

(ii) The HUD-FHA maximum interest rate for multifamily housing (or another rate prescribed by HUD) for rehabilitation costs paid by the Owner out of nonborrowed funds, and

(iii) At least a 15 year loan term, except that if the total amount of rehabilitation is less than \$15,000, the actual loan term will be used for the portion of the rehabilitation costs borrowed by the Owner. (HUD Field Offices may authorize loan terms which differ from the above in accordance with HUD requirements.)

(d) *Changes in Initial Contract Rents during rehabilitation.* (1) The initial Contract Rents established pursuant to paragraph (c) of this section will be the Contract Rents on the effective date of the Contract except under the following circumstances:

(i) When, during rehabilitation, work items (including substantial and necessary design changes) which (A) could not reasonably have been anticipated or are necessitated by a change in local codes or ordinances, and (B) were not listed in the work write-up prepared or approved by the PHA, are subsequently required and approved by the PHA.

(ii) When the actual cost of the rehabilitation performed is less than that estimated in the calculation of Contract Rents for the Agreement or the actual, certified costs are more than estimated due to unforeseen factors beyond the owner's control (e.g., strikes, weather delays or unexpected delays caused by local governments).

(iii) When the PHA (or HUD) approves changes in financing.

(iv) When the actual relocation payments made by the Owner to temporarily relocated Families varies from the cost estimated in the calculation of Contract Rents for the Agreement.

(v) When necessary to correct errors in computation of the base and Contract Rents to comply with the HUD requirements.

(2) Should changes occur as specified in paragraph (d)(1) (either an increase or decrease), the PHA will approve any necessary change in work and amendment of the work write-up and cost estimate, recalculate the initial Contract Rents in accordance with paragraph (d)(3) of this section, and amend the

Contract or Agreement, as appropriate, to reflect the revised rents.

(3) In establishing the revised Contract Rents, the PHA must determine that the resulting Gross Rents do not exceed the Moderate Rehabilitation Fair Market Rent or the exception rent in effect at the time of execution of the Agreement. The Fair Market Rent or exception rent, as appropriate, may only be exceeded when the PHA determines in accordance with paragraph (d)(1) of this section that it will be necessary for the revised Gross Rent to exceed the Moderate Rehabilitation Fair Market Rent or exception rent. Should this determination be made, the PHA may not execute a revised Agreement or Contract for Gross Rents exceeding the Fair Market Rents by more than 10 percent until it receives HUD Field Office approval. The HUD Field Office may approve revised Gross Rents which exceed the Fair Market Rents by up to 20 percent for reasons specified in paragraph (d)(1) of this section upon proper justification by the PHA of the necessity for the increase.

[47 FR 34379, Aug. 9, 1982, as amended at 52 FR 19725, May 27, 1987]

**§ 882.409 Contract rents at end of rehabilitation loan term.**

For a Contract where the initial Contract Rent was based upon a loan term shorter than 15 years, the Contract must provide for reduction of the Contract Rent effective with the rent for the month following the end of the term of the rehabilitation loan. The amount of the reduction will be the monthly cost of amortization of the rehabilitation loan. This reduction should result in a new Contract Rent equal to the base rent established pursuant to § 882.408(c) plus all subsequent adjustments.

**§ 882.410 Rent adjustments.**

(a) *Annual and special adjustments.* Contract Rents will be adjusted as provided in paragraphs (a) (1) and (2) of this section upon submittal to the PHA by the Owner of a revised schedule of Contract Rents, provided that the unit is in decent, safe, and sanitary condition and that the Owner is otherwise in compliance with the terms of the Lease and Contract. Subject to the foregoing,

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adjustments of Contract Rents will be as follows:

(1) The Annual Adjustment Factors which are published annually by HUD (see Schedule C, 24 CFR part 888) will be utilized. On or after each annual anniversary date of the Contract, the Contract Rents may be adjusted in accordance with HUD procedures, effective for the month following the submittal by the Owner of a revised schedule of Contract Rents. The changes in rent as a result of the adjustment cannot exceed the amount established by multiplying the Annual Adjustment Factor by the base rents. However, if the amounts borrowed to finance the rehabilitation costs or to finance purchase of the property are subject to a variable rate or are otherwise renegotiable, Contract Rents may be adjusted in accordance with other procedures as prescribed by HUD, and specified in the Contract, provided that the adjusted Contract Rents cannot exceed the rents established by multiplying the Annual Adjustment Factor by the Contract Rents. Adjusted Contract Rents must then be examined in accordance with paragraph (b) of this section and may be adjusted accordingly. Contract Rents may be adjusted upward or downward, as may be appropriate.

(2) *Special Adjustments.* (i) A special adjustment, to the extent determined by HUD to reflect increases in the actual and necessary expenses of owning and maintaining the unit which have resulted from substantial general increases in real property taxes, assessments, utility rates and utilities not covered by regulated rates, may be recommended by the PHA for approval by HUD. Subject to appropriations, a special adjustment may also be recommended by the PHA for approval by HUD when HUD determines that a project is located in a community where drug-related criminal activity is generally prevalent, and not specific to a particular project, and the project's operating, maintenance, and capital repair expenses have substantially increased primarily as a result of the prevalence of such drug-related activity. HUD may, on a project-by-project basis, provide adjustments to the maximum monthly rents, to a level no greater than 120 percent of the current

gross rents for each unit size under a Housing Assistance Payments Contract, to cover the costs of maintenance, security, capital repairs and reserves required for the Owner to carry out a strategy acceptable to HUD for addressing the problem of drug-related criminal activity. Prior to approval of a special adjustment to cover the cost of physical improvements, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(ii) The aforementioned special rent adjustments will only be approved if and to the extent the Owner clearly demonstrates that these general increases have caused increases in the owners operating costs which are not adequately compensated for by annual adjustments.

(iii) The Owner must submit financial information to the PHA which clearly supports the increase. For Contracts of more than twenty units, the Owner must submit audited financial information.

(b) *Overall limitation.* Notwithstanding any other provisions of this part, adjustments as provided in this section must not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph (a)(2) of this section). However, unless the rents have been adjusted in accordance with § 882.409, this limitation should not be construed to prohibit differences in rents between assisted and comparable unassisted units to the extent that differences existed with respect to the initial Contract Rents.

(Approved by the Office of Management and Budget under OMB approval number 2577-0196)

[47 FR 34379, Aug. 9, 1982, as amended at 59 FR 47773, Sept. 16, 1994]

**§ 882.411 Payments for vacancies.**

(a) *Vacancies from execution of Contract to initial occupancy.* If a Contract unit which has been rehabilitated in accordance with this Program is not leased within 15 days of the effective date of the Contract, the Owner will be