.* (1) An applicant is or will be involuntarily displaced if the applicant has vacated or will have to vacate his or her housing unit as a result of one or more of the following actions:

(i) A disaster, such as a fire or flood, that results in the uninhabitability of an applicant's unit;

(ii) Activity carried on by an agency of the United States or by any State or local governmental body or agency in connection with code enforcement or a public improvement or development program; or

(iii) Action by a housing owner that results in an applicant's having to vacate his or her unit, where:

(A) The reason for the owner's action is beyond an applicant's ability to control or prevent;

(B) The action occurs despite an applicant's having met all previously imposed conditions of occupancy; and

(C) The action taken is other than a rent increase.

(2) An applicant also is involuntarily displaced if—

(i) The applicant has vacated his or her housing unit as a result of actual or threatened physical violence directed against the applicant or one or more members of the applicant's family by a spouse or other member of the applicant's household; or

(ii) The applicant lives in a housing unit with such an individual who engages in such violence.

For purposes of this paragraph (d)(2), the actual or threatened violence must, as determined by the PHA in accordance with HUD's administrative instructions, have occurred recently or be of a continuing nature.

(3) For purposes of paragraph (d)(1)(iii) of this section, reasons for an applicant's having to vacate a housing unit include, but are not limited to, conversion of an applicant's housing unit to non-rental or non-residential use; closure of an applicant's housing unit for rehabilitation or for any other reason; notice to an applicant that he or she must vacate a unit because the owner wants the unit for the owner's personal or family use or occupancy; sale of a housing unit in which an applicant resides under an agreement that the unit must be vacant when possession is transferred; or any other legally authorized act that results or will result in the withdrawal by the owner of the unit or structure from the rental market. Such reasons do not include the vacating of a unit by a tenant as a result of actions taken because of the tenant's refusal—

(i) To comply with applicable program policies and procedures under this title with respect to the occupancy of underoccupied and overcrowded units or

(ii) To accept a transfer to another housing unit in accordance with a court decree or in accordance with such policies and procedures under a HUD-approved desegregation plan.

(e) *Verification procedures for applicants involuntarily displaced.* Verification of an applicant's involuntary displacement is established by the following documentation:

(1) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced as a result of a disaster, as defined in paragraph (d)(1)(i) of this section;

(2) Certification, in a form prescribed by the Secretary, from a unit or agency of government that an applicant has been or will be displaced by government action, as defined in paragraph (d)(1)(ii) of this section;

(3) Certification, in a form prescribed by the Secretary, from an owner or owner's agent that an applicant had to, or will have to, vacate a unit by a date certain because of an owner action referred to in paragraph (d)(1)(iii) of this section; or

(4) Certification, in a form prescribed by the Secretary, of displacement because of the domestic violence referred to in paragraph (d)(2) of this section, from the local police department, social services agency, or court of competent jurisdiction, or a clergyman, physician, or public or private facility that provides shelter or counseling to the victims of domestic violence.

(f) *Definition of substandard housing.* (1) A unit is substandard if it:

(i) Is dilapidated;

(ii) Does not have operable indoor plumbing;

(iii) Does not have a usable flush toilet inside the unit for the exclusive use of a family;

(iv) Does not have a usable bathtub or shower inside the unit for the exclusive use of a family;

(v) Does not have electricity, or has inadequate or unsafe electrical service;

(vi) Does not have a safe or adequate source of heat;

(vii) Should, but does not, have a kitchen; or

(viii) Has been declared unfit for habitation by an agency or unit of government.

(2) For purposes of paragraph (f)(1) of this section, a housing unit is dilapidated if it does not provide safe and adequate shelter, and in its present condition endangers the health, safety, or well-being of a family, or it has one or more critical defects, or a combination of intermediate defects in sufficient number or extent to require considerable repair or rebuilding. The defects may involve original construction, or they may result from continued neglect or lack of repair or from serious damage to the structure.

(3) For purposes of this paragraph (f), an applicant who is a "homeless family" is living in substandard housing. For purposes of the preceding sentence, a "homeless family" includes any individual or family who:

(i) Lacks a fixed, regular, and adequate nighttime residence; and

(ii) Has a primary nighttime residence that is:

(A) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(B) An institution that provides a temporary residence for individuals intended to be institutionalized; or

(C) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

A "homeless family" does not include any individual imprisoned or otherwise detained pursuant to an Act of the Congress or a State law.

(4) For purposes of paragraph (f)(1) of this section, Single Room Occupancy (SRO) Housing (as defined in § 882.102) is not substandard solely because it does not contain sanitary or food preparation facilities (or both).

(g) *Verification procedures for applicants living in substandard housing.* Verification that an applicant is living in substandard housing consists of certification, in a form prescribed by the Secretary, from a unit or agency of government or from an applicant's present landlord that the applicant's unit has one or more of the deficiencies listed in, or the unit's condition is as described in, paragraph (f) (1) or (2) of this section. In the case of a "homeless family" (as described in paragraph (f)(3) of this section), verification consists of certification, in a form prescribed by the Secretary, of this status from a public or private facility that provides shelter for such individuals, or from the local police department or social services agency.

(h) *Definition of family income.* For purposes of this section, family income is Monthly Income, as defined in 24 CFR 913.102.

(i) *Definition of rent.* (1) For purposes of this section, rent is defined as:

(i) The actual amount due, calculated on a monthly basis, under a lease or occupancy agreement between a family and the family's current landlord; and

(ii) In the case of utilities purchased directly by tenants from utility providers,

(A) The PHA's reasonable estimate of tenant-purchased utilities (except telephone) and the other housing services that are normally included in rent; or

(B) If the family chooses, the average monthly payments that it actually made for these utilities and services for the most recent 12-month period or, if

information is not obtainable for the entire period, for an appropriate recent period.

(2) For purposes of calculating rent under this paragraph (i), amounts paid to or on behalf of a family under any energy assistance program must be subtracted from the otherwise applicable rental amount to the extent that they are not included in the family's income.

(3) In the case of an applicant who owns a manufactured home, but who rents the space upon which it is located, rent under this paragraph (i) includes the monthly payment to amortize the purchase price of the home, as calculated in accordance with HUD's requirements.

(4) In the case of members of a cooperative, rent under this paragraph (i) means the charges under the occupancy agreement between the members and the cooperative.

(j) *Verification of an applicant's income, rent, and utilities payments.* The PHA must verify that an applicant is paying more than 50 percent of family income for rent, as follows:

(1) The PHA must verify the family's income in accordance with the standards and procedures that it uses to verify income for the purpose of determining applicant eligibility and Total Tenant Payment under 24 CFR Part 913.

(2)(i) The PHA must verify the amount due to the family's landlord (or cooperative) under the lease or occupancy agreement—

(A) By requiring the family to furnish copies of its most recent rental (or cooperative charges) receipts (which may include cancelled checks or money order receipts) or a copy of the family's current lease or occupancy agreement, or

(B) By contacting the landlord (or cooperative) or its agent directly.

(ii) The PHA must verify the amount paid to amortize the purchase price of a manufactured home—

(A) By requiring the family to furnish copies of its most recent payment receipts (which may include cancelled checks or money order receipts) or a copy of the family's current purchase agreement, or

(B) By contacting the lienholder directly.

(3) To verify the actual amount that a family paid for utilities and other housing services, the PHA must require the family to provide copies of the appropriate bills or receipts, or must obtain the information directly from the utility or service supplier.

(k) *Notice and opportunity for a meeting where Federal preference is denied.* If the PHA determines that an applicant does not meet the criteria for receiving a Federal preference, the PHA must promptly provide the applicant with written notice of the determination. The notice must contain a brief statement of the reasons for the determination, and state that the applicant has the right to meet with the PHA's designee to review it. If requested, the meeting must be conducted by a person or persons designated by the PHA. Those designated may be an officer or employee of the PHA, including the person who made or reviewed the determination, or his or her subordinate. The procedures specified in this paragraph (k) must be carried out in accordance with HUD's requirements. The applicant may exercise other rights if the applicant believes that he or she has been discriminated against on the basis of race, color, religion, sex, national origin, age, or handicap.

(l) *Effective date.* PHAs must implement the provisions of this section no later than July 13, 1988.

Dated: December 21, 1987.

Samual R. Pierce, Jr.,

Secretary.

[FR Doc. 88-293 Filed 1-14-88; 8:45 am]

BILLLING CODE 4210-32-M