

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**24 CFR Part 985**

[Docket No. FR-4498-I-01]

RIN 2577-AC10

Technical Amendment to the Section 8 Management Assessment Program (SEMAP)

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

ACTION: Interim rule.

SUMMARY: This interim rule amends the regulations for the Section 8 Management Assessment Program (SEMAP) for the purpose of incorporating technical revisions recommended by the Office of Management and Budget to conform to requirements under the Single Audit Act Amendments of 1996. This interim rule revises the basis upon which HUD assigns ratings under eight SEMAP indicators. For the eight SEMAP indicators where the HUD verification method is the latest independent auditor (IA) annual audit report, this interim rule provides that the rating will be based on the housing agency (HA) SEMAP certification to HUD, rather than on statements in the annual audit report. Under this interim rule, SEMAP ratings will be subject to change after HUD receives the HA's annual audit report if the audit report contains information that the HA's SEMAP certification is not accurate.

DATES: *Effective Date:* August 25, 1999. *Comments Due Date:* September 24, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410-0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communications submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Acting Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Room 4210, 451 Seventh Street, S.W., Washington, DC 20410-0500. Telephone: (202) 708-0477

(voice); (202) 708-0850 (TTY). Persons with hearing or speech impairments may call 1-800-877-8339 (Federal Information Relay Service TTY). (Other than the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:**I. Background**

On September 10, 1998 (63 FR 48548), HUD published a final rule which established the Section 8 Management Assessment Program (SEMAP). The September 10, 1998 final rule provided that HUD would rate the performance of a housing authority (HA) under eight SEMAP indicators based on statements in the latest independent auditor (IA) annual audit report. The eight indicators are: (1) Selection from the Waiting List; (2) Reasonable Rent; (3) Determination of Adjusted Income; (4) Utility Allowance Schedule; (5) Housing Quality Standards (HQS) Quality Control Inspections; (6) HQS Enforcement; (7) Expanding Housing Opportunities; and (8) Deconcentration Bonus. HUD intended that IAs would independently test a minimum sample of files for HA compliance with requirements under five of these eight indicators and would include specific statements concerning HA compliance in the audit report on compliance with all eight. Procedures of the Office of Management and Budget (OMB) implementing the Single Audit Act Amendments of 1996, however, do not permit HUD to include audit procedures in the OMB Circular A-133 compliance supplement which require either minimum samples of files or any specific reporting on compliance.

II. This Rule

In accordance with OMB requirements under the Single Audit Act Amendments of 1996, HUD is amending the September 10, 1998 final rule to base ratings for the eight indicators on the HA's SEMAP certification to HUD, rather than on the IA annual audit report. The OMB Circular A-133 compliance supplement for the Section 8 tenant-based programs will still provide procedures for the IA to audit compliance for the eight SEMAP indicators, and to verify the accuracy of the HA's SEMAP certification to HUD. Therefore, the HUD method of verification of HA performance under the eight indicators remains the IA annual audit report. The Department continues to rely on IA's to verify the accuracy of the HA's SEMAP certification with respect to the eight indicators. This interim rule also clarifies that HUD confirmatory reviews will be used as an additional method of

verification to the extent they are performed.

This technical amendment to the September 10, 1998 final rule requires the HA to submit a SEMAP certification concerning the results of its supervisory quality control reviews of file samples drawn in an unbiased manner to ensure compliance under four SEMAP indicators ((1) Selection from the Waiting List; (2) Reasonable Rent; (3) Determination of Adjusted Income; and (4) HQS Enforcement). The interim rule, therefore, requires the HA to perform annual quality control reviews of its performance under these indicators in order to complete the SEMAP certification form. While there has previously been no regulatory requirement that an HA perform quality control reviews in these four areas, many HAs would have instituted such procedures under the September 10, 1998 final rule. Further, sound management practices require adequate internal control systems, such as supervisory quality control reviews, which the Department has required and encouraged in the past.

This technical amendment also revises the SEMAP standard under § 985.3(e) for HQS quality control inspections. This indicator is changed to require HQS quality control samples of the same minimum sample size as required for other supervisory quality control reviews. The requirement for a 5 percent HQS quality control sample no longer applies.

III. Justification for Interim Rulemaking

It is HUD's policy to publish rules for public comment before their issuance for effect, in accordance with its own regulations on rulemaking found at 24 CFR part 10. Part 10 provides, however, that prior public procedure will be omitted if HUD determines that it is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.0). HUD finds that in this case prior comment is unnecessary. This interim rule amends §§ 985.1, 985.2, 985.3, and 985.103, only to make technical changes to the basis for HUD ratings on eight SEMAP indicators and to the minimum sample size for HQS quality control inspections. Rather than relying on statements in the IA annual audit report to assign ratings under the eight indicators, HUD will rely on the HA's SEMAP certification to assign ratings. The HA's SEMAP certification for these eight indicators may be subject to a compliance audit under the Single Audit Act Amendments of 1996, or to a HUD confirmatory review, and if the audit report on compliance or the

confirmatory review report contains information that the HA's SEMAP certification is not accurate, SEMAP ratings will be subject to change.

IV. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, D.C. 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule would not have a significant economic impact on a substantial number of small entities. There are no anti-competitive discriminatory aspects of the rule with regard to small entities, and there are not any unusual procedures that would need to be complied with by small entities. Nevertheless, the Department is sensitive to the fact that the uniform application of requirements on entities of differing sizes often places a disproportionate burden on small businesses. The Department, therefore, is soliciting alternatives for compliance from small entities as to how these small entities might comply in a way less burdensome to them.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Program numbers assigned to the Section 8 Management Assessment Program are 14.855 and 14.857.

List of Subjects for 24 CFR Part 985

Grant programs—housing and community development, Housing, Rent

subsidies, Reporting and recordkeeping requirements.

Accordingly, part 985 of title 24 of the Code of Federal Regulations is amended as follows:

PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

1. The authority citation for 24 CFR part 985 continues to read as follows:

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

2. Section 985.1 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 985.1 Purpose and applicability.

(a) *Purpose.* * * * SEMAP also establishes a system for HUD to measure HA performance in key Section 8 program areas and to assign performance ratings. * * *

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3. In § 985.2 amend paragraph (b) by adding definitions of "confirmatory review" and "HA's quality control sample" in alphabetical order to read as follows:

§ 985.2 Definitions.

* * * * *

(b) * * *

Confirmatory review means an on site review performed by HUD to verify the management performance of an HA.

* * * * *

HA's quality control sample means an annual sample of files or records drawn in an unbiased manner and reviewed by an HA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. The minimum size of the HA's quality control sample is as follows:

Universe	Minimum number of files or records to be sampled
50 or less	5.
51–600	5 plus 1 for each 50 (or part of 50) over 50.
601–2000	16 plus 1 for each 100 (or part of 100) over 600.
Over 2000	30 plus 1 for each 200 (or part of 200) over 2000.

Where the universe is: the number of admissions in the last year for each of the two quality control samples under the SEMAP indicator at § 985.3(a) Selection from the Waiting List; the number of families assisted for the SEMAP indicators at § 985.3(b) Reasonable Rent, and 985.3(c) Determination of Adjusted Income; the number of units under HAP contract

during the last completed HA fiscal year for the SEMAP indicator at § 985.3(e) HQS Quality Control Inspections; and the number of failed HQS inspections in the last year for the SEMAP indicator at § 985.3(f) HQS Enforcement.

* * * * *

4. Section 985.3 is amended by revising the last sentence of the first introductory paragraph, the first sentence of the second introductory paragraph, and paragraphs (a)(2), (a)(3) introductory text, (a)(3)(i) introductory text, (a)(3)(i)(B), (a)(3)(ii), (b)(2), (b)(3) introductory text, (b)(3)(i) introductory text, (b)(3)(i)(B), (b)(3)(ii), (b)(3)(iii), (c)(2), (c)(3) introductory text, (c)(3)(i) introductory text, (c)(3)(ii), (c)(3)(iii), (d)(2), (d)(3), (e), (f)(2), (f)(3), (g)(2), (g)(3) introductory text, (g)(3)(i) introductory text, (g)(3)(ii), (h)(2) and (h)(3) to read as follows:

§ 985.3 Indicators, HUD verification methods and ratings.

* * * The method for selecting the HA's quality control sample under paragraphs (a), (b), (c) and (f) of this section must leave a clear audit trail that can be used to verify that the HA's quality control sample was drawn in an unbiased manner.

An HA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor (IA), will not be rated under the SEMAP indicators in paragraphs (a) through (g) of this section for which the annual IA audit report is a HUD verification method. * * *

(a) * * *

(2) HUD verification method: The independent auditor (IA) annual audit report covering the HA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The HA's SEMAP certification states that:

* * * * *

(B) Based on the HA's quality control samples, drawn separately for applicants reaching the top of the waiting list and for admissions, documentation shows that at least 98 percent of the families in both samples of applicants and admissions were selected from the waiting list for admission in accordance with these policies and met the selection criteria that determined their places on the waiting list and their order of selection. 15 points.

(ii) The HA's SEMAP certification does not support the statement in paragraph (a)(3)(i) of this section. 0 points.

(b) * * *

(2) HUD verification method: The IA annual audit report covering the HA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The HA's SEMAP certification states that:

* * * * *

(B) Based on the HA's quality control sample of tenant files, the HA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable in accordance with § 982.503 for at least 98 percent of units sampled at the time of initial leasing, if there is any increase in the rent to owner and, at the HAP contract anniversary if there is a 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. 20 points.

(ii) The HA's SEMAP certification includes the statements in paragraph (b)(3)(i) of this section, except that the HA documents its determination of reasonable rent for only 80 to 97 percent of units sampled at initial leasing, if there is any increase in the rent to owner, and at the HAP contract anniversary if there is a 5 percent decrease in the published FMR in effect 60 days before the HAP contract anniversary. 15 points.

(iii) The HA's SEMAP certification does not support the statements in either paragraph (b)(3)(i) or (b)(3)(ii) of this section. 0 points.

(c) * * *

(2) HUD verification method: The IA annual audit report covering the HA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The HA's SEMAP certification states that, based on the HA's quality control sample of tenant files, for at least 90 percent of families:

* * * * *

(ii) The HA's SEMAP certification includes the statements in paragraph (c)(3)(i) of this section, except that the HA obtains and uses independent verification of income, properly attributes allowances, and uses the appropriate utility allowances for only 80 to 89 percent of families. 15 points.

(iii) The HA's SEMAP certification does not support the statements in either paragraph (c)(3)(i) or (c)(3)(ii) of this section. 0 points.

(d) * * *

(2) HUD verification method: The IA annual audit report covering the HA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The HA's SEMAP certification states that the HA reviewed

utility rate data within the last 12 months, and adjusted its utility allowance schedule if there has been a change of 10 percent or more in a utility rate since the last time the utility allowance schedule was revised. 5 points.

(ii) The HA's SEMAP certification does not support the statement in paragraph (d)(3)(i) of this section. 0 points.

(e) *HQS quality control inspections.*

(1) This indicator shows whether an HA supervisor or other qualified person reinspects a sample of units under contract during the HA fiscal year, which meets the minimum sample size requirements specified at § 983.2 under HA's quality control sample, for quality control of HQS inspections. The HA supervisor's reinspected sample is to be drawn from recently completed HQS inspections (i.e., performed during the 3 months preceding reinspection) and is to be drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors. (24 CFR 982.405(b))

(2) HUD verification method: The IA annual audit report covering the HA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The HA's SEMAP certification states that an HA supervisor or other qualified person performed quality control HQS reinspections during the HA fiscal year for a sample of units under contract which meets the minimum sample size requirements specified in § 983.2 under HA's quality control sample. The HA's SEMAP certification also states that the reinspected sample was drawn from recently completed HQS inspections (i.e., performed during the 3 months preceding the quality control reinspection) and was drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors. 5 points.

(ii) The HA's SEMAP certification does not support the statements in paragraph (e)(3)(i) of this section. 0 points.

(f) * * *

(2) HUD verification method: The IA annual audit report covering the HA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The HA's SEMAP certification states that the HA's quality control sample of case files with failed HQS inspections shows that, for all cases sampled, any cited life-threatening HQS deficiencies were corrected within 24 hours from the inspection and, for at least 98 percent of cases sampled, all

other cited HQS deficiencies were corrected within no more than 30 calendar days from the inspection or any HA-approved extension, or, if any life-threatening HQS deficiencies were not corrected within 24 hours and all other HQS deficiencies were not corrected within 30 calendar days or any HA-approved extension, the HA stopped (abated) housing assistance payments beginning no later than the first of the month following the correction period, or took prompt and vigorous action to enforce family obligations. 10 points.

(ii) The HA's SEMAP certification does not support the statement in paragraph (f)(3)(i) of this section. 0 points.

(g) * * *

(2) HUD verification method: The IA annual audit report covering the HA fiscal year entered on the SEMAP certification and on-site confirmatory review if performed.

(3) Rating: (i) The HA's SEMAP certification states that:

* * * * *

(ii) The HA's SEMAP certification does not support the statement in paragraph (g)(3)(i) of this section. 0 points.

(h) * * *

(2) HUD verification methods: HA data submitted for the deconcentration bonus, the IA annual audit report covering the HA fiscal year entered on the SEMAP certification, and on-site confirmatory review if performed.

(3) Rating: (i) The data submitted by the HA for the deconcentration bonus shows that the HA met the requirements for bonus points in paragraph (h)(1)(i), (ii) or (iii) of this section. 5 points.

(ii) The data submitted by the HA for the deconcentration bonus does not show that the HA met the requirements for bonus points in paragraph (h)(1)(i), (ii) or (iii) of this section. 0 points.

* * * * *

5. Section 985.103 is amended by redesignating paragraph (d) as paragraph (e), adding a new paragraph (d), and revising newly redesignated paragraph (e)(3), to read as follows:

§ 985.103 SEMAP score and overall performance rating.

* * * * *

(d) *Modified rating on an indicator.* A rating on any of the indicators at §§ 985.3(a) through 985.3(h) will be subject to change after HUD receives the HA's annual audit report or after HUD conducts a confirmatory review if the

audit report or the confirmatory review report contains information that the HA's SEMAP certification concerning an indicator is not accurate.

(e) *Modified or withheld overall rating.* * * *

(3) When HUD modifies or withholds a rating for any reason, it shall explain in writing to the HA the reasons for the modification or for withholding the rating.

Dated: June 23, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

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