

HUD publishes HERA final rule

The Department of Housing and Urban Development ([HUD](#)) published the long-awaited [final rule](#) implementing changes from the Housing and Economic Recovery Act of 2008 ([HERA](#)). While the majority of regulatory changes apply to the project-based voucher ([PBV](#)) program, the final rule also makes two conforming changes applicable to the tenant-based HCV program.

HERA's self-implementing provisions were described in a *Federal Register* [notice](#) published on November 24, 2008. On May 15, 2012, HUD published a [proposed rule](#) covering HERA provisions that were not self-implementing. This notice finalizes the proposed rule, with changes, and also makes conforming changes to establish HERA's requirements by regulation.

➤ **Changes Applicable to Tenant-Based Program:** The final rule revises HUD's [Part 5](#) income regulations to exclude deferred disability payments from the [Veterans Administration](#). This change was implemented in 2008. Today's rule also makes streamlining changes to rent reasonableness determinations for units receiving low income housing tax credits ([LIHTC](#)).

➤ **PBV Changes to [Part 983](#) Regulations:**

- The final rule corrects a regulatory error that excluded "cooperative housing" from the PBV program. Units in cooperative housing are eligible for PBV assistance.
- The rule makes several regulatory changes to implement the substitution of the word "project" for "building." These changes cut across several areas of program operation. For example, where the prior rule capped non-excepted PBV units at 25 percent of the units in a "building," the cap is now at 25 percent of the units in a "project." A project is defined as a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land.
- The notice clarifies the term "commencement of construction" for purposes of contract execution. Commencement of construction occurs when excavation or site preparation (including clearing of the land) begins. A PHA may not attach or pay PBV assistance for units for which construction or rehab has commenced prior to execution of the agreement to enter into a housing assistance payments contract (AHAP).
- The final rule gives PHAs the discretion to state in the HAP contract that rent to owner shall not be decreased below the initial rent. Rent to owner may not exceed reasonable rent unless the PHA has included this clause in the HAP contract. The establishment of a rent "floor" was mandatory in the proposed rule but the final rule leaves the issue to the PHA's discretion.
- The notice also provides guidance on removal of units from the HAP contract when the family's income increases and tenant rent equals or exceeds rent to owner. The unit must be removed from the HAP contract 180 days after the last HAP payment. Under the existing rule, another unit may be substituted. The final rule adds a provision for fully-assisted projects: the PHA may reinstate the unit to the HAP contract once the ineligible family moves out.
- In another change to occupancy rules, the notice provides that elderly or disabled families living in excepted units may continue to occupy the unit after the elderly or disabled family member dies or moves out. The change was made in response to concerns that under the current rule, such families were required to vacate because they no longer qualified for the excepted unit. PHAs now have the discretion to allow the family to continue to occupy the unit and to continue to count the unit as an excepted unit for as long as the family lives there.
- The final rule also makes minor changes to the regulation covering families occupying units which are overcrowded, under-occupied, or contain accessibility features which the family does

not need. The final rule draws a distinction between families who are offered tenant-based assistance to move and those who are offered other forms of continued housing assistance.

- If the family is offered a tenant-based voucher, the PHA must terminate the HAP for the wrong-sized or accessible PBV unit at the earlier of the voucher expiration date or the date the family vacates the PBV unit. If the family does not move by the voucher expiration date, the PHA must remove the unit from the HAP contract.
- If the family is offered other, non-voucher housing assistance and does not accept the offer or vacate the PBV unit within a reasonable time (as defined by the PHA), the PHA must terminate the HAP at the end of the reasonable time period. The PHA must also remove the unit from the HAP contract.

The final rule became effective July 25, 2014