

The rule provides that the HA may not rely on a document not produced in response to the family's request. Comments agree with this provision. Advance disclosure helps the family prepare for the hearing. Other comments indicate that the rule should provide a stronger sanction for the HA failure to disclose a document, by prohibiting the HA from raising any issue, fact or claim concerning the document.

In the final rule, the sanctions provision is retained as proposed. The HA may not rely on a document withheld from disclosure. Similarly, the rule provides that the family may not rely on a document not produced at request of the HA. Any additional sanctions for non-disclosure are left to the authority and judgment of the hearing officer, and should not be prescribed in the rule. The hearing officer may tailor the character and severity of the sanction to the facts of the immediate case.

At request of the other party, the HA or family must produce documents that are "directly relevant" to the hearing. Comments recommend that the rule designate what documents must be released in discovery with more specificity. HUD believes that the proposed standard is an adequate guide. As under any such standard, there can be disputes at the margin whether particular documents are directly relevant to the issues at the hearing. HUD is unable to devise a better standard, and no such standard is suggested in the comments.

Comments express concern that the family may lose documents. Under the rule, the HA can devise appropriate procedures for inspection of documents, including provision for supervised inspection. The HA is not required to allow the family to remove documents or files from the HA offices. The HA could, if desired, provide document copies to minimize the risk of losing originals or corruption of HA files.

The rule provides that the family may copy HA documents "at the family's expense". (§ 982.555(e)(2)(i)) Comments suggest that the HA should not be permitted to charge the family for copying documents. The comment is not adopted. The HA may work out appropriate local policies on copying charges (for example, policies that allow free copying of a limited number of pages).

Hearing Officer

As in the past, the rule provides that a hearing may be conducted by any person or persons designated by the HA, other than a person who made or approved the decision under review or

a subordinate of this person.

(§ 982.555(e)(4)(i))

Comments recommend that the hearing officer should not be a person connected to the HA. The comments state that a hearing officer who is an HA employee will tend to support a colleague's decision, and may be familiar with the issues and complaint.

The recommendation is not adopted. The designated hearing officer is responsible for exercising an independent and good faith judgment on the issues presented. Factual determinations concerning the individual family must be based on evidence presented at hearing. An HA employee or officer can render a fair and objective judgment. Conversely, precluding use of HA employees or officers will generally increase the expense of the hearing process. (For full discussion of the basis of the current provisions, see 49 FR 12229-12230)

X. Section 8 Certificate Program: Project-Based Assistance (PBC)

PBC: Moving the Rule

The regulations for the Project-based Certificate (PBC) Program have been moved to a separate subpart, 24 CFR part 983, since the tenant-based and project-based programs are very different.

PBC: Reducing Program Complexity and HUD Involvement; Initial HAP Contract Term

Comments state that the PBC program is difficult for HAs and HUD to administer, and operationally complex for all parties. The extent and timeliness of HUD review is criticized. Comments state that the PBC regulations inappropriately require HUD PBC reviews similar to the HUD reviews for applications for long term subsidy contracts under the Section 202 and Section 8 new construction programs. Comments note that the level of HUD activity for the PBC program is not justified by a five-year subsidy commitment.

HUD agrees that the HUD oversight is excessive for a five-year subsidy commitment, especially considering the limited HUD field office staff capacity to perform PBC reviews. The final rule significantly decreases HUD review responsibilities for the PBC program, and simplifies program administration. The requirements for a HUD cost containment review and intergovernmental review have been deleted. Initial contract rents for non-HUD insured, non-HA owned PBC projects will be set by the HA, based on appraisals conducted by a State certified

general appraiser. The costs of the PBC appraisal will come from the administrative fees already paid to HAs. The HUD 2530 previous participation requirement has also been eliminated, and responsibility for PBC historic preservation and environmental review responsibilities have been assumed by States and units of local government pursuant to section 305(b) of the Multifamily Housing Property Disposition Reform Act of 1994. In addition, the rule eliminates the requirement for a HUD-approved HA schedule of leasing. The final rule also limits the initial PBC HAP contract term to five years, the typical funding term for new units.

Other changes have been made throughout the rule to delete requirements on matters which do not need to be regulated.

PBC: Maximum Number of PBC Units; Application to Implement a PBC Program

Comments suggested that HUD should allow project-basing in the voucher program, and should increase the percentage of certificate units which may be project-based. These suggestions have not been adopted. The statute does not permit project-basing of voucher units. The statute does not require that HUD permit project basing for more than 15 percent of assistance under the certificates (or 30 percent for rehabilitation of certain State-assisted units).

In order to further simplify program administration and in recognition that the ACC no longer lists the number of units by bedroom size, the references to the 15 and 30 percent limits in § 983.702 and § 983.703 have been revised to delete reference to "units under ACC". The 15 and 30 percent limits apply to the number of budgeted certificate units, not the number of units under ACC.

Section 983.3 has also been revised to delete the requirement that HAs indicate the bedroom sizes of the PBC units and identify a funding source for purposes of determining the maximum PBC HAP contract term. When approving the HAP contract term for PBC units, the HA must ensure that the contract authority for the funding source exceeds the estimated annual housing assistance payments for all tenant-based and project-based HAP contracts funded from the funding source.

PBC: Funding

Several comments recommend that HUD provide special funding for the PBC program. If HUD specifically allocated funds for PBC, HAs would be