§ 792.204

(b) The remaining balance of the recovery proceeds (i.e., the portion of recovery the PHA is not authorized to retain) must be applied as directed by HUD.

§ 792.204 Recordkeeping and reporting.

To permit HUD to audit amounts retained under this part, an PHA must maintain all records required by HUD, including:

24 CFR Ch. VII (4-1-12 Edition)

- (a) Amounts recovered on any judgment or repayment agreement;
- (b) The nature of the judgment or repayment agreement; and
- (c) The amount of the legal fees and expenses incurred in obtaining the judgment or repayment agreement and recovery.

(Approved by the Office of Management and Budget under Control Number 2577–0053)

PARTS 793-798 [RESERVED]

CHAPTER VIII—OFFICE OF THE ASSISTANT
SECRETARY FOR HOUSING-FEDERAL HOUSING
COMMISSIONER, DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT (SECTION 8
HOUSING ASSISTANCE PROGRAMS, SECTION
202 DIRECT LOAN PROGRAM, SECTION 202
SUPPORTIVE HOUSING FOR THE ELDERLY
PROGRAM AND SECTION 811 SUPPORTIVE
HOUSING FOR PERSONS WITH DISABILITIES
PROGRAM)

EDITORIAL NOTE: Nomenclature changes to chapter VIII appear at 59 FR 14090, Mar. 25, 1994. PartPage800-810 [Reserved] 811 Tax exemption of obligations of public housing agencies and related amendments 37 850 Housing development grants 43 880 Section 8 housing assistance payments program for new construction 46 881 Section 8 housing assistance payments program for substantial rehabilitation 67 882 Section 8 moderate rehabilitation programs 73 883 Section 8 housing assistance payments program— State housing agencies 884 Section 8 housing assistance payments program, new construction set-aside for Section 515 rural rental housing projects 112886 Section 8 housing assistance payments program— Special allocations 131

24 CFR Ch. VIII (4-1-12 Edition)

Part		Page
887	[Reserved]	
888	Section 8 housing assistance payments program— Fair market rents and contract rent annual ad-	
	justment factors	168
891	Supportive housing for the elderly and persons	
	with disabilities	177

PARTS 800-810 [RESERVED]

PART 811—TAX EXEMPTION OF OB-LIGATIONS OF PUBLIC HOUSING AGENCIES AND RELATED AMENDMENTS

Sec

811.101 Purpose and scope.

811.102 Definitions.

811.103 General.

811.104 Approval of Public Housing Agencies (other than agency or instrumentality PHAS).

811.105 Approval of agency or instrumentality PHA.

811.106 Default under the contract.

811.107 Financing documents and data.

811.108 Debt service reserve.

811.109 Trust indenture provisions.

811.110 Refunding of obligations issued to finance Section 8 projects.

AUTHORITY: Sec. 7(d), Dept. of HUD Act (42 U.S.C. 3535(d)); secs. 3(6), 5(b), 8, 11(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f, and 1437).

SOURCE: 44 FR 12360, Mar. 6, 1979, unless otherwise noted.

§811.101 Purpose and scope.

(a) The purpose of this part is to provide a basis for determining tax exemption of obligations issued by public housing agencies pursuant to Section 11(b) of the United States Housing Act of 1937 (42 U.S.C. 1437i) to refund bonds for Section 8 new construction or substantial rehabilitation projects.

(b) This part does not apply to tax exemption pursuant to Section 11(b) for low-income housing projects developed pursuant to 24 CFR parts 950 and 941.

[61 FR 14460, Apr. 1, 1996]

§811.102 Definitions.

The terms *HUD* and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

Act. The United States Housing Act of 1937 (42 U.S.C. 1437, et seq.).

Agency or Instrumentality PHA. A notfor-profit private or public organization that is authorized to engage in or assist in the development or operation of low-income housing and that has the relationship to a parent entity PHA required by this subpart.

Agreement. An Agreement to Enter Into Housing Assistance Payments

Contract as defined in the applicable Section 8 regulations. The form of agreement for projects financed with tax-exempt obligations shall be amended in accordance with this subpart.

Annual Contributions Contract (ACC). An Annual Contributions Contract as defined in the applicable Section 8 regulations. The form of ACC for projects financed with tax-exempt obligations shall be amended in accordance with this subpart.

Applicable Section 8 Regulations. The provisions of 24 CFR parts 880, 881, or 883 that apply to the project.

Contract. A Housing Assistance Payments Contract as defined in the applicable Section 8 regulations. The form of contract for projects financed with tax-exempt obligations shall be amended in accordance with this subpart.

Cost of issuance. Ordinary, necessary, and reasonable costs in connection with the issuance of obligations. These costs shall include attorney fees, rating agency fees, trustee fees, printing costs, bond counsel fees, feasibility studies (for non-FHA-insured projects only), consultant fees and other fees or expenses approved by HUD.

Debt service reserve. A fund maintained by the trustee as a supplemental source of money for the payment of debt service on the obligations.

Financing Agency. The PHA (parent entity PHA or agency or instrumentality PHA) that issues the tax-exempt obligations for financing of the project.

Low-income Housing Project. Housing for families and persons of low-income developed, acquired or assisted by a PHA under Section 8 of the Act and the improvement of any such housing.

Obligations. Bonds or other evidence of indebtedness that are issued to provide permanent financing of a low-income housing project. Pursuant to Section 319(b) of the Housing and Community Development Act of 1974, the term obligation shall not include any obligation secured by a mortgage insured under Section 221(d)(3) of the National Housing Act (12 U.S.C. 17151) and issued by a public agency as mortgagor in connection with the financing of a project assisted under Section 8 of the Act. This exclusion does not apply to a public agency as mortgagee.

§811.103

Owner. An owner as defined in the applicable Section 8 regulations.

Parent Entity PHA. Any state, county, municipality or other governmental entity or public body that is authorized to engage in or assist in the development or operation of low-income housing and that has the relationship to an agency or instrumentality PHA required by this subpart.

Servicing fees. The annual costs of servicing the obligations 0 including any debt service reserve), including trustee fees, mortgage servicing fees, PHA expenses in connection with annual reviews, maintenance of books and accounts, audit expenses, agent fees and other costs of servicing the obligations.

Trust indenture. A contract setting forth the rights and obligations of the issuer, bondholders, owner and trustee in connection with the tax-exempt obligations. The trust indenture may also include provisions regarding the loan to the owner or these may be set forth in a separate mortgage.

Trustee. The entity that has legal responsibility under the trust indenture for disposition of the proceeds of a bond issuance and servicing of the debt represented by the obligations. The trustee must be a bank or other financial institution that is legally qualified and experienced in performing fiduciary responsibilities with respect to the care and investment of funds of a magnitude comparable to those involved in the financing.

Yield. That percentage rate at which the present worth of all payments of principal and interest to be paid on the obligations is equal to the purchase price.

[44 FR 12360, Mar. 6, 1979, as amended at 61 FR 5212, Feb. 9, 1996; 61 FR 14460, Apr. 1, 1996]

§811.103 General.

- (a) In order for obligations to be taxexempt under this subpart the obligations must be issued by a PHA in connection with a low-income housing project approved by HUD under the Act and the applicable Section 8 regulations.
- (1) Except as needed for a resident manager or similar requirement, all dwelling units in a low-income housing project that is to be financed with obli-

gations issued pursuant to this subpart must be Section 8 contract units.

- (2) A low-income housing project that is to be financed with obligations issued pursuant to this subpart may include necessary appurtenances. Such appurtenances may include commerical space not to exceed 10% of the total net rentable area.
- (b) Where the parent entity PHA is not the owner of the project, the parent entity PHA or other PHA approvable under §811.104 must agree to administer the contract pursuant to an ACC with HUD, and such a PHA must agree that in the event there is a default under the contract it will pursue all available remedies to achieve correction of the default, including operation and possession of the project, if called upon by HUD to do so. If the field office finds that the PHA does not have the capacity to perform these functions, the Assistant Secretary may approve alternative contractual arrangements for performing these functions.

§811.104 Approval of Public Housing Agencies (other than agency or instrumentality PHAS).

- (a)(1) An application to the field office for approval as a Public Housing Agency, other than an agency or instrumentality PHA, for purposes of this subpart shall be supported by evidence satisfactory to HUD to establish that:
- (i) The applicant is a PHA as defined in this subpart, and has the legal authority to meet the requirements of this subpart and applicable Section 8 regulations, as described in its application. This evidence shall be supported by the opinion of counsel for the applicant.
- (ii) The applicant has or will have the administrative capability to carry out the responsibilities described in its application.
- (2) The evidence shall include any facts or documents relevant to the determinations required by paragraph (a)(1) of this section, including identification of any pending application the applicant has submitted under the Act. In the absence of evidence indicating the applicant may not be qualified, the

field office may accept as satisfactory evidence:

- (i) Identification of any previous HUD approval of the applicant as a PHA pursuant to this section;
- (ii) Identification of any prior ACC with the applicant under the Act; or
- (iii) A statement, where applicable, that the applicant is an approved participating agency under 24 CFR Part 883 (State Housing Finance and Development Agencies).
- (b) The applicant shall receive no compensation in connection with the financing of a project, except for its expenses. Such expenses shall be subject to approval by HUD in determining the development cost, cost of issuance and servicing fee, as appropriate. Should the applicant receive any compensation in excess of such expenses, the excess is to be placed in the debt service reserve.
- (c) Where the applicant acts as the financing agency, the applicant shall be required to furnish to HUD an audit by an independent public accountant of its books and records in connection with the financing of the project within 90 days after the execution of the contract or final endorsement and at least biennially thereafter.
- (d) Any subsequent amendments to the documents submitted to HUD pursuant to this section must be approved by HUD.

§811.105 Approval of agency or instrumentality PHA.

- (a) An application to the field office for approval as an agency or instrumentality PHA for purposes of this subpart shall:
 - (1) Identify the parent entity PHA.
- (2) Establish by evidence satisfactory to HUD that:
- (i) The parent entity PHA meets the requirements of §811.104.
- (ii) The applicant was properly created pursuant to state law as a not-for-profit entity; is an agency or instrumentality PHA, as defined in this subpart; has the legal authority to meet the requirements of this subpart and applicable Section 8 regulations, as described in its application; and the actions required to establish the legal relationship with the parent entity PHA prescribed by paragraph (c) of this sec-

- tion have been taken and are not prohibited by State law. This evidence shall be supported by the opinion of counsel for the applicant and counsel for the parent entity PHA.
- (iii) The applicant has, or will have, the administrative capability to carry out the responsibilities described in its application.
- (b) The charter or other organic document establishing the applicant shall limit the activities to be performed by the applicant, and funds and assets connected therewith, to carrying out or assisting in carrying out Section 8 projects and other low-income housing projects approved by the Secretary. Such organic documents shall provide that the applicant shall receive no compensation in connection with the financing of a project, except for its expenses. Such expenses shall be subject to approval by HUD in determining the development cost, cost of issuance and servicing fee, as appropriate. Should the applicant receive any compensation in excess of such expenses, the excess is to be placed in the debt service reserve.
- (c) The documents submitted by the applicant shall include the following with respect to the relationship between the parent entity PHA and the agency or instrumentality PHA:
- (1) Provisions requiring approval by the parent entity PHA of the charter or other organic instrument and of the bylaws of the applicant, which organic instrument and bylaws shall specify that any amendments are subject to approval by the parent entity PHA and by HUD.
- (2) Provisions requiring approval by the parent entity PHA of each project and of the program and expenditures of the applicant.
- (3) Provisions requiring approval by the parent entity PHA of each issue of obligations by the applicant not more than 60 days prior to the date of issue and approval of any substantive changes to the terms and conditions of the issuance prior to date of issue.
- (4) Provisions requiring the applicant to furnish an audit of all its books and records by an independent public accountant to the parent entity PHA within 90 days after execution of the contract or final endorsement and at

§811.106

least bennially thereafter; and provisions requiring the parent entity PHA to perform an annual review of the applicant's performance and to provide HUD with a copy of such review together with any audits performed during the reporting period.

- (5) Provisions giving the parent entity PHA right of access at any time to all books and records of the applicant.
- (6) Provisions that upon dissolution of the applicant, title to or other interest in any real or personal property that is owned by such applicant at the time of dissolution shall be transferred to the parent entity PHA or to another PHA or to another not-for-profit entity as determined by the parent entity PHA and approved by HUD, to be used only for purposes approved by HUD.
- (7) Evidence of agreement by the parent entity PHA, or other entity as may be provided for in alternative contractual arrangements pursuant to §811.103(b), to accept title to any real or personal property pursuant to paragraph (c)(6) of this section.
- (d) Any subsequent amendments to the documents submitted to HUD pursuant to this section must be approved by HUD.
- (e) Members, officers, or employees of the parent entity PHA may be directors or officers of the applicant unless this is contrary to state law.

 $[44\ FR\ 12360,\ Mar.\ 6,\ 1979,\ as\ amended\ at\ 61\ FR\ 14461,\ Apr.\ 1,\ 1996]$

§811.106 Default under the contract.

If HUD finds there is a default under the Contract, the field office shall so notify the trustee and give the trustee a specified reasonable time to take action to require the owner to correct such default prior to any suspension or termination of payments under the contract. In the event of a default under the contract, HUD may terminate or suspend payments under the contract, may seek specific performance of the contract and may pursue other remedies.

[44 FR 12360, Mar. 6, 1979, as amended at 61 FR 14461, Apr. 1, 1996]

§811.107 Financing documents and data.

- (a) The financing agency shall assure that any official statement or prospectus or other disclosure statement prepared in connection with the financing shall state on the first page that:
- (1) In addition to any security cited in the statement, the bonds may be secured by a pledge of an Annual Contributions Contract and a Housing Assistance Payments Contract, executed by HUD;
- (2) The faith of the United States is solemnly pledged to the payment of annual contributions pursuant to the Annual Contributions Contact or to the payment of housing assistance payments pursuant to the Housing Assistance Payments Contract, and funds have been obligated by HUD for such payments;
- (3) Except as provided in any contract of mortgage insurance, the bonds are not insured by HUD:
- (4) The bonds are not to be construed as a debt or indebtedness of HUD or the United States, and payment of the bonds is not guaranteed by the United States;
- (5) Nothing in the text of a disclosure statement is to be interpreted to conflict with the above; and
- (6) HUD has not reviewed or approved and bears no responsibility for the content of disclosure statements.
- (b) The financing agency shall retain in its files the documentation relating to the financing. A copy of this documentation shall be furnished to HUD upon request.

[61 FR 14461, Apr. 1, 1996]

§811.108 Debt service reserve.

(a) FHA-Insured projects. (1) The debt service reserve shall be invested and the income used to pay principal and interest on that portion of the obligations which is attributable to the funding of the debt service reserve. Any excess investment income shall be added to the debt service reserve. In the event such investment income is insufficient, surplus cash or residual receipts, to the extent approved by the field office, may be used to pay such principal and interest costs.

- (2) The debt service reserve and its investment income shall be available only for the purpose of paying principal or interest on the obligations. The use of the debt service reserve for this purpose shall not be a cure for any failure by the owner to make required payments.
- (3) Upon full payment of the principal and interest on the obligations (including that portion of the obligations attributable to the funding of the debt service reserve), any funds remaining in the debt service reserve shall be remitted to HUD.
- (b) Non-FHA-insured projects. (1) Investment income from the debt service reserve, up to the amount required for debt service on the bonds attributable to the debt service reserve, shall be credited toward the owner's debt service payment. Any excess investment income shall be added to and become part of the debt service reserve.
- (2) The debt service reserve and investment income thereon shall be available only for the purpose of paying principal or interest on the obligations. The use of the debt service reserve for this purpose shall not be a cure for any failure by the owner to make required payments.
- (3) Upon full payment of the principal and interest on the obligations (including that portion of the obligations attributable to the funding of the debt service reserve), any funds remaining in the debt service reserve shall be remitted to HUD.

[61 FR 14461, Apr. 1, 1996]

§811.109 Trust indenture provisions.

Obligations shall be prepaid only under such conditions as HUD shall require, including reduction of contract rents and continued operation of the project for the housing of low-income families.

 $[44~{\rm FR}~12360,~{\rm Mar.}~6,~1979.~{\rm Redesignated}~{\rm at}~61~{\rm FR}~14461,~{\rm Apr.}~1,~1996]$

§811.110 Refunding of obligations issued to finance Section 8 projects.

(a) This section states the terms and conditions under which HUD will approve refunding or defeasance of certain outstanding debt obligations which financed new construction or

- substantial rehabilitation of Section 8 projects, including fully and partially assisted projects.
- (b) In the case of bonds issued by State Agencies qualified under 24 CFR part 883 to refund bonds which financed projects assisted pursuant to 24 CFR part 883, HUD requires compliance with the prohibition on duplicative fees contained in 24 CFR part 883 and with paragraphs (f) and (h) of this section, as applicable to the projects to be refunded.
- (c) No agency shall issue obligations to refund outstanding 11(b) obligations until the Office of the Assistant Secretary for Housing sends the financing agency a Notification of Tax Exemption based on approval of the proposed refunding's terms and conditions as conforming to this part's requirements, including continued operation of the project as housing for low-income families, and where possible, reduction of Section 8 assistance payments through lower contract rents or an equivalent cash rebate to the U.S. Treasury (i.e. Trustee Sweep). The agency shall submit such documentation as HUD determines is necessary for review and approval of the refunding transaction. Upon conclusion of the closing of refunding bonds, written confirmation must be sent to the Office of Multifamily Housing by bond counsel, or other acceptable closing participant, including a schedule of the specific amount of savings in Section 8 assistance where applicable, CUSIP number information, and a final statement of Sources and Uses.
- (d)(1) HUD approval of the terms and conditions of a Section 8 refunding proposal requires evaluation by HUD's Office of Multifamily Housing of the reasonableness of the terms of the Agency's proposed financing plan, including projected reductions in project debt service where warranted by market conditions and bond yields. This evaluation shall determine that the proposed amount of refunding obligations is the amount needed to: pay off outstanding bonds; fund a debt service reserve to the extent required by credit enhancers or bond rating agencies, or bond underwriters in the case of unrated refunding bonds; pay credit enhancement fees acceptable to HUD; and

§811.110

pay transaction costs as approved by HUD according to a sliding scale ceiling based on par amount of refunding bond principal. Exceptions may be approved by HUD, if consistent with applicable statutes, in the event that an additional issue amount is required for project purposes.

(2) The stated maturity of the refunding bonds may not exceed by more than one year the remaining term of the project mortgage, or in the case of an uninsured loan, the later of expiration date of the Housing Assistance Payments Contract (the "HAPC") or final maturity of the refunded bonds.

(3) The bond yield may not exceed by more than 75 basis points the 20 Bond General Obligation Index published by the Daily Bond Buyer for the week immediately preceding the sale of the bonds, except as otherwise approved by HUD. An amount not to exceed one-fourth of one percent annually of the bonds' outstanding principal balance may be allowed for servicing and trustee fees.

(e) For projects for which the Agreement to enter into the HAPC was executed between January 1, 1979, and December 31, 1984 (otherwise known as "McKinney Act Projects"), for which a State or local agency initiates a refunding, the Secretary shall make available to an eligible issuing agency 50 percent of the Section 8 savings of a refunding, as determined by HUD on a project-by-project basis, to be used by the agency in accordance with the terms of a Refunding Agreement executed by the Agency and HUD which incorporates the Agency's Housing Plan for use of savings to provide decent, safe, and sanitary housing for very low-income households. In determining the amount of savings recaptured on a project-by-project basis, as authorized by section 1012(b) of the McKinney Act, HUD will take into account the physical condition of the projects participating in the refunding which generate the McKinney Act savings and, if necessary, HUD will finance in refunding bond debt service correction of existing deficiencies which cannot be funded completely by existing project replacement reserves or by a portion of reserves released from the refunded bond's indenture.

For McKinney Act refundings of projects which did not receive a Financing Adjustment Factor ("FAF"), HUD will allow up to 50 percent of debt service savings to be allocated to the project account; in which case, the remainder will be shared equally by the Agency and the U.S. Treasury.

(f) For refundings of Section projects other than McKinney Act Projects, and for all transactions which substitute collateral for, but do not redeem, outstanding obligations, and for which a HUD approval is needed (such as assignment of a HAPC or insured mortgage note), the Office of Multifamily Housing in consultation with HUD Field Office Counsel will review the HAPC, the Trust Indenture for the outstanding obligations, applicable HUD regulations, and reasonableness of proposed financing terms. In particular, HUD review should be obtained for the release of reserves from the trust indenture of the outstanding 11(b) that are being refunded, defeased, or pre-paid. A proposal to distribute to a non-Federal entity the benefits of a refinancing, such as debt service savings and/or balances in reserves held under the original Trust Indenture, should be referred to the Office of Multifamily Housing for further review. In proposals submitted for HUD approval, HUD will consent to release reserves, as provided by the Trust Indenture, in an amount remaining after correction of project physical deficiencies and/or replenishment of replacement reserves, where needed. In the case of a refunding of 11(b) bonds by a public agency issuer which is the owner of the project and is entitled to reserves held under the Trust Indenture, HUD requires execution by the project owner of a use agreement, and amendment of a regulatory agreement, if applicable, to extend low-income tenant occupancy for ten years after expiration of the original HAPC term. In the case of HAP contracts with renewable 5-year terms, the Use Agreement shall extend for 10 years after the project owners first opt-out date. The Use Agreement may also be required of private entity owners, unless the refunding is incidental to a transfer of project ownership or a transaction which provides a substantial public

benefit, as determined by the Office of Multifamily Housing. Proposed use of benefits shall be consistent with applicable appropriations law, the HAPC, and other requirements applicable to the original project financing, and the proposed financing terms must be reasonable in relation to bond market yields and transaction fees, as approved by the HUD Office of Multifamily Housing.

(g) Agencies shall have wide latitude in the design of specific delivery vehicles for use of McKinney Act savings, subject to HUD audit of each Agency's performance in serving the targeted income eligible population. Savings may be used for shelter costs of providing housing, rental, or owner-occupied, to very low-income households through new construction, rehabilitation, repairs, and acquisition with or without rehab, including assistance to very low-income units in mixed-income developments. These include programs designed to assist in obtaining shelter, such as rent or homeownership subsidies. Self-sufficiency services in support of very low-income housing are also eligible, and may include, but are not limited to, homeownership counseling, additional security measures in high-crime areas, construction job training for residents' repair of housing units occupied by very low-income families, and empowerment activities designed to support formation and growth of resident entities. Except for the cost of providing third-party program audit reports to HUD, eligible costs exclude consultant fees or reimbursement of Agency staff expenses, but may include fees for professional services required in the Agency's McKinney Act programs of assistance to very low-income families. Unless otherwise specified by HUD in a McKinney Agreement, savings shall be subject to the above use requirements for 10 years from the date of receipt of the savings.

(h) Refunding bonds, including interest thereon, approved under this Section shall be exempt from all taxation now or hereafter imposed by the United States, and the notification of approval of tax exemption shall not be subject to revocation by HUD. Whether refunding bonds approved under this section

meet the requirements of Section 103 or any other provisions of the Internal Revenue Code is not within the responsibilities of HUD to determine. Such bonds shall be prepaid during the HAPC term only under such conditions as HUD shall require.

[61 FR 14461, Apr. 1, 1996]

PART 850—HOUSING DEVELOPMENT GRANTS

Subpart A—General Provisions

Sec

850.1 Applicability and savings clause.

Subparts B-E [Reserved]

Subpart F—Project Management

850.151 Project restrictions.

850.153 Rent control.

850.155 Securing owner's responsibilities.

AUTHORITY: 42 U.S.C. 14370, 3535(d).

SOURCE: 49 FR 24641, June 14, 1984, unless otherwise noted.

Subpart A—General Provisions

§ 850.1 Applicability and savings clause.

(a) Applicability. This part implements the Housing Development Grant Program contained in section 17 of the United States Housing Act of 1937 (42 U.S.C. 14370). The Program authorized the Secretary to make housing development grants to support the new construction or substantial rehabilitation of real property to be used primarily for residential rental purposes. Section 289(b)(1) of the Cranston-Gonzalez National Affordable Housing Act (42 U.S.C. 12839) repealed section 17 effective October 1, 1991. Section 289(a) prohibited new grants under the Housing Development Grant Program except for projects for which binding commitments had been entered into prior to October 1, 1991.

(b) Savings clause. Any grant made pursuant to a binding commitment entered into before October 1, 1991 will continue to be governed by subparts A

§ 850.151

through E of this part in effect immediately before April 1, 1996, and by subpart F of this part as currently in effect.

[61 FR 7944, Feb. 29, 1996]

Subparts B-E [Reserved]

Subpart F-Project Management

§850.151 Project restrictions.

- (a) Owner-grantee agreement. The grantee and the owner must enter into an agreement that requires the owner (including its successors in interest) to carry out the requirements of this section and of the grant agreement, as appropriate. The grantee-owner agreement must require the grantee to monitor (where required) and to take appropriate legal action to enforce compliance with the owner's responsibilities thereunder. The owner's compliance with its obligations under this section must be secured by a mortgage or other security instrument meeting the requirements of §850.155. Nothing in this section shall preclude enforcement by the Federal government of grant agreement provisions, civil rights statutes, or other provisions of law that apply to the Housing Development Grant Program.
- (b) Restriction on conversion. The owner shall not convert the units in the project to condominium ownership or to a form of cooperative ownership that is not eligible to receive a housing development grant, during the 20-year period from the date on which the units in the project are available for occupancy.
- (c) Tenant selection. The owner shall determine the eligibility of applicants for lower income units in accordance with the requirements of 24 CFR parts 812 and 813, including the provisions of these parts concerning citizenship or eligible immigration status and income limits, and certain assistance to mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status.). The owner shall not, during the 20-year period from the date on which the units in the project are available for occupancy, discriminate against prospective tenants on the

basis of their receipt of, or eligibility for, housing assistance under any Federal, State, or local housing assistance program or, except for an elderly housing project, on the basis that they have a minor child or children who will be living with them.

- (d) Restriction on leasing assisted units. The owner shall assure that the percentage of low-income units specified in the grant agreement is occupied, or is available for occupancy, by low-income households during the period beginning on the date on which the units in the project are available for occupancy through 20 years from the date on which 50 percent of the units are occupied. The owner may lease a low-income unit only to a tenant that is a low-income household at the time of its initial occupancy. An owner may continue to lease a low-income unit to a tenant that ceases to qualify as a low-income household only as provided in paragraph (f) of this section.
- (e) Low-income unit rent. (1) Section 17(d)(8)(A) of the U.S. Housing Act of 1937 prohibits the rents for low-income units from exceeding "30 per centum of the adjusted income of a family whose income equals 50 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families." This paragraph describes how these maximum rent determinations are
- (2) The maximum rents that may be charged for low-income units are based on the size of the unit by number of bedrooms, and are calculated in accordance with the following procedure. For each unit size, HUD will provide the Section 8 very low-income limits. HUD will also provide income adjustments for each unit size, consistent with 24 CFR part 813. An adjusted income amount for each unit size is calculated by the owner or grantee by subtracting the income adjustment from the Section 8 limit. The adjusted income amount is multiplied by 30 percent and divided by 12 to obtain the maximum monthly gross rent for each low-income unit. A monthly allowance for the utilities and services (excluding telephone) to be paid by the tenant is subtracted from the maximum monthly gross rent to obtain the maximum

monthly rent that may be charged for low-income units. Information to be provided by HUD will be available from the responsible HUD Field Office.

- (3) The initial monthly allowance for utilities and services to be paid by the tenant must be approved by HUD. Subsequent calculations of this allowance must be approved by the grantee in connection with its review and approval of rent schedules under paragraph (e)(4) of this section. The maximum monthly rent must be recalculated annually, and may change as changes in the Section 8 very low-income limit, the income adjustments, or the monthly allowance for utilities and services warrant.
- (4) The grantee must review and approve any schedule of rents proposed by the owner for low-income units. Any schedule submitted by an owner within the permissible maximum will be deemed approved, unless the grantee informs the owner, within 60 days after receiving the schedule, that it is disapproved.
- (5) Any increase in rents for low-income units is subject to the provisions of outstanding leases, in any event, the owner must provide tenants of those units not less than 30 days prior written notice before implementing any increase in rents.
- (f) Reexamination of tenant income and composition. (1) The owner shall reexamine the income of each tenant household living in low-income units at least once a year. At the first regular reexamination after June 19, 1995 the owner shall follow the requirements of 24 CFR part 812 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 812 concerning verification of the immigration status of any new family member.
- (2) If this reexamination indicates that the tenant no longer qualifies as a low-income household, the owner must take one of the following actions, as appropriate: (i) If the unit occupied by the tenant must be leased to a low- income household to maintain the percentage of low-income units specified in the grant agreement, the owner

- must notify the tenant that it must move when the current lease expires or six months after the date of the notification, whichever is later; (ii) If the owner can meet this percentage without the unit occupied by the tenant (for example, by designating another comparable unit as a low-income unit), the owner may continue to lease to that tenant, but is free to renegotiate the rent at the expiration of the current lease.
- (3) For provisions related to termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR 812.9, and also 24 CFR 812.10 for provisions related to certain assistance to mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions related to deferral of termination of assistance.
- (g) Affirmative fair housing marketing. Marketing must be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan, Form HUD-935.2, and all fair housing and equal opportunity requirements. The purpose of the Plan and the requirements is to provide for affirmative marketing through the provision of information regarding the availability of units in projects assisted. Affirmative marketing steps consist of good faith efforts to provide information and otherwise attract eligible persons from all racial, ethnic and gender groups in the housing market area to the available housing.
- (h) Management and maintenance functions. The owner must perform all management and maintenance functions in compliance with equal opportunity requirements. These functions include selection of tenants, reexamination of family income, evictions and other terminations of tenancy, and all ordinary and extraordinary maintenance and repairs, including replacement of capital items.
- (i) Residency preferences. Local residency requirements are prohibited. Local residency preferences may be applied in selecting tenants only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the owner's HUD-

§ 850.153

approved AFHM 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.

[49 FR 24641, June 14, 1984, as amended at 60 FR 14841, Mar. 20, 1995]

§850.153 Rent control.

A project constructed or substantially rehabilitated with a housing development grant is not subject to State or local rent control unless the rent control requirements or agreements (a) (1) were entered into under a State law or local ordinance of general applicability that was enacted and in effect in the jurisdiction before November 30, 1983 and (2) apply generally to rental housing projects not assisted under the Housing Development Grant Program, or (b) are imposed under this subpart. State and local rent controls expressly preempted by this section include, but are not limited to, rent laws or ordinances, rent regulating agreements, rent regulations, occupancy agreements, or financial penalties for failure to achieve certain occupancy or rent projections.

§850.155 Securing owner's responsibil-

Assistance provided under this part shall constitute a debt of the owner (including its successors in interest) to the grantee, and shall be secured by a mortgage or other security instrument. The debt shall be repayable in the event of a substantive, uncorrected violation by an owner of the obligations contained in paragraphs (b), (c), (d) and (e) of §850.151. The instruments securing this debt shall provide for repayment to the grantee in an amount equal to the total amount of housing development grant assistance outstanding, plus interest which is determined by the Secretary by adding two percent to the average yield on outstanding marketable long-term obligations of the United States during the month preceding the date on which assistance was made available. The amount to be repaid shall be reduced by 10 percent for each full year in excess of 10 years that intervened between the beginning of the term of the

owner-grantee agreement and the violation.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PRO-GRAM FOR NEW CONSTRUC-TION

Subpart A—Summary and Applicability

Sec. 880.101 General. 880.104 Applicability of part 880. 105 Applicability to proposals projects under 24 CFR part 811. 880.105 and

Subpart B—Definitions and Other **Requirements**

880.201 Definitions. 880.205 Limitation on distributions. 880.207 Property standards. 880.208 Financing. 880.211 Audit.

Subparts C-D [Reserved]

Subpart E—Housing Assistance Payments Contract

880.501 The contract. 880.502 Term of contract. 880.503 Maximum annual commitment and

project account. 880.504 Leasing to eligible families.

880.505 Contract administration and conversions. 880.506 Default by owner (private-owner/

HUD and PHA-owner/HUD projects). 880.507 Default by PHA and/or owner (private-owner/PHA projects).

880.508 Notice upon contract expiration.

Subpart F-Management

880.601 Responsibilities of owner.

880.602 Replacement reserve.

Selection and admission of assisted 880.603 tenants.

880.604 Tenant rent.

880.605 Overcrowded and underoccupied units.

880.606 Lease requirements. 880.607 Termination of tenancy and modification of lease.

880.608 Security deposits.

880.609 Adjustment of contract rents. 880.610

Adjustment of utility allowances. 880.611 Conditions for receipt of vacancy

payments. 880.612 Reviews during management period.

880.612a Preference for occupancy by elderly

AUTHORITY: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611-13619.

SOURCE: 44 FR 59410, Oct. 15, 1979, unless otherwise noted.

Subpart A—Summary and Applicability

§880.101 General.

- (a) The purpose of the Section 8 program is to provide low-income families with decent, safe and sanitary rental housing through the use of a system of housing assistance payments. This part contains the policies and procedures applicable to the Section 8 new construction program. The assistance may be provided to public housing agency owners or to private owners either directly from HUD or through public housing agencies.
- (b) This part does not apply to projects developed under other Section 8 program regulations, including 24 CFR parts 881, 882, 883, 884, and 885, except to the extent specifically stated in those parts. Portions of subparts E and F of this part 880 have been cross-referenced in 24 CFR parts 881 and 883.

[61 FR 13587, Mar. 27, 1996]

§880.104 Applicability of part 880.

- (a) Part 880, in effect as of November 5, 1979, applies to all proposals for which a notification of selection was not issued before the November 5, 1979 effective date of part 880. (See 24 CFR part 880, revised as of April 1, 1980.) Where a notification of selection was issued for a proposal before the November 5, 1979 effective date, part 880, in effect as of November 5, 1979, applies if the owner notified HUD within 60 calendar days that the owner wished the provisions of part 880, effective November 5, 1979, to apply and promptly brought the proposal into conformance.
- (b) Subparts E (Housing Assistance Payments Contract) and F (Management) of this part apply to all projects for which an Agreement was not executed before the November 5, 1979, effective date of part 880. Where an Agreement was so executed:
- (1) The owner and HUD may agree to make the revised subpart E of this part applicable and to execute appropriate amendments to the Agreement and/or Contract.

- (2) The owner and HUD may agree to make the revised subpart F of this part applicable (with or without the limitation on distributions) and to execute appropriate amendments to the Agreement and/or Contract.
- (c) Section 880.607 (Termination of tenancy and modification of leases) applies to all families.
- (d) Notwithstanding the provisions of paragraph (b) of this section, the provisions of 24 CFR part 5 apply to all projects, regardless of when an Agreement was executed.

[61 FR 13587, Mar. 27, 1996, as amended at 65 FR 16722, Mar. 29, 2000]

§880.105 Applicability to proposals and projects under 24 CFR part 811.

Where proposals and projects are financed with tax-exempt obligations under 24 CFR part 811, the provisions of part 811 will be complied with in addition to all requirements of this part. In the event of any conflict between this part and part 811, part 811 will control.

Subpart B—Definitions and Other Requirements

§880.201 Definitions.

Annual Contributions Contract (ACC). As defined in part 5 of this title.

Agency. As defined in 24 CFR part 883. Agreement. (Agreement to Enter into Housing Assistance Payments Contract) The Agreement between the owner and the contract administrator which provides that, upon satisfactory completion of the project in accordance with the HUD-approved final proposal, the administrator will enter into the Contract with the owner.

Annual income. As defined in part 5 of this title.

Contract. (Housing Assistance Payments Contract) The Contract entered into by the owner and the contract administrator upon satisfactory completion of the project, which sets forth the rights and duties of the parties with respect to the project and the payments under the Contract.

Contract Administrator. The entity which enters into the Contract with the owner and is responsible for monitoring performance by the owner. The contract administrator is a PHA in the

§ 880.201

case of private-owner/PHA projects, and HUD in private-owner/HUD and PHA-owner/HUD projects.

Contract rent. The total amount of rent specified in the contract as payable to the owner for a unit.

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

Drug-related criminal activity. The illegal manufacture, sale, distribution, use or possession with the intent to manufacture, sell, distribute, or use, of a controlled substance as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802.

 ${\it Elderly\ family}.$ As defined in part 5 of this title.

Fair Market Rent (FMR). As defined in part 5 of this title.

Family. As defined in part 5 of this title.

Final proposal. The detailed description of a proposed project to be assisted under this part, which an owner submits after selection of the preliminary proposal, except where a preliminary proposal is not required under \$880.303(c). (The final proposal becomes an exhibit to the Agreement and is the standard by which HUD judges acceptable construction of the project.)

Housing assistance payment. The payment made by the contract administrator to the owner of an assisted unit as provided in the contract. Where the unit is leased to an eligible family, the payment is the difference between the contract rent and the tenant rent. An additional payment is made to the family when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a "vacancy payment". may be made to the owner when an assisted unit is vacant, in accordance with the terms of the contract.

HUD. Department of Housing and Urban Development.

Independent Public Accountant. A Certified Public Accountant or a licensed or registered public accountant, having no business relationship with the owner except for the performance of audit, systems work and tax preparation. If not certified, the Independent Public Accountant must have been licensed or registered by a regulatory

authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title "public accountant," only Certified Public Accountants may be used.

Low income family. As defined in part 5 of this title.

NOFA. As defined in part 5 of this title.

Owner. Any private person or entity (including a cooperative) or a public entity which qualifies as a PHA, having the legal right to lease or sublease newly constructed dwelling units assisted under this part. The term owner also includes the person or entity submitting a proposal under this part.

Partially-assisted Project. A project for non-elderly families under this part which includes more than 50 units of which 20 percent or fewer are assisted.

PHA-Owner/HUD Project. A project under this part which is owned by a PHA. For this type of project, the Agreement and the Contract are entered into by the PHA, as owner, and HUD, as contract administrator.

Private-Owner/HUD Project. A project under this part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and HUD, as contract administrator

Private-Owner/PHA Project. A project under this part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and the PHA, as contract administrator, pursuant to an ACC between the PHA and HUD. The term also covers the situation where the ACC is with one PHA and the owner is another PHA.

Project Account. A specifically identified and segregated account for each project which is established in accordance with §880.503(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC, as applicable, each year.

Public Housing Agency (PHA). As defined in part 5 of this title.

Rent. In the case of an assisted unit in a cooperative project, rent means

the carrying charges payable to the cooperative with respect to occupancy of the unit.

Replacement cost. The estimated construction cost of the project when the proposed improvements are completed. The replacement cost may include the land, the physical improvements, utilities within the boundaries of the land, architect's fees, and miscellaneous charges incident to construction as approved by the Assistant Secretary.

Secretary. The Secretary of Housing and Urban Development (or designee).

Small Project. A project for non-elderly families under this part which includes a total of 50 or fewer (assisted and unassisted) units.

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Vacancy payment. The housing assistance payment made to the owner by the contract administrator for a vacant assisted unit if certain conditions are fulfilled as provided in the Contract. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

Very low income family. As defined in part 5 of this title.

[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 18923, Mar. 24, 1980; 48 FR 12703, Mar. 28, 1983; 49 FR 6714, Feb. 23, 1984; 49 FR 17449, Apr. 24, 1984; 49 FR 19943, May 10, 1984; 61 FR 5212, Feb. 9, 1996; 61 FR 13587, Mar. 27, 1996; 61 FR 47382, Sept. 6, 1996; 63 FR 46578, Sept. 1, 1998; 65 FR 16722, Mar. 29, 2000]

§880.205 Limitation on distributions.

- (a) Non-profit owners are not entitled to distributions of project funds.
- (b) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is

completed. Distributions may not exceed the following maximum returns:

- (1) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 6 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the FEDERAL REGISTER.
- (2) For projects for non-elderly families, the first year's distribution will be limited to 10 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 10 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the FEDERAL REGISTER.
- (c) For the purpose of determining the allowable distribution, an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by HUD at cost certification (see §880.405) unless the owner justifies a higher equity contribution by cost certification documentation in accordance with HUD mortgage insurance procedures.
- (d) Any short-fall in return may be made up from surplus project funds in future years.
- (e) If HUD determines at any time that project funds are more than the amount needed for project operations, reserve requirements and permitted distribution, HUD may require the excess to be placed in an account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess funds must be remitted to HUD.
- (f) Owners of small projects or partially-assisted projects are exempt from the limitation on distributions contained in paragraphs (b) through (d) of this section.
- (g) In the case of HUD-insured projects, the provisions of this section

§880.207

will apply instead of the otherwise applicable mortgage insurance program provisions.

- (h) HUD may permit increased distributions of surplus cash, in excess of the amounts otherwise permitted, to profit-motivated owners who participate in a HUD-approved initiative or program to preserve below-market housing stock. The increased distributions will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the owner is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the owner.
- (i) Any State or local law or regulation that restricts distributions to an amount lower than permitted by this section or permitted by the Commissioner under this paragraph (i) is preempted to the extent provided by section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997

[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 18923, Mar. 24, 1980; 49 FR 6714, Feb. 23, 1984; 61 FR 5212, Feb. 9, 1996; 65 FR 61074, Oct. 13, 20001

§880.207 Property standards.

Projects must comply with:

- (a) [Reserved]
- (b) In the case of manufactured homes, the Federal Manufactured Home Construction and Safety Standards, pursuant to Title VI of the Housing and Community Development Act of 1974, and 24 CFR part 3280;
- (c) In the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards;
- (d) HUD requirements pursuant to section 209 of the Housing and Community Development Act of 1974 for projects for the elderly or handicapped;
- (e) HUD requirements pertaining to noise abatement and control; and
- (f) Applicable State and local laws, codes, ordinances and regulations.
- (g) Smoke detectors—(1) Performance requirement. After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm

system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

(2) Acceptability criteria. The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

[44 FR 59410, Oct. 15, 1979, as amended at 50 FR 9269, Mar. 7, 1985; 57 FR 33851, July 30, 1992; 63 FR 46578, Sept. 1, 1998]

§880.208 Financing.

- (a) *Types of financing*. Any type of construction financing and long-term financing may be used, including:
- (1) Conventional loans from commercial banks, savings banks, savings and loan associations, pension funds, insurance companies or other financial institutions;
- (2) Mortgage insurance programs under the National Housing Act;
- (3) Mortgage and loan programs of the Farmers' Home Administration of the Department of Agriculture compatible with the Section 8 program; and
- (4) Financing by tax-exempt bonds or other obligations.
- (b) HUD approval. HUD must approve the terms and conditions of the financing to determine consistency with these regulations and to assure they do not purport to pledge or give greater rights or funds to any party than are provided under the Agreement, Contract, and/or ACC. Where the project is financed with tax-exempt obligations, the terms and conditions will be approved in accordance with the following:
- (1) An issuer of obligations that are tax-exempt under any provision of Federal law or regulation, the proceeds of the sale of which are to be used to purchase GNMA mortgage-backed securities issued by the mortgagee of the Section 8 project, will be subject to 24 CFR part 811, subpart B.
- (2) Issuers of obligations that are taxexempt under Section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR part 811, subpart A if paragraph (b)(1) of this section is not applicable.

- (3) Issuers of obligations that are taxexempt under any provision of Federal law or regulation other than section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR part 811, subpart A if paragraph (b)(1) of this section is not applicable, except that such issuers that are State Agencies qualified under 24 CFR part 883 are not subject to 24 CFR part 811 subpart A and are subject solely to the requirements of 24 CFR part 883 with regard to the approval of tax-exempt financing.
- (c) Pledge of Contracts. An owner may pledge, or offer as security for any loan or obligation, an Agreement, Contract or ACC entered into pursuant to this part: Provided, however, That such financing is in connection with a project constructed pursuant to this part and approved by HUD. Any pledge of the Agreement, Contract, or ACC, or payments thereunder, will be limited to the amounts payable under the Contract or ACC in accordance with its terms. If the pledge or other document provides that all payments will be paid directly to the mortgagee or the trustee for bondholders, the mortgagee or trustee will make all payments or deposits required under the mortgage or trust indenture or HUD regulations and remit any excess to the owner.
- (d) Foreclosure and other transfers. In the event of foreclosure, assignment or sale approved by HUD in lieu of foreclosure, or other assignment or sale approved by HUD:
- (1) The Agreement, the Contract and the ACC, if applicable, will continue in effect, and
- (2) Housing assistance payments will continue in accordance with the terms of the Contract.
- (e) Financing of manufactured home parks. In the case of a newly constructed manufactured home park, the principal amount of any mortgage attributable to the rental spaces in the park may not exceed an amount per space determined in accordance with § 207.33(b) of this title.

[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 62797, Sept. 22, 1980; 48 FR 12704, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984]

§ 880.211 Audit.

(a) Where a State or local government is the eligible owner of a project

- or a contract administrator under §880.505 receiving financial assistance under this part, the audit requirements in 24 CFR part 44 shall apply.
- (b) Where a nonprofit organization is the eligible owner of a project, receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.

[50 FR 39091, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986; 57 FR 33256, July 27, 1992]

Subparts C-D [Reserved]

Subpart E—Housing Assistance Payments Contract

§880.501 The contract.

- (a) Contract. The Housing Assistance Payments Contract sets forth rights and duties of the owner and the contract administrator with respect to the project and the housing assistance payments. The owner and contract administrator execute the Contract in the form prescribed by HUD upon satisfactory completion of the project.
 - (b) [Reserved]
- (c) Housing Assistance Payments to Owners under the Contract. The housing assistance payments made under the Contract are:
- (1) Payments to the owner to assist eligible families leasing assisted units, and
- (2) Payments to the owner for vacant assisted units ("vacancy payments") if the conditions specified in §880.610 are satisfied.
- The housing assistance payments are made monthly by the contract administrator upon proper requisition by the owner, except payments for vacancies of more than 60 days, which are made semi-annually by the contract administrator upon requisition by the owner.
- (d) Amount of Housing Assistance Payments to Owner. (1) The amount of the housing assistance payment made to the owner of a unit being leased by an eligible family is the difference between the contract rent for the unit and the tenant rent payable by the family.
- (2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the

§ 880.502

first 60 days of vacancy, subject to the conditions in §880.611. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as HUD directs.

- (3) For a vacancy that exceeds 60 days, a housing assistance payment for the vacant unit will be made, subject to the conditions in §880.611, in an amount equal to the principal and interest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.
- (e) Payment of utility reimbursement. Where applicable, the owner will pay a utility reimbursement in accordance with §5.632 of this title. HUD will provide funds for the utility reimbursement to the owner in trust solely for the purpose of paying the utility reimbursement.

[44 FR 59410, Oct. 15, 1979, as amended at 49 FR 19943, May 10, 1984; 61 FR 13587, Mar. 27, 1996; 65 FR 16722, Mar. 29, 2000]

§880.502 Term of contract.

- (a) Term (except for Manufactured Home Parks). The term of the contract will be as follows:
- (1) For assisted units in a project financed with the aid of a loan insured or co-insured by the Federal government or a loan made, guaranteed or intended for purchase by the Federal government, the term will be 20 years.
- (2) For assisted units in a project financed other than as described in paragraph (a)(1) of this section, the term will be the lesser of (i) the term of the project's financing (but not less than 20 years), or (ii) 30 years, or 40 years if (A) the project is owned or financed by a loan or loan guarantee from a state or local agency, (B) the project is intended for occupancy by non-elderly families and (C) the project is located in an area designated by HUD as one requiring special financing assistance.
- (b) Term for Manufactured Home Parks. For manufactured home units or spaces in newly constructed manufactured home parks, the term of the Contract will be 20 years.
- (c) Staged Projects. If the project is completed in stages, the term of the Contract must relate separately to the

units in each stage. The total Contract term for the units in all stages, beginning with the effective date of the Contract for the first stage, may not exceed the overall maximum term allowable for any one unit under this section, plus two years.

[44 FR 59410, Oct. 15, 1979, as amended at 45 FR 18924, Mar. 24, 1980; 48 FR 12705, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984]

§880.503 Maximum annual commitment and project account.

- (a) Maximum Annual Commitment. Where HUD is the contract administrator, the maximum annual amount that may be committed under the Contract is the total of the contract rents and utility allowances for all assisted units in the project. Where the PHA is the contract administrator, the maximum annual contribution that may be contracted for in the ACC is the total of the contract rents and utility allowances for all assisted units plus an administrative fee for the PHA as approved by HUD.
- (b) Project Account. (1) A project account will be established and maintained by HUD as a specifically identified and segregated account for each project. The account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC each year. Payments will be made from this account for housing assistance payments (and fees for PHA administration, if appropriate) when needed to cover increases in contract rents or decreases in tenant rents and for other cost specifically approved by the Secretary.
- (2) Whenever a HUD-approved estimate of required annual payments under the Contract or ACC for a fiscal year exceeds the maximum annual commitment and would cause the amount in the project account to be less than 40 percent of the maximum, HUD will, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the U.S. Housing Act of 1937, as may be necessary, to assure that payments under the Contract or ACC will be adequate to cover increases in Contract rents and decreases in tenant rents.

§880.504 Leasing to eligible families.

- (a) Availability of units for occupancy by Eligible Families. During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with §880.601(a): (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to the contract administrator. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of the contract administrator in accordance with HUD guidelines. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.
- (b) Reduction of number of units covered by Contract—(1) Part 880 and 24 CFR part 881 projects. HUD (or the PHA at the direction of HUD, as appropriate) may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:
- (i) The owner fails to comply with the requirements of paragraph (a) of this section; or
- (ii) Notwithstanding any prior approval by the contract administrator to lease such units to ineligible families, HUD (or the PHA at the direction of HUD, as appropriate) determines that the inability to lease units to eligible families is not a temporary problem.
- (2) For 24 CFR part 883 projects. HUD and the Agency may reduce the number of units covered by the Contract to

- the number of units available for occupancy by eligible families if:
- (i) The owner fails to comply with the requirements of paragraph (a) of this section; or
- (ii) Notwithstanding any prior approval by the Agency to lease such units to ineligible families, HUD and the Agency determine that the inability to lease units to eligible families is not a temporary problem.
- (c) Restoration. For this part 880 and 24 CFR part 881 projects, HUD will agree to an amendment of the ACC or the Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section, and for 24 CFR part 883 projects, HUD will agree to an amendment of the ACC and the Agency may agree to an amendment to the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section, if:
- (1) HUD determines (for 24 CFR part 883 projects, HUD and the Agency determine) that the restoration is justified by demand,
- (2) The owner otherwise has a record of compliance with his obligations under the Contract, and
- (3) Contract and budget authority is available.
- (d) Applicability. In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all Contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time will continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.
- (e) Termination of assistance for failure to submit evidence of citizenship or eligible immigration status. If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR part 5 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the

§ 880.505

termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR part 5, the owner shall comply with the provisions of 24 CFR part 5 concerning assistance to mixed families, and deferral of termination of assistance.

(f) Subpart L of 24 CFR part 5 applies to selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking.

[44 FR 59410, Oct. 15, 1979, as amended at 49 FR 31397, Aug. 7, 1984; 51 FR 11224, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988; 53 FR 6601, Mar. 2, 1988; 59 FR 13652, Mar. 23, 1994; 60 FR 14841, Mar. 20, 1995; 61 FR 13587, Mar. 27, 1996; 73 FR 72342. Nov. 28, 2008; 75 FR 66260, Oct. 27, 2010]

§ 880.505 Contract administration and conversions.

- (a) Contract administration. For private-owner/PHA projects, the PHA is primarily responsible for administration of the Contract, subject to review and audit by HUD. For private-owner/HUD and PHA-owner/HUD projects, HUD is responsible for administration of the Contract. The PHA or HUD may contract with another entity for the performance of some or all of its contract administration functions.
- (b) PHA fee for Contract administration. A PHA will be entitled to a reasonable fee, determined by HUD, for administering a Contract except under certain circumstances (see 24 CFR part 883) where a state housing finance agency is the PHA and finances the project.
- (c) Conversion of Projects from one Ownership/Contractual arrangement to another. Any project may be converted from one ownership/contractual arrangement to another (for example, from a private-owner/HUD to a private-owner/PHA project) if:
- (1) The owner, the PHA and HUD agree.
- (2) HUD determines that conversion would be in the best interest of the project, and
- (3) In the case of conversion from a private-owner/HUD to a private-owner/PHA project, contract authority is available to cover the PHA fee for administering the Contract.

§ 880.506 Default by owner (privateowner/HUD and PHA-owner/HUD projects).

The Contract will provide:

- (a) That if HUD determines that the owner is in default under the Contract, HUD will notify the owner and the lender of the actions required to be taken to cure the default and of the remedies to be applied by HUD including specific performance under the Contract, reduction or suspension of housing assistance payments and recovery of overpayments, where appropriate; and
- (b) That if the owner fails to cure the default, HUD has the right to terminate the Contract or to take other corrective action.

§ 880.507 Default by PHA and/or owner (private-owner/PHA projects).

- (a) Rights of Owner if PHA defaults under Agreement or Contract. The ACC, the Agreement and the Contract will provide that, in the event of failure of the PHA to comply with the Agreement or Contract with the owner, the owner will have the right, if he is not in default, to demand that HUD investigate. HUD will first give the PHA a reasonable opportunity to take corrective action. If HUD determines that a substantial default exists, HUD will assume the PHA's rights and obligations under the Agreement or Contract and meet the obligations of the PHA under the Agreement or Contract including the obligations to enter into the Contract.
- (b) Rights of HUD if PHA defaults under ACC. The ACC will provide that, if the PHA fails to comply with any of its obligations, HUD may determine that there is a substantial default and require the PHA to assign to HUD all of its rights and interests under the Contract; however, HUD will continue to pay annual contributions in accordance with the terms of the ACC and the Contract. Before determining that a PHA is in substantial default, HUD will give the PHA a reasonable opportunity to take corrective action.
- (c) Rights of PHA and HUD if Owner defaults under Contract. (1) The Contract will provide that if the PHA determines that the owner is in default

under the Contract, the PHA will notify the owner and lender, with a copy to HUD, (i) of the actions required to be taken to cure the default, (ii) of the remedies to be applied by the PHA including specific performance under the Contract, abatement of housing assistance payments and recovery of overpayments, where appropriate, and (iii) that if he fails to cure the default, the PHA has the right to terminate the Contract or to take other corrective action, in its discretion or as directed by HUD.

(2) If the PHA is the lender, the Contract will also provide that HUD has an independent right to determine whether the owner is in default and to take corrective action and apply appropriate remedies, except that HUD will not have the right to terminate the Contract without proceeding in accordance with paragraph (b) of this section.

§880.508 Notice upon contract expiration.

(a) The Contract will provide that the owner will notify each assisted family, at least 90 days before the end of the Contract term, of any increase in the amount the family will be required to pay as rent which may occur as a result of its expiration. If the Contract is to be renewed but with a reduction in the number of units covered by it, this notice shall be given to each family who will no longer be assisted under the Contract.

(b) The notice provided for in paragraph (a) of this section shall be accomplished by: (1) Sending a letter by first class mail, properly stamped and addressed, to the family at its address at the project, with a proper return address; and (2) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not considered to be effective until both required notices have been accomplished. The date on which the notice shall be considered to be received by the family shall be the date on which the owner mails the first class letter provided for in this paragraph, or the date on which the notice provided for in this paragraph is properly given, whichever is later.

- (c) The notice shall advise each affected family that, after the expiration date of the Contract, the family will be required to bear the entire cost of the rent and that the owner will be free (to the extent the project is not otherwise regulated by HUD) to alter the rent without HUD approval, but subject to any applicable requirements or restrictions under the lease or under State or local law. The notice shall also state: (1) The actual (if known) or the estimated rent which will be charged following the expiration of the Contract; (2) the difference between the rent and the Total Tenant Payment toward rent under the Contract; and (3) the date the Contract will expire.
- (d) The owner shall give HUD a certification that families have been notified in accordance with this section with an example of the text of the notice attached.
- (e) This section applies to all Contracts entered into pursuant to an Agreement executed on or after October 1, 1981, or entered into pursuant to an Agreement executed before October 1, 1981, but renewed or amended on or after October 1, 1984.

[49 FR 31283, Aug. 6, 1984]

Subpart F-Management

§880.601 Responsibilities of owner.

- (a) Marketing. (1) The owner must commence diligent marketing activities in accordance with the Agreement not later than 90 days prior to the anticipated date of availability for occupancy of the first unit of the project.
- (2) Marketing must be done in accordance with the HUD-approved Affirmative Fair Housing Marketing Plan and all Fair Housing and Equal Opportunity requirements. The purpose of the Plan and requirements is to assure that eligible families of similar income in the same housing market area have an equal opportunity to apply and be selected for a unit in projects assisted under this part regardless of their race, color, creed, religion, sex or national origin.

§ 880.601

- (3) With respect to non-elderly family units, the owner must undertake marketing activities in advance of marketing to other prospective tenants in order to provide opportunities to reside in the project to non-elderly families who are least likely to apply, as determined in the Affirmative Fair Housing Marketing Plan, and to non-elderly families expected to reside in the community by reason of current or planned employment.
- (4) At the time of Contract execution, the owner must submit a list of leased and unleased units, with justification for the unleased units, in order to qualify for vacancy payments for the unleased units.
- (b) Management and maintenance. The owner is responsible for all management functions, including determining eligibility of applicants, selection of tenants. reexamination and verification of family income and composition, determination of family rent (total tenant payment, tenant rent and utility reimbursement), collection of rent, termination of tenancy and eviction, and performance of all repair and maintenance functions (including ordinary and extraordinary maintenance), and replacement of capital items. (See part 5 of this title.) All functions must be performed in accordance with applicable equal opportunity requirements.
- (c) Contracting for services. (1) For this part 880 and 24 CFR part 881 projects, with HUD approval, the owner may contract with a private or public entity (except the contract administrator) for performance of the services or duties required in paragraphs (a) and (b) of this section.
- (2) For 24 CFR part 883 projects, with approval of the Agency, the owner may contract with a private or public entity (but not with the Agency unless temporarily necessary for the Agency to protect its financial interest and to uphold its program responsibilities where no alternative management agent is immediately available) for performance of

- the services or duties required in paragraphs (a) and (b) of this section.
- (3) However, such an arrangement does not relieve the owner of responsibility for these services and duties.
- (d) Submission of financial and operating statements. After execution of the Contract, the owner must submit to the contract adminstrator:
- (1) Financial information in accordance with 24 CFR part 5, subpart H; and
- (2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to administration of the Contract and monitoring of project operations.
- (e) Use of project funds. (1) Project funds must be used for the benefit of the project, to make required deposits to the replacement reserve in accordance with \$880.602 and to provide distributions to the owner as provided in \$880.205, \$881.205 of this chapter, or \$883.306 of this chapter, as appropriate.
- (2) For this part 880 and 24 CFR part 881 projects:
- (i) Any remaining project funds must be deposited with the mortgagee or other HUD-approved depository in an interest-bearing residual receipts account. Withdrawals from this account will be made only for project purposes and with the approval of HUD.
- (ii) Partially-assisted projects are exempt from the provisions of this section.
- (iii) In the case of HUD-insured projects, the provisions of this paragraph (e) will apply instead of the otherwise applicable mortgage insurance provisions.
 - (3) For 24 CFR part 883 projects:
- (i) Any remaining project funds must be deposited with the Agency, other mortgagee or other Agency-approved depository in an interest-bearing account. Withdrawals from this account may be made only for project purposes and with the approval of the Agency.
- (ii) In the case of HUD-insured projects, the provisions of this paragraph will apply instead of the otherwise applicable mortgage insurance

provisions, except in the case of partially-assisted projects which are subject to the applicable mortgage insurance provisions.

(Approved by the Office of Management and Budget under control number 2502-0204)

[44 FR 59410, Oct 15, 1979, as amended at 45 FR 18924, Mar. 24, 1980; 51 FR 11224, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988; 53 FR 1145, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39702, Sept. 27, 1989; 56 FR 7536, Feb. 22, 1991; 60 FR 14841, Mar. 20, 1995; 61 FR 13588, Mar. 27, 1996; 63 FR 46593, Sept. 1, 1998; 65 FR 16722, Mar. 29, 20001

§880.602 Replacement reserve.

- (a) A replacement reserve must be established and maintained in an interest-bearing account to aid in funding extraordinary maintenance and repair and replacement of capital items.
- (1) Part 880 and 24 CFR part 881 projects. (i) For this part 880 and 24 CFR part 811 projects, an amount equivalent to .006 of the cost of total structures, including main buildings, accessory buildings, garages and other buildings, or any higher rate as required by HUD from time to time, will be deposited in the replacement reserve annually. This amount will be adjusted each year by the amount of the automatic annual adjustment factor.
- (ii) The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of HUD.
- (iii) All earnings including interest on the reserve must be added to the reserve.
- (iv) Funds will be held by the mortgagee or trustee for bondholders, and may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.
- (v) Partially-assisted part 880 and 24 CFR part 881 projects are exempt from the provisions of this section.
- (2) Part 883 of this chapter projects. (i) For 24 CFR part 883 projects, an amount equivalent to at least .006 of the cost of total structures, including main buildings, accessory buildings, garages and other buildings, or any

higher rate as required from time to time by:

- (A) The Agency, in the case of projects approved under 24 CFR part 883, subpart D; or
- (B) HUD, in the case of all other projects, will be deposited in the replacement reserve annually. For projects approved under 24 CFR part 883, subpart D, this amount may be adjusted each year by up to the amount of the automatic annual adjustment factor. For all projects not approved under 24 CFR part 883, subpart D, this amount must be adjusted each year by the amount of the automatic annual adjustment factor.
- (ii) The reserve must be built up to and maintained at a level determined to be sufficient by the Agency to meet projected requirements. Should the reserve achieve that level, the rate of deposit to the reserve may be reduced with the approval of the Agency.
- (iii) All earnings, including interest on the reserve, must be added to the reserve.
- (iv) Funds will be held by the Agency, other mortgagee or trustee for bondholders, as determined by the Agency, and may be drawn from the reserve and used only in accordance with Agency guidelines and with the approval of, or as directed by, the Agency.
- (v) The Agency may exempt partially-assisted projects approved under 24 CFR part 883, subpart D, from the provisions of this section. All partially-assisted projects not approved under the Fast Track Procedures formerly in 24 CFR part 883, subpart D, are exempt from the provisions of this section.
- (b) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance provisions, except in the case of partially-assisted insured projects which are subject to the applicable mortgage insurance provisions.

[61 FR 13588, Mar. 27, 1996]

§880.603 Selection and admission of assisted tenants.

(a) Application. The owner must accept applications for admission to the project in the form prescribed by HUD. Both the owner (or designee) and the

§ 880.603

applicant must complete and sign the application. For this part 880 and 24 CFR part 881 projects, on request, the owner must furnish copies of all applications to HUD and the PHA, if applicable. For 24 CFR part 883 projects, on request, the owner must furnish to the Agency or HUD copies of all applications received.

(b) Determination of eligibility and selection of tenants. The owner is responsible for obtaining and verifying information related to income eligibility in accordance with 24 CFR part 5, subpart F, and evidence related to citizenship and eligible immigration status in accordance with 24 CFR part 5, subpart E, to determine whether the applicant is eligible for assistance in accordance with the requirements of 24 CFR part 5, and to select families for admission to the program, which includes giving selection preferences in accordance with 24 CFR part 5, subpart D.

(1) 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, provided the owner complies with the procedures for informing applicants about admission preferences as provided in 24 CFR part 5, subpart D.

(2) If the owner determines that an applicant is ineligible on the basis of income or family composition, or because of failure to meet the disclosure and verification requirements for Social Security Numbers (as provided by 24 CFR part 5), or because of failure by an applicant to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR parts 5 and 813), 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. See 24 CFR part 5 for the informal review provisions for the denial of a Federal preference or the failure to establish citizenship or eligible immigration status and for notice requirements where assistance is terminated, denied, suspended, or reduced based on wage and claim information obtained by HUD from a State Wage Information Collection Agency.

(3) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) Reexamination of family income and composition—(1) Regular reexaminations. The owner must reexamine the income and composition of all families at least every 12 months. After consultation with the family and upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 5 of this title and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and must carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition. the owner must require the family to disclose the verify Social Security Numbers, as provided by 24 CFR part 5. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5. At the first regular reexamination after June 19, 1995, the

owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 5 and verify the immigration status of any new family member.

(2) Interim reexaminations. The family must comply with provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified. See 24 CFR part 5 for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5. At any interim reexamination after June 19, 1995, when a new family member has been added, the owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of the citizenship or eligible immigration status of any new family member.

(3) Continuation of housing assistance payments. A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the contract rent plus any utility allowance. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements, for such reasons as failure to submit requested verification informa-

tion, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, or failure to sign and submit consent forms for the obtaining wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5. See 24 CFR part 5 for provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status and also for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

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[61 FR 13589, Mar. 27, 1996, as amended at 65 FR 16722, Mar. 29, 2000; 70 FR 77744, Dec. 30, 2005]

§ 880.604 Tenant rent.

The eligible Family pays the Tenant Rent directly to the Owner.

[49 FR 19943, May 10, 1984]

§ 880.605 Overcrowded and underoccupied units.

If the contract administrator determines that because of change in family size an assisted unit is smaller than appropriate for the eligible family to which it is leased, or that the unit is larger than appropriate, housing assistance payments with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate alternative unit. If possible, the owner will, as promptly as possible, offer the family an appropriate unit. The owner may receive vacancy payments for the vacated unit if he complies with the requirements of § 880.611.

§880.606 Lease requirements.

(a) Term of Lease. The term of the lease will be for not less than one year. The lease may, or in the case of a lease for a term of more than one year must, contain a provision permitting termination on 30 days advance written notice by the family.

24 CFR Ch. VIII (4-1-12 Edition)

§ 880.607

- (b) Form—(1) Part 880 and 24 CFR part 881 projects. For this part 880 and 24 CFR part 881 projects, the form of lease must contain all required provisions, and none of the prohibited provisions specified in the developer's packet, and must conform to the form of lease included in the approved final proposal.
- (2) 24 CFR part 883 projects. For 24 CFR part 883 projects, the form of lease must contain all required provisions, and none of the prohibited provisions specified below.
- (i) Required provisions (Addendum to lease).

Addendum to Lease The following additional Lease provisions

are incorporated in full in the Lease between

(Landlord)

and

(Tenant) for the following dwelling unit: In case of any conflict between these and any other provisions of the Lease, these provisions will prevail. a. The total rent will be \$_ month. b. Of the total rent, \$ will be payable by the State Agency (Agency) as housing assistance payments on behalf of the Tenant and \$ _ will be payable by the Tenant. These amounts will be subject to change by reason of changes in the Tenant's family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD-established schedules and criteria; or by reason of adjustment by the Agency of any applicable Utility Allowance; or by reasons of changes in program rules. Any such change will be ef-

to the Tenant.
c. The Landlord will not discriminate against the Tenant in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

fective as of the date stated in a notification

- d. The Landlord will provide the following services and maintenance:
- e. A violation of the Tenant's responsibilities under the Section 8 Program, as determined by the Agency, is also a violation of the lease.

[End of addendum]

(ii) Prohibited provisions. Lease clauses which fall within the classifica-

tions listed below must not be included in any Lease.

Lease Clauses

- a. Confession of Judgment. Consent by the tenant to be sued, to admit guilt, or to accept without question any judgment favoring the landlord in a lawsuit brought in connection with the lease.
- b. Seize or Hold Property for Rent or Other Charges. Authorization to the landlord to take property of the tenant and/or hold it until the tenant meets any obligation which the landlord has determined the tenant has failed to perform.
- c. Exculpatory Clause. Prior agreement by the tenant not to hold the landlord or landlord's agents legally responsible for acts done improperly or for failure to act when the landlord or landlord's agent was required to do so.
- d. Waiver of Legal Notice. Agreement by the tenant that the landlord need not give any notices in connection with (1) a lawsuit against the tenant for eviction, money damages, or other purposes, or (2) any other action affecting the tenant's rights under the lease
- e. Waiver of Legal Proceeding. Agreement by the tenant to allow eviction without a court determination.
- f. Waiver of Jury Trial. Authorization to the landlord's lawyer to give up the tenant's right to trial by jury.
- g. Waiver of Right to Appeal Court Decision. Authorization to the landlord's lawyer to give up the tenant's right to appeal a decision on the ground of judicial error or to give up the tenant's right to sue to prevent a judgment being put into effect.
- h. Tenant Chargeable with Cost of Legal Actions Regardless of Outcome of Lawsuit. Agreement by the tenant to pay lawyer's fees or other legal costs whenever the landlord decides to sue the tenant whether or not the tenant wins. (Omission of such a clause does not mean that the tenant, as a party to a lawsuit, may not have to pay lawyer's fees or other costs if the court so orders.)

[End of clauses]

[44 FR 59410, Oct. 15, 1979, as amended at 61 FR 13590, Mar. 27, 1996]

§880.607 Termination of tenancy and modification of lease.

- (a) Applicability. The provisions of this section apply to all decisions by an owner to terminate the tenancy of a family residing in a unit under Contract during or at the end of the family's lease term.
- (b) Entitlement of Families to occupancy—(1) Grounds. The owner may not

terminate any tenancy except upon the following grounds:

- (i) Material noncompliance with the lease:
- (ii) Material failure to carry out obligations under any State landlord and tenant act:
- (iii) Criminal activity by a covered person in accordance with sections 5.858 and 5.859, or alcohol abuse by a covered person in accordance with section 5.860. If necessary, criminal records can be obtained for lease enforcement purposes under section 5.903(d)(3).
- (iv) Other good cause, which may include the refusal of a family to accept an approved modified lease form (see paragraph (d) of this section). No termination by an owner will be valid to the extent it is based upon a lease or a provisions of State law permitting termination of a tenancy solely because of expiration of an initial or subsequent renewal term. All terminations must also be in accordance with the provisions of any State and local landlord tenant law and paragraph (c) of this section.
- (2) Notice of good cause. The conduct of a tenant cannot be deemed "other good cause" under paragraph (b)(1)(iv) of this section unless the owner has given the family prior notice that the grounds constitute a basis for termination of tenancy. The notice must be served on the family in the same manner as that provided for termination notices under paragraph (c) of this section and State and local law.
- (3) Material noncompliance. (i) Material noncompliance with the lease includes:
- (A) One or more substantial violations of the lease; or
- (B) Repeated minor violations of the lease that disrupt the livability of the building; adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities; interfere with the management of the building or have an adverse financial effect on the building.
- (ii) Failure of the family to timely submit all required information on family income and composition, including failure to submit required evidence of citizenship or eligible immi-

- gration status (as provided by 24 CFR part 5), failure to disclose and verify Social Security Numbers (as provided by 24 CFR part 5), failure to sign and submit consent forms (as provided by 24 CFR part 5), or knowingly providing incomplete or inaccurate information, shall constitute a substantial violation of the lease.
- (c) Termination notice. (1) The owner must give the family a written notice of any proposed termination of tenancy, stating the grounds and that the tenancy is terminated on a specified date and advising the family that it has an opportunity to respond to the owner.
- (2) When a termination notice is issued for other good cause (paragraph (b)(1)(iv) of this section), the notice will be effective, and it will so state, at the end of a term and in accordance with the termination provisions of the lease, but in no case earlier than 30 days after receipt by the family of the notice. Where the termination notice is based on material noncompliance with the lease or material failure to carry out obligations under a State landlord and tenant act pursuant to paragraph (b)(1)(i) or (b)(1)(ii) of this section, the time of service must be in accord with the lease and State law.
- (3) In any judicial action instituted to evict the family, the owner may not rely on any grounds which are different from the reasons set forth in the notice
- (4) See 24 CFR part 5 for provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including informal hearing procedures and also for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.
- (5) In actions or potential actions to terminate tenancy, the Owner shall follow 24 CFR part 5, subpart L, in all cases where domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

§880.608

(d) Modification of Lease form. The owner, with the prior approval of HUD or, for a 24 CFR part 883 project, the Agency, may modify the terms and conditions of the lease form effective at the end of the initial term or a successive term, by serving an appropriate notice on the family, together with the offer of a revised lease or an addendum revising the existing lease. This notice and offer must be received by the family at least 30 days prior to the last date on which the family has the right to terminate the tenancy without being bound by the modified terms and conditions. The family may accept the modified terms and conditions by executing the offered revised lease or addendum, or may reject the modified terms and conditions by giving the owner written notice in accordance with the lease that the family intends to terminate the tenancy. Any increase in rent must in all cases be governed by \$880.609 and other applicable HUD regulations.

(Approved by the Office of Management and Budget under control number 2502–0204)

[44 FR 59410, Oct. 15, 1979, as amended at 51 FR 11225, Apr. 1, 1986; 53 FR 846, Jan. 13, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39703, Sept. 27, 1989; 56 FR 7537, Feb. 22, 1991; 60 FR 14842, Mar. 20, 1995; 61 FR 13590, Mar. 27, 1996; 61 FR 47382, Sept. 6, 1996; 66 FR 28797, May 24, 2001; 73 FR 72342, Nov. 28, 2008; 75 FR 66260, Oct. 27, 20101

§880.608 Security deposits.

- (a) At the time of the initial execution of the lease, the owner will require each family to pay a security deposit in an amount equal to one month's Total Tenant Payment or \$50, whichever is greater. The family is expected to pay the security deposit from its own resources and/or other public sources. The owner may collect the security deposit on an installment basis.
- (b) The owner must place the security deposits in a segregated, interest-bearing account. The balance of this account must at all times be equal to the total amount collected from the families then in occupancy, plus any accrued interest. The owner must comply with any applicable State and local laws concerning interest payments on security deposits.

- (c) In order to be considered for the return of the security deposit, a family which vacates its unit will provide the owner with its forwarding address or arrange to pick up the refund.
- (d) The owner, subject to State and local law and the requirements of this paragraph, may use the security deposit, plus any accrued interest, as reimbursement for any unpaid family contribution or other amount which the family owes under the lease. Within 30 days (or shorter time if required by State, or local law) after receiving notification of the family's forwarding address, the owner must:
- (1) Refund to a family owing no rent or other amount under the lease the full amount of the security deposit, plus accrued interest:
- (2) Provide to a family owing rent or other amount under the lease a list itemizing any unpaid rent, damages to the unit, and estimated costs for repair, along with a statement of the family's rights under State and local law. If the amount which the owner claims is owed by the family is less than the amount of the security deposit, plus accrued interest, the owner must refund the unused balance to the family. If the owner fails to provide the list, the family will be entitled to the refund of the full amount of the security deposit plus accrued interest.
- (e) In the event a disagreement arises concerning reimbursement of the security deposit, the family will have the right to present objections to the owner in an informal meeting. The owner must keep a record of any disagreements and meetings in a tenant file for inspection by the contract administrator. The procedures of this paragraph do not preclude the family from exercising its rights under State and local law.
- (f) If the security deposit, including any accrued interest, is insufficient to reimburse the owner for any unpaid tenant rent or other amount which the family owes under the lease, and the owner has provided the family with the list required by paragraph (d)(2) of this section, the owner may claim reimbursement from the contract administrator, as appropriate, for an amount not to exceed the lesser of:
 - (1) The amount owed the owner, or

(2) One month's contract rent, minus the amount of the security deposit plus accrued interest. Any reimbursement under this section will be applied first toward any unpaid tenant rent due under the lease. No reimbursement may be claimed for unpaid rent for the period after termination of the tenancy.

[44 FR 59410, Oct. 15, 1979, as amended at 49 FR 19943, May 10, 1984; 61 FR 13591, Mar. 27, 1996]

§880.609 Adjustment of contract rents.

- (a) Automatic annual adjustment of Contract Rents. Upon request from the owner to the contract administrator, contract rents will be adjusted on the anniversary date of the contract in accordance with 24 CFR part 888.
- (b) Special additional adjustments. For all projects, special additional adjustments will be granted, to the extent determined necessary by HUD (for 24 CFR part 883 projects, by the Agency and HUD), to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, and utilities not covered by regulated rates, and which are not adequately compensated for by annual adjustments under paragraph (a) of this section. The owner must submit to the contract administrator required supporting data, financial statements and certifications.
- (c) Overall limitation. Any adjustments of contract rents for a unit after Contract execution or cost certification, where applicable, must not result in material differences between the rents charged for assisted units and comparable unassisted units except to the extent that the differences existed with respect to the contract rents set at Contract execution or cost certification, where applicable.

[44 FR 59410, Oct. 15, 1979, as amended at 59 FR 22755, May 3, 1994; 61 FR 13591, Mar. 27, 1996]

§ 880.610 Adjustment of utility allowances.

In connection with annual and special adjustments of contract rents, the owner must submit an analysis of the project's Utility Allowances. Such data

as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the project owner must advise the contract administrator and request approval of new Utility Allowances. Whenever a Utility Allowance for a unit is adjusted, the owner will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment for the nnit

(Approved by the Office of Management and Budget under control number 2502-0161)

[50 FR 39097, Sept. 27, 1985]

§880.611 Conditions for receipt of vacancy payments.

- (a) General. Vacancy payments under the Contract will not be made unless the conditions for receipt of these housing assistance payments set forth in this section are fulfilled.
- (b) Vacancies during Rent-up. For each assisted unit that is not leased as of the effective date of the Contract, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:
- (1) Conducted marketing in accordance with §880.601(a) and otherwise complied with §880.601;
- (2) Has taken and continues to take all feasible actions to fill the vacancy; and
- (3) Has not rejected any eligible applicant except for good cause acceptable to the contract administrator.
- (c) Vacancies after Rent-Up. If an eligible family vacates a unit, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:
- (1) Certifies that he did not cause the vacancy by violating the lease, the Contract or any applicable law;
- (2) Notified the contract administrator of the vacancy or prospective

§880.612

vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

- (3) Has fulfilled and continues to fulfill the requirements specified in §880.601(a) (2) and (3) and paragraph (b) (2) and (3) of this section; and
- (4) For any vacancy resulting from the owner's eviction of an eligible family, certifies that he has complied with \$880.607
- (d) Vacancies for longer than 60 days. If an assisted unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the owner may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up to 12 additional months for the unit if:
- (1) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed;
- (2) The owner has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and
- (3) The owner has (for 24 CFR part 883 projects, the owner and the Agency have) demonstrated to the satisfaction of HUD that:
- (i) For the period of vacancy, the project is not providing the owner with revenues at least equal to project expenses (exclusive of depreciation), and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit, and
- (ii) The project can achieve financial soundness within a reasonable time.
- (e) Prohibition of double compensation for vacancies. The owner is not entitled to vacancy payments for vacant units to the extent he can collect for the vacancy from other sources (such as security deposits, payments under § 880.608(f), and governmental payments under other programs).

[44 FR 59410, Oct. 15, 1979, as amended at 61 FR 13591, Mar. 27, 1996]

§880.612 Reviews during management period.

(a) After the effective date of the Contract, the contract administrator will inspect the project and review its operation at least annually to determine whether the owner is in compliance with the Contract and the assisted units are in decent, safe and sanitary condition.

- (b) In addition:
- (1)(i) For this part 880 and 24 CFR part 881 private-owner/PHA projects, HUD will review the PHA's administration of the Contract at least annually to determine whether the PHA is in compliance with the ACC; and
- (ii) For 24 CFR part 883 projects, HUD will periodically review the Agency's administration of the Contract to determine whether it is in compliance with the Contract.
- (2) HUD may independently inspect project operations and units at any time.
- (c) Equal Opportunity reviews may be conducted by HUD at any time.

[44 FR 59410, Oct. 15, 1979, as amended at 61 FR 13591, Mar. 27, 1996]

§880.612a Preference for occupancy by elderly families.

- (a) Election of preference for occupancy by elderly families—(1) Election by owners of eligible projects. (i) An owner of a project assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an "eligible project") may, at any time, elect to give preference to elderly families in the project, subject to the requirements of this section.
- (ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an "elderly project." "Elderly families" refers to families whose heads of household, their spouses or sole members are 62 years or older.
- (iii) An owner who elects to provide a preference to elderly families in accordance with this section is required to notify families on the waiting list who are not elderly that the election has been made and how the election may affect them if:
- (A) The percentage of disabled families currently residing in the project

who are neither elderly nor near-elderly (hereafter, collectively referred to as "non-elderly disabled families") is equal to or exceeds the minimum required percentage of units established for the elderly project in accordance with paragraph (c)(1) of this section, and therefore non-elderly families on the waiting list (including non-elderly disabled families) may be passed over for covered section 8 units; or

(B) The project, after making the calculation set forth in paragraph (c)(1) of this section, will have no units set aside for non-elderly disabled families.

- (iv) An owner who elects to give a preference for elderly families in accordance with this section shall not remove an applicant from the project's waiting list on the basis of having made the election.
- (2) HUD approval of election not required. (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project's eligibility through the production of all relevant documentation in the possession of the owner that pertains to the original design of the project.
- (ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations under the Fair Housing Act (42 U.S.C. 3601 through 3619), or compliance reviews and complaint investigations under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.
- (b) Determining projects eligible for preference for occupancy by elderly families—(1) Evidence supporting project eligibility. Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this

section, shall consist of at least one item from the sources ("primary" sources) listed in paragraph (b)(1)(i) of this section, or at least two items from the sources ("secondary" sources) listed in paragraph (b)(1)(ii) of this section:

- (i) Primary sources. Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: The application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan commitment; the bid invitation; the owner's management plan, or any underwriting or financial document collected at or before loan closing; or
- (ii) Secondary sources. Two or more sources of evidence such as: lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older; evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with more than fifty percent of efficiency and one-bedroom units [a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of "elderly families" from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of "elderly families" which includes disabled families]; or any other relevant type of historical data, unless clearly contradicted by other comparable evidence.
- (2) Sources in conflict. If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of

§880.612a

preferences for elderly families as provided by this section based upon primary sources alone. In any case where primary sources do not provide *clear evidence* of original design of the project for occupancy primarily by elderly families, including those cases where primary sources conflict, secondary sources may be used to establish the use for which the project was originally designed.

- (c) Reservation of units in elderly projects for non-elderly disabled families. The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph (c)(1) of this section for occupancy by non-elderly disabled families.
- (1) Minimum number of units to be reserved for non-elderly disabled families. The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:
- (i) The number of units equivalent to the higher of—
- (A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and
- (B) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families upon January 1, 1992; or
- (ii) 10 percent of the number of units assisted under this part in the eligible project.
- (2) Option to reserve greater number of units for non-elderly disabled families. The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.
- (d) Secondary preferences. An owner of an elderly project also may elect to establish secondary preferences in ac-

cordance with the provisions of paragraph (d) of this section.

- (1) Preference for near-elderly disabled families in units reserved for elderly families. If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c) of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.
- (2) Preference for near-elderly disabled families in units reserved for non-elderly disabled families. If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units to disabled families who are near-elderly families.
- (e) Availability of units to families without regard to preference. An owner shall make vacant units in an elderly project generally available to otherwise eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section if either:
- (1) The owner has adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, reserve preference, and secondary preference has been given, to fill all the vacant units; or
- (2) The owner has *not* adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, and reserve preference has been given to fill all the vacant units.
- (f) Determination of insufficient number of applicants qualifying for preference. To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:
- (1) Conduct marketing in accordance with §880.601(a) to attract applicants

qualifying for the preferences and reservation of units set forth in this section; and

- (2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.
- (g) Prohibition of evictions. An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

[59 FR 65850, Dec. 21, 1994, as amended at 61 FR 9046, Mar. 6, 1996; 65 FR 16722, Mar. 29, 2000]

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

Subpart A—Summary and Applicability

Sec.

881.101 General.

881.104 Applicability of part 881.

881.105 Applicability to proposals and projects under 24 CFR part 811.

Subpart B—Definitions and Other Requirements

881.201 Definitions.

881.205 Limitation on distributions.

881.207 Property standards.

881.208 Financing.

881.211 Audit.

Subparts C-D [Reserved]

Subpart E—Housing Assistance Payments Contract

881.501 The contract.

881.502 Term of contract.

881.503 Cross-reference.

Subpart F-Management

881.601 Cross-reference.

AUTHORITY: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

SOURCE: 45 FR 7085, Jan. 31, 1980, unless otherwise noted.

Subpart A—Summary and Applicability

§881.101 General.

- (a) The purpose of the Section 8 program is to provide low-income families with decent, safe and sanitary rental housing through the use of a system of housing assistance payments. This part contains the policies and procedures applicable to the Section 8 substantial rehabilitation program. The assistance may be provided to public housing agency owners or to private owners either directly from HUD or through public housing agencies.
- (b) This part does not apply to projects developed under other Section 8 program regulations, including 24 CFR parts 880, 882, 883, 884, and 885, except to the extent specifically stated in those parts.

[61 FR 13591, Mar. 27, 1996]

§881.104 Applicability of part 881.

- (a) Part 881, in effect as of February 20, 1980, applies to all proposals for which a notification of selection was not issued before the February 20, 1980 effective date of part 881. (See 24 CFR part 881, revised as of April 1, 1980). Where a notification of selection was issued for a proposal before the February 20, 1980, effective date, part 881 in effect as of February 20, 1980 applies if the owner notified HUD within 60 calendar days that the owner wished the provisions of part 881, effective February 20, 1980, to apply and promptly brought the proposal into conformance.
- (b) Subparts E (Housing Assistance Payments Contract) and F (Management) of this part apply to all projects for which an Agreement was not executed before the February 20, 1980, effective date of part 881. Where an Agreement was so executed:
- (1) The owner and HUD may agree to make the revised subpart E of this part applicable and to execute appropriate amendments to the Agreement and/or Contract.
- (2) The owner and HUD may agree to make the revised subpart F of this part applicable (with or without the limitation on distributions) and to execute appropriate amendments to the Agreement and/or Contract.

§881.105

- (c) Section 881.607 (Termination of tenancy and modification of leases) applies to all families.
- (d) Notwithstanding the provisions of paragraph (b) of this section, the provisions of 24 CFR part 5 apply to all projects, regardless of when an Agreement was executed.

[61 FR 13591, Mar. 27, 1996, as amended at 65 FR 16722, Mar. 29, 2000]

§881.105 Applicability to proposals and projects under 24 CFR part 811.

Where proposals and projects are financed with tax-exempt obligations under 24 CFR part 811, the provisions of part 811 will be complied with in addition to all requirements of this part. In the event of any conflict between this part and part 811, part 811 will control.

Subpart B—Definitions and Other Requirements

$\S 881.201$ Definitions.

Agreement. (Agreement to Enter into Housing Assistance Payments Contract) The Agreement between the owner and the contract administrator which provides that, upon satisfactory completion of the project in accordance with the HUD-approved final proposal, the administrator will enter into the Contract with the owner.

Annual Contributions Contract (ACC). As defined in part 5 of this title.

Annual income. As defined in part 5 of this title.

Assisted unit. A dwelling unit eligible for assistance under a Contract.

Contract. (Housing Assistance Payments Contract) The Contract entered into by the owner and the contract administrator upon satisfactory completion of the project, which sets forth the rights and duties of the parties with respect to the project and the payments under the Contract.

Contract Administrator. The entity which enters into the Contract with the owner and is responsible for monitoring performance by the owner. The contract administrator is a PHA in the case of private-owner/PHA projects, and HUD is private-owner/HUD and PHA-owner/HUD projects.

Contract rent. The total amount of rent specified in the contract as payable to the owner for a unit.

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

Elderly family. As defined in part 5 of this title.

Fair Market Rent (FMR). As defined in part 5 of this title.

Family. As defined in part 5 of this title.

Final proposal. The detailed description of a proposed project to be assisted under this part, which an owner submits after selection of the preliminary proposal, except where a preliminary proposal is not required under §881.303(c). The final proposal becomes an exhibit to the Agreement and is the standard by which HUD judges acceptable construction of the project.

Housing assistance payment. The payment made by the contract administrator to the owner of an assisted unit as provided in the contract. Where the unit is leased to an eligible family, the payment is the difference between the contract rent and the tenant rent. An additional payment is made to the family when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a "vacancy payment" may be made to the owner when an assisted unit is vacant, in accordance with the terms of the contract.

HUD. Department of Housing and Urban Development.

Independent Public Accountant. A Certified Public Accountant or a licensed or registered public accountant, having no business relationship with the owner except for the performance of audit, systems work and tax preparation. If not certified, the Independent Public Accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title "public accountant," only Certified Public Accountants may be used.

Low income family. As defined in part 5 of this title.

NOFA. As defined in part 5 of this title.

Owner. Any private person or entity (including a cooperative) or a public entity which qualifies as a PHA, having the legal right to lease or sublease substantially rehabilitated dwelling units assisted under this part. The term owner also includes the person or entity submitting a proposal under this part.

Partially-assisted Project. A project for non-elderly families under this part which includes more than 50 units of which 20 percent or fewer are assisted.

PHA-Owner/HUD Project. A project under this part which is owned by a PHA. For this type of project, the Agreement and the Contract are entered into by the PHA, as owner, and HUD, as contract administrator.

Private-Owner/HUD Project. A project under this part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and HUD, as contract administrator.

Private-Owner/PHA Project. A project under this part which is owned by a private owner. For this type of project, the Agreement and Contract are entered into by the private owner, as owner, and the PHA, as contract administrator, pursuant to an ACC between the PHA and HUD. The term also covers the situation where the ACC is with one PHA and the owner is another PHA.

Project Account. A specifically identified and segregated account for each project which is established in accordance with §881.503(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the Contract or ACC, as applicable, each year.

Public Housing Agency (PHA). As defined in part 5 of this title.

Rent. In the case of an assisted unit in a cooperative project, rent means the carrying charges payable to the cooperative with respect to occupancy of the unit.

Replacement cost. The sum of the "as is" value before rehabilitation of the property as determined by HUD and the estimated cost of rehabilitation, including carrying and finance charges.

Secretary. The Secretary of Housing and Urban Development (or designee).

Single Room Occupancy (SRO) Housing. A unit for occupancy by a single eligible individual capable of independent living, which does not contain food preparation and/or sanitary facilities and is located within a multifamily structure consisting of more than 12 units.

Small project. A project for non-elderly families under this part which includes a total of 50 or fewer (assisted and unassisted) units.

Substantial rehabilitation. (a) The improvement of a property to decent, safe and sanitary condition in accordance with the standards of this part from a condition below those standards. Substantial rehabilitation may vary in degree from gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as substantial rehabilitation under this definition.

(b) Substantial rehabilitation may also include renovation, alteration or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part or the repair or replacement of major building systems or components in danger of failure.

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Vacancy payment. The housing assistance payment made to the owner by the contract administrator for a vacant assisted unit if certain conditions are fulfilled as provided in the Contract. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

Very low income family. As defined in part 5 of this title.

[45 FR 7085, Jan. 31, 1980, as amended at 48 FR 12705, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 49 FR 19944, May 10, 1984; 61 FR 5212, Feb. 9, 1996; 61 FR 13591, Mar. 27, 1996; 63 FR 46578, Sept. 1, 1998; 65 FR 16722, Mar. 29, 2000]

§881.205

§881.205 Limitation on distributions.

- (a) Non-profit owners are not entitled to distributions of project funds.
- (b) For the life of the Contract, project funds may only be distributed to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until cost certification, where applicable, is completed. Distributions may not exceed the following maximum returns:
- (1) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 6 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the FEDERAL REGISTER.
- (2) For projects for non-elderly families, the first year's distribution will be limited to 10 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 10 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the FEDERAL REGISTER.
- (c) For the purpose of determining the allowable distribution, an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by HUD at cost certification (see §881.405), unless the owner justifies a higher equity contribution by cost certification documentation in accordance with HUD mortgage insurance procedures.
- (d) Any short-fall in return may be made up from surplus project funds in future years.
- (e) If HUD determines at any time that project funds are more than the amount needed for project operations, reserve requirements and permitted distribution, HUD may require the ex-

- cess to be placed in an account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess funds must be remitted to HUD.
- (f) Owners of small projects or partially-assisted projects are exempt from the limitation on distributions contained in paragraphs (b) through (d) of this section.
- (g) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance program provisions.
- (h) HUD may permit increased distributions of surplus cash, in excess of the amounts otherwise permitted, to profit-motivated owners who participate in a HUD-approved initiative or program to preserve below-market housing stock. The increased distributions will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the owner is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the owner.
- (i) Any State or local law or regulation that restricts distributions to an amount lower than permitted by this section or permitted by the Commissioner under this paragraph (i) is preempted to the extent provided by section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997.

[45 FR 7085, Jan. 31, 1980, as amended at 65 FR 61074, Oct. 13, 2000]

§881.207 Property standards.

Projects must comply with:

- (a) [Reserved]
- (b) In the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards;
- (c) HUD requirements pursuant to section 209 of the Housing and Community Development Act of 1974 for projects for the elderly or handicapped;
- (d) HUD requirements pertaining to noise abatement and control;
- (e) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C.

4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title; and

- (f) Applicable State and local laws, codes, ordinances and regulations.
- (g) Smoke detectors—(1) Performance requirement. After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.
- (2) Acceptability criteria. The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

[45 FR 7085, Jan. 31, 1980, as amended at 52 FR 1893, Jan. 15, 1987; 57 FR 33851, July 30, 1992; 63 FR 46578, Sept. 1, 1998; 64 FR 50227, Sept. 15, 1999]

§881.208 Financing.

- (a) Types of financing. Any type of construction financing and long-term financing may be used, including:
- (1) Conventional loans from commercial banks, savings banks, savings and loan associations, pension funds, insurance companies or other financial institutions:
- (2) Mortgage insurance programs under the National Housing Act: and
- (3) Financing by tax-exmpt bonds or other obligations.
- (b) HUD approval. HUD must approve the terms and conditions of the financing to determine consistency with these regulations and to assure they do not purport to pledge or give greater rights or funds to any party than are provided under the Agreement, Contract, and/or ACC. Where the project is financed with tax-exempt obligations, the terms and conditions will be approved in accordance with the following:
- (1) An issuer of obligations that are tax-exempt under any provision of Federal law or regulation, the proceeds of the sale of which are to be used to pur-

- chase GNMA mortgage-backed securities issued by the mortgagee of the Section 8 project, will be subject to 24 CFR part 811, subpart B.
- (2) Issuers of obligations that are taxexempt under Section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR part 811, subpart A if paragraph (b)(1) of this section is not applicable.
- (3) Issuers of obligations that are tax-exempt under any provision of Federal law or regulation other than Section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR 811, subpart A if paragraph (b)(1) of this section is not applicable, except that such issuers that are State Agencies qualified under 24 CFR part 883 are not subject to 24 CFR part 811, subpart A and are subject solely to the requirements of 24 CFR part 883 with regard to the approval of tax-exempt financing.
- (c) Pledge of contracts. An owner may pledge, or offer as security for any loan or obligation, an Agreement, Contract or ACC entered into pursuant to this part: Provided, however, That such financing is in connection with a project constructed pursuant to this part and approved by HUD. Any pledge of the Agreement, Contract, or ACC, or payments thereunder, will be limited to the amounts payable under the Contract or ACC in accordance with its terms. If the pledge or other document provides that all payments will be paid directly to the mortgagee or the trustee for bondholders, the mortgagee or trustee will make all payments or deposits required under the mortgage, trust indenture of HUD regulations and remit any excess to the owner.
- (d) Foreclosure and other transfers. In the event of foreclosure, assignment or sale approved by HUD in lieu of foreclosure, or other assignment or sale approved by HUD:
- (1) The Agreement, the Contract and the ACC, if applicable, will continue in effect, and
- (2) Housing assistance payments will continue in accordance with the terms of the Contract.
- (e) Financing of manufactured home parks. In the case of a substantially rehabilitated manufactured home park, the principal amount of any mortgage attributable to the rental spaces in the park may not exceed an amount per

§881.211

space determined in accordance with §207.33(b) of this Title.

[45 FR 7085, Jan. 31, 1980, as amended at 45 FR 62797, Sept. 22, 1980; 48 FR 12706, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984]

§881.211 Audit.

- (a) Where a State or local government is the eligible owner of a project or a contract administrator under §881.505 receiving financial assistance under this part, the audit requirements in 24 CFR part 44 shall apply.
- (b) Where a nonprofit organization is the eligible owner of a project, receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.

[50 FR 39091, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986, as amended at 57 FR 33257, July 27, 1992; 59 FR 2738, Jan. 19, 1994]

Subparts C-D [Reserved]

Subpart E—Housing Assistance Payments Contract

§881.501 The contract.

- (a) Contract. The Housing Assistance Payments Contract sets forth rights and duties of the owner and the contract administrator with respect to the project and the housing assistance payments. The owner and contract administrator execute the Contract in the form prescribed by HUD upon satisfactory completion of the project.
 - (b) [Reserved]
- (c) Housing assistance payments to owners under the contract. The housing assistance payments made under the Contract are:
- (1) Payments to the owner to assist eligible families leasing assisted units, and
- (2) Payments to the owner for vacant assisted units ("vacancy payments") if the conditions specified in §881.611 are satisfied.

The housing assistance payments are made monthly by the contract administrator upon proper requisition by the owner, except payments for vacancies of more than 60 days, which are made semi-annually by the contract administrator upon requisition by the owner.

(d) Amount of housing assistance payments to owner. (1) The amount of the

housing assistance payment made to the owner of a unit being leased by an eligible family is the difference between the contract rent for the unit and the tenant rent payable by the family.

- (2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the first 60 days of vacancy, subject to the conditions in §881.611. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as HUD directs.
- (3) For a vacancy that exceeds 60 days, a housing assistance payment for the vacant unit will be made, subject to the conditions in §881.611, in an amount equal to the principal and interest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.
- (e) Payment of utility reimbursement. Where applicable, the Utility Reimbursement will be paid to the Family as an additional Housing Assistance Payment. The Contract will provide that the Owner will make this payment on behalf of the contract administrator. Funds for this purpose will be paid to the Owner in trust solely for the purpose of making the additional payment. If the Family and the utility company consent, the Owner may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

[45 FR 7085, Jan. 31, 1980, as amended at 49 FR 19944, May 10, 1984; 61 FR 13591, Mar. 27, 1996]

\$881.502 Term of contract.

- (a) Term (except for Manufactured Home Parks). The term of the Contract will be as follows:
- (1) Where the estimated cost of the rehabilitation is less than 25 percent of the estimated value of the project after completion of the rehabilitation, the contract will be for a term of 20 years for any dwelling unit.
- (2) Where the estimated cost of rehabilitation is 25 percent or more of the estimated value of the project after

completion of rehabilitation, the contract may be for a term which:

- (i) Will cover the longest term, but not less than 20 years, of a single credit instrument covering:
 - (A) The cost of rehabilitation, or
 - (B) The existing indebtedness, or
- (C) The cost of rehabilitation and the refinancing of the existing indebtedness, or
- (D) The cost of rehabilitation and the acquisition of the property; and
- (ii) For assisted units in a project financed with the aid of a loan insured or co-insured by the Federal government or a loan made, guaranteed or intended for purchase by the Federal government, will be 20 years for any dwelling unit; or
- (iii) For units in a project financed other than as described in paragraph (a)(2)(ii) of this section will not exceed 30 years for any dwelling unit except that this limit will be 40 years if (A) the project is owned or financed by a loan or loan guarantee from a state or local agency, (B) the project is intended for occupancy by non-elderly families and (C) the project is located in an area designated by HUD as one requiring special financing assistance.
- (b) Term for manufactured home parks. For manufactured home units or spaces in substantially rehabilitated manufactured home parks, the term of the Contract will be 20 years.
- (c) Staged projects. If the project is completed in stages, the term of the Contract must relate separately to the units in each stage. The total Contract term for the units in all stages, beginning with the effective date of the Contract for the first stage, may not exceed the overall maximum term allowable for any one unit under this section, plus two years.

[48 FR 12707, Mar. 28, 1983, and 49 FR 17449, Apr. 24, 1984]

\$881.503 Cross-reference.

All of the provisions of §§ 880.503, 880.504, 880.505, 880.506, 880.507, and 880.508 of this chapter apply to projects assisted under this part, subject to the requirements of § 881.104.

[61 FR 13592, Mar. 27, 1996]

Subpart F-Management

§881.601 Cross-reference.

All of the provisions of part 880, subpart F, of this chapter apply to projects assisted under this part, subject to the requirements of §881.104.

[61 FR 13592, Mar. 27, 1996]

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

Subpart A—Applicability, Scope and Basic Policies

Sec.

882.101 Applicability.

882.102 Definitions.

882.103-882.122 [Reserved]

882.123 Conversion of Section 23 Units to Section 8 and Section 23 monitoring. 882.124 Audit.

Subparts B-C [Reserved]

Subpart D—Special Procedures for Moderate Rehabilitation—Basic Policies

882.401 Eligible properties.

882.402 [Reserved]

882.403 ACC, housing assistance payments contract, and lease.

882.404 Physical condition standards; physical inspection requirements.

882.405 Financing.

882.406 [Reserved]

882.407 Other federal requirements.

882.408 Initial contract rents.

882.409 Contract rents at end of rehabilitation loan term.

882.410 Rent adjustments.

882.411 Payments for vacancies.

882.412 Subcontracting of owner services.

882.413 Responsibility of the Family.

882.414 Security and utility deposits.

Subpart E—Special Procedures for Moderate Rehabilitation—Program Development and Operation

 $882.501 – 882.506 \quad [Reserved]$

882.507 Completion of rehabilitation.

882.508 [Reserved]

882.509 Overcrowded and under occupied units.

882.510 Adjustment of utility allowance.

882.511 Lease and termination of tenancy.

882.512 Reduction of number of units covered by contract.

882.513 Public notice to low-income families; waiting list.

882.514 Family participation.

882.515 Reexamination of family income and composition.

882.516 Maintenance, operation and inspections.

882.517 HUD review of contract compliance. 882.518 Denial of admission and termination of assistance for criminals and alcohol abusers.

Subparts F-G [Reserved]

Subpart H—Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals

882.801 Purpose.

882.802 Definitions.

882.803 Project eligibility and other requirements

 $882.804 \quad Other \ Federal \ requirements.$

882.805 HA application process, ACC execution, and pre-rehabilitation activities.

882.806 Agreement to enter into housing assistance payments contract.

882.807 Housing assistance payments contract.

882.808 Management.

882.809 Waivers.

882.810 Displacement, relocation, and acquisition.

AUTHORITY: 42 U.S.C. 1437f and 3535(d).

SOURCE: 43 FR 61246, Dec. 29, 1978, unless otherwise noted.

Subpart A—Applicability, Scope and Basic Policies

§882.101 Applicability.

(a) The provisions of this part apply to the Section 8 Moderate Rehabilitation program.

(b) This part states the policies and procedures to be used by a PHA in administering a Section 8 Moderate Rehabilitation program. The purpose of this program is to upgrade substandard rental housing and to provide rental subsidies for low-income families.

(c) Subpart H of this part only applies to the Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals.

[63 FR 23853, Apr. 30, 1998]

§882.102 Definitions.

(a) Terms found elsewhere. The following terms are defined in part 5, subpart A of this title: 1937 Act, covered person, drug, drug-related criminal activity, federally assisted housing, guest, household, HUD, MSA, other person under the tenant's control, public housing

agency (PHA), Section 8, and violent criminal activity.

(b) In addition, the following definitions apply to this part:

ACC reserve account (or "project account"). The account established and maintained in accordance with §882.403(b).

Agreement to enter into Housing Assistance Payments Contract ("Agreement"). A written agreement between the Owner and the PHA that, upon satisfactory completion of the rehabilitation in accordance with requirements specified in the Agreement, the PHA will enter into a Housing Assistance Payments Contract with the Owner.

Annual Contributions Contract ("ACC"). The written agreement between HUD and a PHA to provide annual contributions to the PHA to cover housing assistance payments and other expenses pursuant to the 1937 Act.

Assisted lease (or "lease"). A written agreement between an Owner and a Family for the leasing of a unit by the Owner to the Family with housing assistance payments under a Housing Assistance Payments Contract between the Owner and the PHA.

Congregate housing. Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing.

Contract. See definition of Housing Assistance Payments Contract.

Contract rent. The total amount of rent specified in the Housing Assistance Payments Contract as payable to the Owner by the Family and by the PHA to the Owner on the Family's behalf

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition standards in 24 CFR part 5, subpart G.

Gross rent. The total monthly cost of housing an eligible Family, which is the sum of the Contract Rent and any utility allowance.

Group home. A dwelling unit that is licensed by a State as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide).

Housing Assistance Payment. The payment made by the PHA to the Owner of

a unit under lease by an eligible Family, as provided under the Contract. The payment is the difference between the Contract Rent and the tenant rent. An additional payment (the "utility reimbursement") is made by the PHA when the utility allowance is greater than the total tenant payment.

Housing Assistance Payments Contract ("Contract"). A written contract between a PHA and an Owner for the purpose of providing housing assistance payments to the Owner on behalf of an eligible Family.

Moderate rehabilitation. Rehabilitation involving a minimum expenditure of \$1000 for a unit, including its prorated share of work to be accomplished on common areas or systems, to:

- (1) Upgrade to decent, safe and sanitary condition to comply with the Housing Quality Standards or other standards approved by HUD, from a condition below these standards (improvements being of a modest nature and other than routine maintenance); or
- (2) Repair or replace major building systems or components in danger of failure.

Owner. Any person or entity, including a cooperative, having the legal right to lease or sublease existing housing.

Single room occupancy housing (SRO). A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities.

Statement of Family responsibility. An agreement in the form prescribed by HUD, between the PHA and a Family to be assisted under the Program, stating the obligations and responsibilities of the Family.

[63 FR 23853, Apr. 30, 1998, as amended at 63 FR 46578, Sept. 1, 1998; 66 FR 28797, May 24, 2001]

§§ 882.103-882.122 [Reserved]

§ 882.123 Conversion of Section 23 Units to Section 8 and Section 23 monitoring.

(a)-(d) [Reserved]

(e) Section 23 policies for units planned for conversion on or before September 30, 1981. (1) PHAs shall not enter into new leases with owners for additional units nor shall they renew or extend leases with owners except consistent with the conversion schedules.

- (2) Subject to the rights of families under existing leases, PHAs may continue to lease units to families under Section 23 only on a month-to-month basis
- (3) PHAs shall conduct annual inspections of all units to determine whether the units are decent, safe and sanitary.
- (4) PHAs shall certify with their requisitions to HUD for payments under the ACC that the units are decent, safe and sanitary, or the PHA shall furnish HUD with a report of the nature of the deficiencies of the units which are not so certified. If an owner's units are not decent, safe and sanitary.
- (i) Where the owner is responsible under the terms of the lease for correcting the deficiencies, the PHA shall send the owner written notification requiring the owner to take specified corrective action within a specified time. The notification shall also state that, if the owner fails to comply, rent payments will be suspended. If the owner fails to comply with the first notification, he shall be notified by the PHA of the noncompliance and rent payments shall be suspended immediately. In the event of such suspension of rent payments, the PHA shall requisition a correspondingly lower ACC payment.
- (ii) Where the PHA is responsible under the terms of the lease for correcting the deficiencies, the Field Office shall send written notification requiring the PHA to take specified corrective action within a specified time. The notification shall also state that, if the PHA fails to comply, HUD will make reduced payments to the PHA only in the amount of the rent due the owner. If the PHA fails to comply with the first notification, the PHA shall be notified of the noncompliance, and the PHA shall not receive any fees for performing management functions until the PHA has complied with the Field Office request and has corrected the noted deficiencies.

(f) [Reserved]

(g) Section 23 policies for units not planned to be converted. (1) PHAs shall not enter into new leases with owners for additional units nor shall they

renew or extend leases with owners for more than one year.

- (2) The provisions contained in paragraphs (e) (3) and (4) of this section shall apply.
- (h) Request for rent increases. An owner may submit to the PHA a request for rent increase because of increases in operating cost, when the rents to the owner, after adjustments based on provisions in the lease, are insufficient to provide decent, safe and sanitary housing. Such a request shall be supported by an audited financial statement, and the data shall clearly show that failure to obtain additional revenue will result in deterioriation of units and loss of decent, safe and sanitary housing for low-income families. The PHA shall inspect the units to determine whether the units are decent, safe and sanitary. Where the need for an adjustment under this paragraph is shown:
- (1) Subject to available contract authority and prior approval by the HUD Field Office, the PHA may grant an adjustment to the extent documented and justified for those items of expenses (excluding debt service) for which the owner is responsible under the lease.
- (2) The amount of the adjustment must be reasonable when compared with similar items under the Section 8 Existing Housing program.
- (3) The adjusted amount for expenses shall not exceed the result of applying the appropriate Section 8 Existing Housing Annual Adjustment Factor (24 CFR part 888) most recently published by HUD in the FEDERAL REGISTER to the appropriate expense base in effect under the lease prior to this adjustment.
- (4) The adjustment shall not be retroactive to pay for costs that the owner had previously incurred.
- (5) The adjustment shall be effective for a period not to exceed one year.

[44 FR 28276, Nov. 14, 1979, as amended at 60 FR 34694, July 3, 1995]

§882.124 Audit.

PHAs receiving financial assistance under this part are subject to audit requirements in 24 CFR part 44.

[50 FR 39091, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986]

Subparts B-C [Reserved]

Subpart D—Special Procedures for Moderate Rehabilitation— Basic Policies

SOURCE: 47 FR 34379, Aug. 9, 1982, unless otherwise noted.

§882.401 Eligible properties.

- (a) Eligible properties. Except as provided in paragraph (b) of this section, housing suitable for moderate rehabilitation as defined in §882.102 is eligible for inclusion under the Moderate Rehabilitation Program. Existing structures of various types may be appropriate for this program, including single-family houses, multi-family structures and group homes.
- (b) Ineligible properties. (1) Nursing homes, units within the grounds of penal, reformatory, medical, mental and similar public or private institutions, and facilities providing continual psychiatric, medical or nursing services are not eligible for assistance under the Moderate Rehabilitation Program.
- (2) Housing owned by a State or unit of general local government is not eligible for assistance under this program.
- (3) High rise elevator projects for families with children may not be utilized unless HUD determines there is no practical alternative. (HUD may make this determination for a locality's Moderate Rehabilitation Program in whole or in part and need not review each building on a case-by-case basis.)
- (4) Single room occupancy (SRO) housing may not be utilized unless:
- (i) The property is located in an area in which there is a significant demand for such units as determined by the HUD Field Office; and
- (ii) The PHA and the unit of general local government in which the property is located approve of such units being utilized for such purpose.

(5) No Section 8 assistance may be provided with respect to any unit occupied by an Owner; however, cooperatives will be considered as rental housing for purposes of the Moderate Rehabilitation Program.

[63 FR 23854, Apr. 30, 1998, as amended at 64 FR 14832, Mar. 29, 1999]

§882.402 [Reserved]

§882.403 ACC, housing assistance payments contract, and lease.

- (a) Maximum Total ACC Commitments. The maximum total annual contribution that may be contracted for is the total of the Moderate Rehabilitation Fair Market Rents for all the units. The fee for the costs of PHA administration is payable out of the annual contribution.
- (b) Project account. (1) A project account will be established and maintained by HUD as a specifically identified and segregated account for each project. The account will contain the sum of the amounts by which the maximum annual commitment exceeds the amount actually paid out for the project under the ACC each year. Payments will be made from this account when needed to cover increases in Contract Rents or decreases in Gross Family Contributions for (i) housing assistance (including vacancy) payments, (ii) the amount of the fee for PHA costs of administration, and (iii) other costs specifically approved by the Secretary.
- (2) When a HUD-approved estimate of required payments under the ACC for a fiscal year exceeds the maximum annual commitment, and would cause the amount in the project account to be less than 40 percent of the maximum, HUD will, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the U.S. Housing Act of 1937, as may be necessary, to assure that payments under the ACC will be adequate to cover increases in Contract Rents and decreases in Gross Family Contributions.
- (c) Term of Housing Assistance Payments Contract. The Contract for any unit rehabilitated in accordance with the Program must be for a term of 15 years.
- (d) Term of Lease. (1) The initial lease between the family and the Owner

- must be for at least one year or the term of the HAP contract, whichever is shorter. In cases where there is less than one year remaining on the HAP contract, the owner and the PHA may mutually agree to terminate the unit from the HAP contract instead of leasing the unit to an eligible family.
- (2) Any renewal or extension of the lease term for any unit must in no case extend beyond the remaining term of the HAP contract.

[47 FR 34379, Aug. 9, 1982, as amended at 64 FR 53869, Oct. 4, 1999]

§ 882.404 Physical condition standards; physical inspection requirements.

- (a) Compliance with physical condition standards. Housing in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.
- (b) Space and security. In addition to the standards in 24 CFR part 5, subpart G, a dwelling unit used in the Section 8 moderate rehabilitation program that is not SRO housing must have a living room, a kitchen area, and a bathroom. Such a dwelling unit must have at least one bedroom or living/sleeping room for each two persons.
- (c) Special housing types. The following provisions in 24 CFR part 982, subpart M (Special Housing Types) apply to the Section 8 moderate rehabilitation program:
- (1) 24 CFR 982.605(b) (for SRO housing). For the Section 8 moderate rehabilitation SRO program under subpart H of this part 882, see also §882.803(b).
- $\left(2\right)$ 24 CFR 982.609(b) (for congregate housing).
- (3) 24 CFR 982.614(c) (for group homes).
- (d) Lead-based paint. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to the Section 8 moderate rehabilitation program.

[63 FR 46579, Sept. 1, 1998; 64 FR 50227, Sept. 15, 1999]

§882.405 Financing.

(a) *Types*. Any type of public or private financing may be utilized with the exception of the rehabilitation loan program under Section 312 of the Housing Act of 1964

(b) Use of Contract as security for financing. An Owner may pledge, or offer as security for any loan or obligation, an Agreement or Contract entered into pursuant to this Program, Provided That (1) such security is in connection with a unit(s) rehabilitated pursuant to this Program and (2) the terms of the financing or any refinancing must be approved by the PHA in accordance with standards provided by HUD. Any pledge of the Agreement or Contract, or payments thereunder, will be limited to the amounts payable under the Contract in accordance with its terms.

§882.406 [Reserved]

§882.407 Other Federal requirements.

The moderate rehabilitation program is subject to applicable Federal requirements in 24 CFR 5.105 and to the requirements for protection for victims of domestic violence, dating violence, or stalking in 24 CFR part 5, subpart L.

[75 FR 66260, Oct. 27, 2010]

§882.408 Initial contract rents.

(a) Fair Market Rent limitation. The Fair Market Rent Schedule for Moderate Rehabilitation is 120 percent of the Existing Housing Fair Market Rent Schedule, except that the Fair Market Rent limitation applicable to single room occupancy housing is 75 percent of the Moderate Rehabilitation Fair Market Rent for a 0-bedroom unit. The initial Gross Rent for any Moderate Rehabilitation unit must not exceed the Moderate Rehabilitation Fair Market Rent applicable to the unit on the date that the Agreement is executed except by up to 10 percent as provided in paragraph (b) of this section. Additionally, to the extent provided in paragraph (d) of this section, the PHA may approve changes in the Contract Rent subsequent to execution of the Agreement which result in an initial Gross Rent which exceeds the Moderate Rehabilitation Fair Market Rent applicable to the unit by up to 20 percent.

- (b) Exception rents. With HUD Field Office approval, the PHA may approve initial Gross Rents which exceed the applicable Moderate Rehabilitation Fair Market Rents by up to 10 percent for all units of a given size in specified areas where HUD has determined that the rents for standard units suitable for the Existing Housing Program are more than 10 percent higher than the Existing Housing Fair Market Rents. The PHA must submit documentation demonstrating the necessity for such exception rents in the area to the HUD Field Office. In areas where HUD has approved the use of exception rents for 0-bedroom units, the single room occupancy housing exception rent will be 75 percent of the exception rent applicable to Moderate Rehabilitation 0-bedroom units.
- (c) Determination Initial Contract Rents. (1) The initial Contract Rent and base rent for each unit must be computed in accordance with HUD requirements. These amounts may be determined in accordance with paragraph (c)(2), or in accordance with an alternative method prescribed by HUD. However, the initial Contract Rent may in no event be more than—
- (i) The Moderate Rehabilitation Fair Market Rent or exception rent applicable to the unit on the date that the Agreement is executed, minus
- (ii) Any applicable allowance for utilities and other services attributable to the unit.
- (2) When the initial Contract Rent is computed under this paragraph, the rent will be equal to the base rent plus the monthly cost of a rehabilitation loan (but not more than the maximum stated in paragraph (c)(1)). The base rent must be calculated using the rent charged for the unit or the estimated costs to the Owner of owning, managing and maintaining the rehabilitated unit. The monthly cost of a rehabilitation loan must be calculated using:
- (i) The actual interest rate on the portion of the rehabilitation costs borrowed by the Owner,
- (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, 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 entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract,

provided that the Owner (1) has complied with §§ 882.506(d) and 882.508(c); (2) has taken and continues to take all feasible actions to fill the vacancy; and (3) has not rejected any eligible applicant except for good cause acceptable to the PHA.

- (b) Vacancies after initial occupancy. (1) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner may receive the housing assistance payments due under the Contract for so much of the month in which the Family vacates the unit as the unit remains vacant. Should the unit continue to remain vacant, the Owner may receive from the PHA a housing assistance payment in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding an additional month. However, if the Owner collects any of the Family's share of the rent for this period, the payment must be reduced to an amount which, when added to the Family's payment, does not exceed 80 percent of the Contract Rent. Any such excess must be reimbursed by the Owner to the PHA. The Owner will not be entitled to any payment under this paragraph (b)(1) of this section unless the Owner:
- (i) Immediately upon learning of the vacancy, has notified the PHA of the vacancy or prospective vacancy, and
- (ii) has taken and continues to take all feasible actions specified in paragraphs (a) (2) and (3) of this section.
- (2) If the Owner evicts an Eligible Family, the Owner will not be entitled to any payment under paragraph (b)(1) of this section unless the PHA determines that the Owner complied with all requirements of the Contract.
- (c) Prohibition of double compensation for vacancies. The Owner will not be entitled to housing assistance payments with respect to vacant units under this section if the Owner is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the HCD Act of 1974 or payments for unpaid

rent under §882.414 (Security and Utility Deposits)).

[47 FR 34379, Aug. 9, 1982, as amended at 63 FR 23855, Apr. 30, 1998]

§882.412 Subcontracting of owner services.

- (a) General. Any Owner may contract with any private or public entity to perform for a fee the services required by the Agreement, Contract or Lease, provided that such contract may not shift any of the Owner's responsibilities or obligations.
- (b) PHA management. If the Owner and a PHA wish to enter into a management contract, they may do so provided that:
- (1) The Housing Assistance Payments Contract with respect to the housing involved is administered by another PHA, or
- (2) Should another PHA not be available and willing to administer the Housing Assistance Payments Contract and no other management alternative exists, the HUD Field Office may authorize PHA management of units administered by the PHA in accordance with specified criteria.
- (3) Notwithstanding the provisions of §882.408 (b) and (c), a PHA may not approve, without prior HUD approval, rents which exceed the appropriate Moderate Rehabilitation Fair Market Rent for a unit for which it provides the management functions under this section.

§ 882.413 Responsibility of the Family.

- (a) A family receiving housing assistance under this Program must fulfill all of its obligations under the Lease and Statement of Family Responsibility.
- (b) No family member may engage in drug-related criminal activity or violent criminal activity. Failure of the Family to meet its responsibilities under the Lease, the Statement of Family Responsibility, or this section shall constitute rounds for termination of assistance by the PHA. Should the PHA determine to terminate assistance to the Family, the provisions of §882.514(f) must be followed.

[55 FR 28546, July 11, 1990, as amended at 63 FR 23855, Apr. 30, 1998]

§882.414 Security and utility deposits.

(a) If at the time of the initial execution of the Lease the Owner wishes to collect a security deposit, the maximum amount shall be the greater of one month's Total Tenant Payment or \$50. However, this amount shall not exceed the maximum amount allowable under State or local law. For units leased in place, security deposits collected prior to the execution of a Contract which are in excess of this maximum amount do not have to be refunded until the Family vacates the unit subject to the lease terms. The Family is expected to pay security deposits and utility deposits from its resources and/or other public or private sources.

(b) If a Family vacates the unit, the Owner, subject to State and local law, may use the security deposit as reimbursement for any unpaid Tenant Rent or other amount which the Family owes under the Lease. If a Family vacates the unit owing no rent or other amount under the Lease consistent with State or local law or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance to the Family.

(c) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. The Owner shall comply with all State and local laws regarding interest payments on security deposits.

(d) If the security deposit is insufficient to reimburse the Owner for the unpaid Tenant Rent or other amounts which the Family owes under the Lease, or if the Owner did not collect a security deposit, the Owner may claim reimbursement from the PHA for an amount not to exceed the lesser of:

(1) The amount owed the Owner, or

(2) Two month's Contract Rent; minus, in either case, the greater of the security deposit actually collected or the amount of security deposit the Owner could have collected under the program (pursuant to paragraph (a) of this section). Any reimbursement under this section must be applied first toward any unpaid Tenant Rent due under the Lease and then to any other amounts owed. No reimbursement may

be claimed for unpaid rent for the period after the Family vacates.

[43 FR 61246, Dec. 29, 1978, as amended at 44 FR 31176, May 31, 1979; 49 FR 19945, May 10, 1984. Redesignated at 63 FR 23854, Apr. 30, 1998]

Subpart E—Special Procedures for Moderate Rehabilitation—Program Development and Operation

SOURCE: 47 FR 34383, Aug. 9, 1982, unless otherwise noted.

§§ 882.501-882.506 [Reserved]

§882.507 Completion of rehabilitation.

- (a) Notification of completion. The Owner must notify the PHA when the work is completed and submit to the PHA the evidence of completion and certifications described in paragraphs (b) and (c) of this section.
- (b) Evidence of completion. Completion of the unit(s) must be evidenced by furnishing the PHA with the following:
- (1) A certificate of occupancy and/or other official approvals as required by the locality.
- (2) A certification by the Owner that:
- (i) The unit(s) has been completed in accordance with the requirements of the Agreement;
- (ii) The unit(s) is in good and tenantable condition;
- (iii) The unit(s) has been rehabilitated in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials;
- (iv) The unit(s) are in compliance with part 35, subparts A, B, H, and R of this title.
- (iv) Any unit(s) built prior to 1973 are in compliance with §882.404(c)(3) and §882.404(c)(4).
- (v) If applicable, the Owner has complied with the provisions of the Agreement relating to the payment of not less than prevailing wage rates and that to the best of the Owner's knowledge and belief there are no claims of underpayment concerning alleged violations of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the Owner, PHA or HUD, the Owner will be

required to place sufficient amount in escrow, as determined by the PHA or HUD, to assure such payments.

(c) Actual cost and rehabilitation loan certifications. The Owner must provide the PHA with a certification of the costs incurred for the rehabilitation and any temporary relocation as well as the interest rate and term of any rehabilitation loan. The Owner must certify that these are the actual costs, interest rate, and term.

The PHA must review for completeness and accuracy and accept these certifications subject to the right of post audit. The PHA must then establish the Contract Rents as provided in \$882.408 which will be subject to reduction based on a post audit.

- (d) Review and inspections. The PHA must review the evidence of completion for compliance with paragraph (b) of this section. The PHA also must inspect the unit(s) to be assisted to determine that the unit(s) has been completed in accordance with the Agreement and meets the Housing Quality Standards or other standards approved by HUD for the Program. If the inspection discloses defects or deficiencies, the inspector must report these in detail.
- (e) Acceptance. (1) If the PHA determines from the review and inspection that the unit(s) has been completed in accordance with the Agreement, the unit(s) will be accepted.
- (2) If there are any items of delayed completion which are minor items or which are incomplete because of weather conditions, and in any case which do not preclude or affect occupancy, and all other requirements of the Agreement have been met, the unit(s) must be accepted. An escrow fund determined by the PHA to be sufficient to assure completion for items of delayed completion must be required, as well as a written agreement between the PHA and the Owner, to be included as an exhibit to the Contract, specifying the schedule for completion. If the items are not completed within the agreed time period, the PHA may terminate the Contract or exercise other rights under the Contract.
- (3) If other deficiencies exist, the PHA must determine whether and to what extent the deficiencies are cor-

rectable, and whether the Contract Rents should be reduced. The Owner must be notified of the PHA's decision. If the corrections required by the PHA are possible, the PHA and the Owner must enter into an agreement for the correction of the deficiencies within a specified time. If the deficiencies are corrected within the agreed period of time, the PHA must accept the unit(s).

(4) Otherwise, the unit(s) may not be accepted, and the Owner must be notified with a statement of the reasons for nonacceptance.

[47 FR 34383, Aug. 9, 1982, as amended at 52 FR 1895, Jan. 15, 1987; 64 FR 50227, Sept. 15, 1999]

§882.508 [Reserved]

§882.509 Overcrowded and under occupied units.

If the PHA determines that a Contract unit is not decent, safe, and sanitary by reason of increase in Family size, or that a Contract unit is larger than appropriate for the size of the Family in occupancy, housing assistance payments with respect to the unit will not be abated; *However*, the Owner must offer the Family a suitable alternative unit should one be available and the Family will be required to move. If the Owner does not have a suitable available unit, the PHA must assist the Family in locating other standard housing in the locality within the Family's ability to pay and require the Family to move to such a unit as soon as possible. In no case will a Family be forced to move nor will housing assistance payments under the Contract be terminated unless the Family rejects without good reason the offer of a unit which the PHA judges to be acceptable.

§882.510 Adjustment of utility allowance.

The PHA must determine, at least annually, whether an adjustment is required in the Utility Allowance applicable to the dwelling units in the Program, on grounds of changes in utility rates or other change of general applicability to all units in the Program. The PHA may also establish a separate schedule of allowances for each building of 20 or more assisted units, based upon at least one year's actual utility

consumption data following rehabilitation under the Program. If the PHA determines that an adjustment should be made in its Schedule of Allowances or if it establishes a separate schedule for a building which will change the allowance, the PHA must then determine the amounts of adjustments to be made in the amount of rent to be paid by affected Families and the amount of housing assistance payments and must notify the Owners and Families accordingly. Any adjustment to the Allowance must be implemented no later than at the Family's next reexamination or at lease renewal, whichever is earlier.

[47 FR 34383, Aug. 9, 1982, as amended at 49 FR 19946, May 10, 1984]

§ 882.511 Lease and termination of tenancy.

- (a) Lease. (1) The lease must include all provisions required by HUD, and must not include any provisions prohibited by HUD.
- (2) The lease must provide that drugrelated criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control is grounds for the owner to terminate tenancy. In addition, the lease must provide that the owner may terminate the tenancy of a family when the owner determines that a household member is illegally using a drug or when the owner determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.
- (b) Applicability. The provisions of this section apply to decisions by an Owner to terminate the tenancy of a Family during or at the end of the Family's lease term.
- (c) Grounds for termination of or refusal to renew the lease. The Owner must not terminate or refuse to renew the lease except upon the following grounds:
- (1) Serious or repeated violation of the terms and conditions of the lease.
- (2) Violation of applicable Federal, State or local law.
 - (3) Other good cause.

- (d) Notice of termination of tenancy. (1) The Owner must serve a written notice of termination of tenancy on the Family which states the date the tenancy shall terminate. Such date must be in accordance with the following:
- (i) When termination is based on failure to pay rent, the date of termination must be not less than five working days after the Family's receipt of the notice.
- (ii) When termination is based on serious or repeated violation of the terms and conditions of the lease or on violation of applicable Federal, State or local law, the date of termination must be in accordance with State and local law.
- (iii) When termination is based on other good cause, the date of termination must be no earlier than 30 days after the notice is served on the Family
 - (2) The notice of termination must:
- (i) State the reasons for such termination with enough specificity to enable the Family to prepare a defense.
- (ii) Advise the Family that if a judicial proceeding for eviction is instituted, the tenant may present a defense in that proceeding.
- (iii) Be served on the Family by sending a prepaid first class properly addressed letter (return receipt requested) to the tenant at the dwelling unit or by delivering a copy of the notice to the dwelling unit.
- (3) Substitution of State and local requirements. In the case of failure to pay rent, a notice of termination which is issued pursuant to State or local law or is common practice in the locality and which satisfies paragraph (c)(2) may be substituted for or run concurrently with the notice required herein.
- (e) Eviction. All evictions must be carried out through judical process under State and local law. "Eviction" means the dispossession of the Family from the dwelling unit pursuant to State or local court action.
- (f) Lease. The requirements of this section shall be incorporated into the dwelling lease between the Owner and the Family.
- (g) In actions or potential actions to terminate tenancy, the Owner shall follow 24 CFR part 5, subpart L, in all cases where domestic violence, dating

violence, or stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

[47 FR 34383, Aug. 9, 1982, as amended at 63 FR 23855, Apr. 30, 1998; 66 FR 28797, May 24, 2001; 73 FR 72342, Nov. 28, 2008; 75 FR 66261, Oct. 27, 2010]

§882.512 Reduction of number of units covered by contract.

- (a) Limitation on leasing to ineligible Families. Owners must lease all assisted units under Contract to Eligible Families. Leasing of vacant, assisted units to ineligible tenants is a violation of the Contract and grounds for all available legal remedies, including suspension or debarment from HUD programs and reduction of the number of units under the Contract, as set forth in paragraph (b) of this section. Once the PHA has determined that a violation exists, the PHA must notify HUD of its determination and the suggested remedies. At the direction of HUD, the PHA must take the appropriate action.
- (b) Reduction for failure to lease to Eligible Families. If, at any time beginning six months after the effective date of the Contract, the Owner fails for a period of six continuous months to have at least 90 percent of the assisted units leased or available for leasing by Eligible Families (because families initially eligible have become ineligible), the PHA may, on at least 30 days' notice, reduce the number of units covered by the Contract. The PHA may reduce the number of units to the number of units actually leased or available for leasing by Eligible Families plus 10 percent (rounded up). If the Owner has only one unit under Contract and if one year has elapsed since the date of the last housing assistance payment, the Contract may be terminated with the consent of the Owner.
- (c) Restoration. The PHA will agree to an amendment of the Contract, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) if:
- (1) The PHA determines that the restoration is justified by demand,
- (2) The Owner otherwise has a record of compliance with obligations under the Contract, and
 - (3) Contract authority is available.

§882.513 Public notice to low-income families; waiting list.

- (a) Public notice to low-income Families. (1) If the PHA does not have a waiting list which is sufficient to provide applicants for the units under the Moderate Rehabilitation Program, the PHA must, promptly after receiving the executed ACC, make known to the public the availability of the Program.
- (i) The notice must state that assistance under this Program will be available only in specified units which have been rehabilitated under the Program.
- (ii) The notice must be made in accordance with the PHA's HUD-approved application and with the HUD guidelines for fair housing requiring the use of the equal housing opportunity logotype, statement and slogan.
- (b) Waiting list. The PHA must maintain a waiting list for applicants for the Moderate Rehabilitation Program. This requirement may be met through the use of waiting lists for other subsidized housing programs such as the Existing Housing Program.

§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 24 CFR parts 5, 750 and 760). The PHA is responsible for verifying the sources and amount of the family's income and other information necessary for determining income eligibility and the amount of the assistance payments.
- (2) PHA records on applicants and Families selected to participate must be maintained so as to provide HUD with racial, gender, and ethnic data.
- (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 24 CFR part 5, 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.
- (c) Owner selection of Families. All vacant units under Contract must be rented to Eligible Families referred by the PHA from its waiting list. However, if the PHA is unable to refer a sufficient number of interested applicants on the waiting list to the Owner within 30 days of the Owner's notification to the PHA of a vacancy, the Owner may advertise or solicit applications from Low-Income Families and refer such Families to the PHA to determine eligibility. Since the Owner is responsible for tenant selection, the Owner may refuse any family, provided that the Owner does not unlawfully discriminate. However, the Owner must not deny program assistance or admission to an applicant based on the fact that the applicant is or has been a victim of domestic violence, dating violence, or stalking, if the applicant otherwise qualifies for assistance or admission. Should the Owner reject a Family, and should the Family believe that the Owner's rejection was the result of unlawful discrimination, the Family may request the assistance of the PHA in resolving the issue. If the issue cannot be resolved promptly, the Family may file a complaint with

HUD, and the PHA may refer the Family to the next available Moderate Rehabilitation unit.

- (d) Briefing of Families. (1) When a Family is initially determined to be eligible for housing assistance payments or is selected for participation in accordance with this section, the PHA must provide the Family with information as to the Tenant Rent and the PHA's schedule of Utility Allowances. Each Family must also, either in group or individual sessions, be provided with a full explanation of the following:
- (i) Family and Owner responsibilities under the Lease and Contract;
- (ii) Significant aspects of the applicable State and local laws;
- (iii) Significant aspects of Federal, State and local fair housing laws;
- (iv) The fact that the subsidy is tied to the unit and the Family must occupy a unit rehabilitated under the Program;
- (v) The Family's options under the Program should the Family be required to move due to an increase or decrease in Family size; and
- (vi) The advisability and availability of blood lead level screening for children under 6 years of age and HUD's lead-based paint requirements in part 35, subparts A, B, H, and R of this title.
- (2) For all Families to be temporarily relocated, the briefing must include a discussion of the relocation policies.
- (e) Continued participation of Family when Contract is terminated. If an Owner evicts an assisted family in violation of the Contract or otherwise breaches the Contract, and the Contract for the unit is terminated, and if the Family was not at fault and is eligible for continued assistance, the Family may continue to receive housing assistance through the conversion of the Moderate Rehabilitation assistance to tenant-based assistance under the Section 8 certificate or voucher program. The Family must then be issued a certificate or voucher, and treated as any participant in the tenant-based programs under 24 CFR part 982, and must be assisted by the PHA in finding a suitable unit. All requirements of 24 CFR part 982 will be applicable except that the term of any housing assistance payments contract may not extend beyond the term of the initial

Moderate Rehabilitation Contract. If the Family is determined ineligible for continued assistance, the certificate or voucher may be offered to the next Family on the PHA's waiting list. The unit will remain under the Moderate Rehabilitation ACC which provides for such a conversion of the units; therefore no amendment to the ACC will be necessary to convert to the Section 8 tenant-based assistance programs.

(f) Families determined by the PHA to be ineligible. If a Family is determined 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 shall promptly notify the Family by letter of the determination and the reasons for it and the letter shall 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, based on a preponderance of the evidence, that the Family is ineligible, it shall 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, age, handicap, familial status, 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. The informal hearing requirements for denial and termination of assistance on the basis of ineligible immigration status are contained in 24 CFR part 5.

(Approved by the Office of Management and Budget under control number 2502–0123)

[47 FR 34383, Aug. 9, 1982, as amended at 49 FR 19945, May 10, 1984; 51 FR 11226, Apr. 1, 1986; 52 FR 1895, Jan. 15, 1987; 53 FR 847, Jan. 13, 1988; 53 FR 1155, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39705, Sept. 27, 1989; 55 FR 28547, July 11, 1990; 56 FR 7539, Feb. 22, 1991; 60 FR 14844, Mar. 20, 1995; 61 FR 9046, Mar. 6, 1996; 61 FR 13625, Mar. 27, 1996; 63 FR 23855, Apr. 30, 1998; 64 FR 50227, Sept. 15, 1999; 66 FR 28797, May 24, 2001; 73 FR 72342, Nov. 28, 2008; 75 FR 66261, Oct. 27, 2010]

§882.515 Reexamination of family income and composition.

(a) Regular reexaminations. The PHA must reexamine the income and com-

position of all families at least once every 12 months. After consultation with the family and upon verification of the information, the PHA must make appropriate adjustments in the Total Tenant Payment in accordance with part 813 of this chapter and determine whether the family's unit size is still appropriate (see §882.213). The PHA must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment. At the time of the annual reexamination of family income and composition, the PHA must require the family to disclose and verify Social Security Numbers. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see part 5, subpart B, of this title. At the first regular reexamination after June 19, 1995, the PHA shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA shall follow the requirements of 24 CFR part 5 concerning verification of immigration status of any new family member.

(b) Interim reexaminations. If the PHA receives information concerning a change in the family's income or other circumstances hetween regularly scheduled reexaminations, the PHA must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent, and Housing Assistance Payment must be verified. See part 5, subpart B, of this title for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see part 5, subpart B, of this title. At any interim reexamination after June 19, 1995 when there is a new family member, the PHA shall follow the requirements

of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) Obligation to supply information. The family must supply such certification, release, information or documentation as the PHA or HUD determine to be necessary, including submission of required evidence of citizenship or eligible immigration status, submission of social security numbers and verifying documentation, submission of signed consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, and submissions required for an annual or interim reexamination of family income and composition. See 24 CFR part 5.

(d) Continuation of housing assistance payments. A family's eligibility for Housing Assistance Payments shall continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by part 5, subpart B, of this title, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by part 5, subpart B, of this title. For provisions requiring termination of assistance when the PHA determines that a family member is not a U.S. citizen or does not have eligible immigration status, see 24 CFR parts 5 and 982 for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

[56 FR 7539, Feb. 22, 1991, as amended at 60 FR 14844, Mar. 20, 1995; 61 FR 11118, Mar. 18, 1996; 61 FR 13625, Mar. 27, 1996; 63 FR 23855, Apr. 30, 1998]

§882.516 Maintenance, operation and inspections.

- (a) Maintenance and operation. The Owner must provide all the services, maintenance and utilities as agreed to under the Contract, subject to abatement of housing assistance payments or other applicable remedies if the Owner fails to meet these obligations.
- (b) Periodic inspection. In addition to the inspections required prior to execution of the Contract, the PHA must inspect or cause to be inspected each dwelling unit under Contract at least annually and at such other times as may be necessary to assure that the Owner is meeting the obligations to maintain the unit in decent, safe and sanitary condition and to provide the agreed upon utilities and other services. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.
- (c) Units not decent, safe and sanitary. If the PHA notifies the Owner that the unit(s) under Contract are not being maintained in decent, safe and sanitary condition and the Owner fails to take corrective action (including corrective action with respect to the Family where the condition of the unit is the fault of the Family) within the time prescribed in the notice, the PHA may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments (even if the Family continues in occupancy), termination of the Contract on the affected unit(s) and assistance to Family in accordance §882.514(e).
- (d) PHA management. Where the PHA is managing units on which it is also administering the Housing Assistance Payments Contract pursuant to a management contract approved by HUD in accordance with §882.412, HUD will make reviews of project operations, including inspections, in addition to required PHA reviews. These HUD reviews will be sufficient to assure that

the Owner and the PHA are in full compliance with the terms and conditions of the Contract and the ACC. Should HUD determine that there are deficiencies, it may exercise any rights or remedies specified for the PHA under the Contract or reserved for HUD in the ACC, require termination of the management contract, or take other appropriate action.

(e) Periodic PHA audits must be conducted as required by HUD, in accordance with guidelines prescribed by 24 CFR part 44.

[47 FR 34383, Aug. 9, 1982, as amended at 53 FR 8065, Mar. 11, 1988]

§882.517 HUD review of contract compliance.

HUD will review program operations at such intervals as it deems necessary to ensure that the Owner and the PHA are in full compliance with the terms and conditions of the Contract and the ACC. Equal Opportunity review may be conducted with the scheduled HUD review or at any time deemed appropriate by HUD.

 $[43\ FR\ 61246,\ Dec.\ 29,\ 1978.\ Redesignated\ at\ 63\ FR\ 23854,\ Apr.\ 30,\ 1998]$

§ 882.518 Denial of admission and termination of assistance for criminals and alcohol abusers.

(a) Requirement to deny admission—(1) Prohibiting admission of drug criminals.
(i) The PHA must prohibit admission to the program of an applicant for three years from the date of termination of tenancy if any household member's federally assisted housing tenancy has been terminated for drug-related criminal activity. However, the PHA may admit the household if the PHA determines:

- (A) The household member who engaged in drug-related criminal activity and whose tenancy was terminated has successfully completed an approved supervised drug rehabilitation program, or
- (B) The circumstances leading to the termination of tenancy no longer exist (for example, the criminal household member has died or is imprisoned).
- (ii) The PHA must establish standards that permanently prohibit admission to the program if any household member has ever been convicted of

drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.

- (iii) The PHA must establish standards that prohibit admission of a household to the program if the PHA determines that any household member is currently engaging in illegal use of a drug or that it has reasonable cause to believe that a household member's pattern of illegal use of a drug, as defined in §5.100 of this title, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.
- (2) Prohibiting admission of sex offenders. The PHA must establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In this screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the State where the housing is located and in other States where household members are known to have resided
- (b) Authority to deny admission—(1) Prohibiting admission of other criminals. The PHA may prohibit admission of a household to the program under standards established by the PHA if the PHA determines that any household member is currently engaged in or has engaged in during a reasonable time before the admission decision:
 - (i) Drug-related criminal activity;
 - (ii) Violent criminal activity;
- (iii) Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents;
- (iv) Other criminal activity which may threaten the health or safety of the owner or any employee, contractor, subcontractor or agent of the owner who is involved in the owner's housing operations.
- (2) Reasonable time. The PHA may establish a period before the admission decision during which an applicant must not have engaged in the activities specified in paragraph (b)(1) of this section "reasonable time".

- (3) Sufficient evidence. If the PHA has denied admission to an applicant because a member of the household engaged in criminal activity in accordance with paragraph (b)(1) of this section, the PHA may reconsider the applicant if the PHA has sufficient evidence that the members of the household are not currently engaged in, and have not engaged in criminal activity during a reasonable period, as determined by the PHA, before the admission decision.
- (i) The PHA would have "sufficient evidence" if the household member submitted a certification that she or he is not currently engaged in and has not engaged in such criminal activity during the specified period and provided supporting information from such sources as a probation officer, a landlord, neighbors, social service agency workers and criminal records, which the PHA verified.
- (ii) For purposes of this section, a household member is "currently engaged in" criminal activity if the person has engaged in the behavior recently enough to justify a reasonable belief that the behavior is current.
- (4) Prohibiting admission of alcohol abusers. The PHA must establish standards that prohibit admission to the program if the PHA determines that it has reasonable cause to believe that a household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.
- (c) Terminating assistance—(1) Terminating assistance for drug criminals. (i) The PHA may terminate assistance for drug-related criminal activity engaged in on or near the premises by any tenant, household member, or guest, and any such activity engaged in on the premises by any other person under the tenant's control. In addition, the PHA may terminate assistance if the PHA determines that a household member is illegally using a drug or when the PHA determines that a pattern of illegal use of a drug interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.
- (ii) The PHA must immediately terminate assistance for a family under the program if the PHA determines

- that any member of the household has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.
- (2) Terminating assistance for other criminals. (i) The PHA must establish standards that allow the PHA to terminate assistance for a family if the PHA determines that any household member is engaged in criminal activity that threatens the health, safety, or right of peaceful enjoyment of the premises by other residents or by persons residing in the immediate vicinity of the premises.
- (ii) The PHA may terminate assistance for a family if the PHA determines that a member of the household is:
- (A) Fleeing to avoid prosecution, or custody or confinement after conviction, for a crime, or attempt to commit a crime, that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- (B) Violating a condition of probation or parole imposed under Federal or State law.
- (3) Evidence of criminal activity. (i) The PHA may terminate assistance for criminal activity in accordance with this section if the PHA determines, based on a preponderance of the evidence, that a covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity.
- (ii) See part 5, subpart J, of this title for provisions concerning access to criminal records.
- (4) Terminating assistance for alcohol abusers. The PHA must establish standards that allow termination of assistance for a family if the PHA determines that a household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

 $[66~{\rm FR}~28797,~{\rm May}~24,~2001]$

Subparts F-G [Reserved]

Subpart H—Section 8 Moderate Rehabilitation Single Room Occupancy Program for Homeless Individuals

SOURCE: 61 FR 48057, Sept. 11, 1996, unless otherwise noted.

§882.801 Purpose.

The purpose of the Section 8 Moderate Rehabilitation Program for Single Room Occupancy (SRO) Dwellings for Homeless Individuals is to provide rental assistance for homeless individuals in rehabilitated SRO housing. The Section 8 assistance is in the form of rental assistance payments. These payments equal the rent for the unit, including utilities, minus the portion of the rent payable by the tenant under the U.S. Housing Act of 1937 (42 U.S.C. 1437 et seq.).

§882.802 Definitions.

In addition to the definitions set forth in 24 CFR part 5 and §882.102 (except for the definition of "Single Room Occupancy (SRO) Housing" therein) the following will apply:

Agreement to enter into housing assistance payments contract (Agreement). A written agreement between the owner and the HA that, upon satisfactory completion of the rehabilitation in accordance with requirements specified in the Agreement, the HA will enter into a housing assistance payments contract with the owner.

Applicant. A public housing agency or Indian housing authority (collectively referred to as HAs), or a private nonprofit organization that applies for assistance under this program. HUD will require private nonprofit applicants to subcontract with public housing agencies to administer their rental assistance

Eligible individual ("individual"). An individual who is capable of independent living and is authorized for admission to assisted housing under 24 CFR part 5.

Homeless individual. An individual as described in section 103 of the McKinney Act (42 U.S.C. 11302).

McKinney Act. The Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11301 et seq.).

Moderate rehabilitation. Rehabilitation involving a minimum expenditure of \$3,000 for a unit, including its prorated share of work to be accomplished on common areas or systems, to upgrade to decent, safe, and sanitary condition to comply with the Housing Quality Standards or other standards approved by HUD, from a condition below those standards (improvements being of a modest nature and other than routine maintenance).

Private nonprofit organization. An organization, no part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual. The organization must:

- (1) Have a voluntary board;
- (2) Have a functioning accounting system that is operated in accordance with generally accepted accounting principles, or designate an entity that will maintain a functioning accounting system for the organization in accordance with generally accepted accounting principles; and
- (3) Practice nondiscrimination in the provision of assistance.

Single room occupancy (SRO) housing. A unit for occupancy by one person, which need not but may contain food preparation, sanitary facilities, or both.

Statement of individual responsibility. An agreement, in the form prescribed by HUD, between the HA and an individual to be assisted under the program, stating the obligations and responsibilities of the two parties.

[61 FR 48057, Sept. 11, 1996, as amended at 63 FR 23855, Apr. 30, 1998]

§882.803 Project eligibility and other requirements.

- (a) Eligible and ineligible properties. (1) Except as otherwise provided in paragraph (a) of this section, housing suitable for moderate rehabilitation is eligible for inclusion under this program. Existing structures of various types may be appropriate for this program, including single family houses and multifamily structures.
- (2) Housing is not eligible for assistance under this program if it is receiving Federal funding for rental assistance or operating costs under other HUD programs.

- (3) Nursing homes and related facilities such as intermediate care or board and care homes; units within the grounds of penal, reformatory, medical, mental, and similar public or private institutions; and facilities providing continual psychiatric, medical, or nursing services are not eligible for assistance under this program.
- (4) No Section 8 assistance may be provided with respect to any unit occupied by an owner.
- (5) Housing located in the Coastal Barrier Resources System designated under the Coastal Barriers Resources Act is not eligible.
- (6) Single-sex facilities are allowable under this program, provided that the HA determines that because of the physical limitations or configuration of the facility, considerations of personal privacy require that the facility (or parts of the facility) be available only to members of a single sex.
- (b)(1) *Physical condition standards*. Section 882.404 applies to this program.
- (2) Site standards. (i) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed; adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with local law, may be considered adequate utilities.)
- (ii) The site must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4), title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601–19), E.O. 11063 (as amended by E.O. 12259; 3 CFR, 1959–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307), and HUD regulations issued pursuant thereto.
- (iii) The site must be accessible to social, recreational, educational, commercial, and health facilities, and other appropriate municipal facilities and services.
- (c) Financing. Section 882.405 applies to this program.
- (d) *Relocation*. Section 882.406 applies to a project assisted under this program.
- (e) *HA-owned housing*. (1) A unit that is owned by the HA that administers

- the assistance under the ACC (including a unit owned by an entity substantially controlled by the HA) may only be assisted if:
- (i) The unit is not ineligible under §882.803(a); and
- (ii) HUD approves the base and contract rent calculations prior to execution of the Agreement and prior to execution of the HAP contract.
- (2) The HA as owner is subject to the same program requirements that apply to other owners in the program.
- [61 FR 48057, Sept. 11, 1996, as amended at 63 FR 46579, Sept. 1, 1998; 64 FR 50227, Sept. 15, 1999]

§882.804 Other Federal requirements.

- (a) Participation in this program requires compliance with the Federal requirements set forth in 24 CFR 5.105, and with the Americans with Disabilities Act (42 U.S.C. 12101 et seq.).
- (b) For agreements covering nine or more assisted units, the following requirements for labor standards apply:
- (1) Not less than the wages prevailing in the locality, as determined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a through 276a-5), must be paid to all laborers and mechanics employed in the development of the project, other than volunteers under the conditions set out in 24 CFR part 70:
- (2) The employment of laborers and mechanics is subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333); and
- (3) HAs, owners, contractors, and subcontractors must comply with all related rules, regulations, and requirements.
- (c) The environmental review requirements of 24 CFR part 58, implementing the National Environmental Policy Act and related environmental laws and authorities, apply to this program.

§ 882.805 HA application process, ACC execution, and pre-rehabilitation activities.

(a) Review. When funds are made available for assistance, HUD will publish a notice of funding availability (NOFA) in the FEDERAL REGISTER in accordance with the requirements of 24 CFR part 4. HUD will review and screen

applications in accordance with the guidelines, rating criteria, and procedures published in the NOFA.

- (b) ACC Execution. (1) Before execution of the annual contributions contract (ACC), the HA must submit to the appropriate HUD field office the following:
- (i) Estimates of Required Annual Contributions, Forms HUD-52672 and HUD-52673;
- (ii) Administrative Plan, which should include:
 - (A) Procedures for tenant outreach;
- (B) A policy governing temporary relocation; and
- (C) A mechanism to monitor the provision of supportive services.
- (iii) Proposed Schedule of Allowances for Tenant-Furnished Utilities and Other Services, Form HUD-52667, with a justification of the amounts proposed;
- (iv) If applicable, proposed variations to the acceptability criteria of the Housing Quality Standards (see §882.803(b)); and
- (v) The fire and building code applicable to each structure.
- (2) After HUD has approved the HA's application, the review and comment requirements of 24 CFR part 791 have been complied with, and the HA has submitted (and HUD has approved) the items required by paragraph (b)(1) of this section, HUD and the HA must execute the ACC in the form prescribed by HUD. The initial term of the ACC must be 11 years. This term allows one year to rehabilitate the units and place them under a 10-year HAP contract. The ACC must give HUD the option to renew the ACC for an additional 10 years.
- (3) Section 882.403(a) (Maximum Total ACC Commitments) applies to this program.
- (4) Section 882.403(b) (Project account) applies to this program.
- (c)(1) If an owner is proposing to accomplish at least \$3000 per unit of rehabilitation by including work to make the unit(s) accessible to a person with disabilities occupying the unit(s) or expected to occupy the unit(s), the PHA may approve such units not to exceed 5 percent of the units under its Program, provided that accessible units are necessary to meet the requirements of 24

CFR part 8, which implements section 504 of the Rehabilitation Act of 1973. The rehabilitation must make the unit(s), and access and egress to the unit(s), barrier-free with respect to the disability of the individual in residence or expected to be in residence.

- (2) The PHA must take the applications and determine the eligibility of all tenants residing in the approved units who wish to apply for the Program. After eligibility of all the tenants has been determined, the Owner must be informed of any adjustment in the number of units to be assisted. In order to make the most efficient use of housing assistance funds, an Agreement may not be entered into covering any unit occupied by a family which is not eligible to receive housing assistance payments. Therefore, the number of units approved by the PHA for a particular proposal must be adjusted to exclude any unit(s) determined by the PHA to be occupied by a family not eligible to receive housing assistance payments. Eligible Families must also be briefed at this stage as to their rights and responsibilities under the Program.
- (3) Should the Owner agree with the assessment of the PHA as to the work that must be accomplished, the preliminary feasibility of the proposal, and the number of units to be assisted, the Owner, with the assistance of the PHA where necessary, must prepare detailed work write-ups including specifications and plans (where necessary) so that a cost estimate may be prepared. The work write-up will describe how the deficiencies eligible for amortization through the Contract Rents are to be corrected including minimum acceptable levels of workmanship and materials. From this work write-up, the Owner, with the assistance of the PHA, must prepare a cost estimate for the accomplishment of all specified
- (4) The owner is responsible for selecting a competent contractor to undertake the rehabilitation. The PHA must propose opportunities for minority contractors to participate in the program.
- (5) The PHA must discuss with the Owner the various financing options available. The terms of the financing

must be approved by the PHA in accordance with standards prescribed by HUD.

- (6) Before execution of the Agreement, the HA must:
- (i)(A) Inspect the structure to determine the specific work items that need to be accomplished to bring the units to be assisted up to the Housing Quality Standards (see §882.803(b)) or other standards approved by HUD;
- (B) Conduct a feasibility analysis, and determine whether cost-effective energy conserving improvements can be added;
- (C) Ensure that the owner prepares the work write-ups and cost estimates required by paragraph (c)(3) of this section;
- (D) Determine initial base rents and contract rents:
- (ii) Assure that the owner has selected a contractor in accordance with paragraph (c)(4) of this section;
- (iii) After the financing and a contractor are obtained, determine whether the costs can be covered by initial contract rents, computed in accordance with paragraph (d) of this section; and, if a structure contains more than 50 units to be assisted, submit the base rent and contract rent calculations to the appropriate HUD field office for review and approval in sufficient time for execution of the Agreement in a timely manner:
- (iv) Obtain firm commitments to provide necessary supportive services;
- (v) Obtain firm commitments for other resources to be provided;
- (vi) Determine that the \$3,000 minimum amount of work requirement and other requirements in paragraph (c)(1) of this section are met:
- (vii) Determine eligibility of current tenants, and select the units to be assisted, in accordance with paragraph (c)(2) of this section;
- (viii) Comply with the financing requirements in paragraph (c)(5) of this section:
- (ix) Assure compliance with all other applicable requirements of this subpart; and
- (x) If the HA determines that any structure proposed in its application is infeasible, or the HA proposes to select a different structure for any other reason, the HA must submit information

for the proposed alternative structure to HUD for review and approval. HUD will rate the proposed structure in accordance with procedures in the applicable notice of funding availability. The HA may not proceed with processing for the proposed structure or execute an Agreement until HUD notifies the HA that HUD has approved the proposed alternative structure and that all requirements have been met.

- (d) Initial contract rents. Section 882.408 (Initial contract rents), including the establishment of fair market rents for SRO units at 75 percent of the O-bedroom Moderate Rehabilitation Fair Market Rent, applies to this program, except as follows:
- (1)(i) In determining the monthly cost of a rehabilitation loan, in accordance with \$882.408(c)(2), a loan term of a least 10 years (instead of 15 years) may be used. The exception in \$882.408(c)(2)(iii) for using the actual loan term if the total amount of the rehabilitation is less than \$15,000 continues to apply. In addition, the cost of the rehabilitation that may be included for the purpose of calculating the amount of the initial contract rent for any unit must not exceed the lower of:
- (A) The projected cost of rehabilitation: or
- (B) The per unit cost limitation that is established by FEDERAL REGISTER notice, plus the cost of the fire and safety improvements required by 24 CFR 982.605(b)(4). HUD may, however, increase the limitation in paragraph (d)(1)(i)(B) of this section by an amount HUD determines is reasonable and necessary to accommodate special local conditions, including high construction costs or stringent fire or building codes. HUD will publish future cost limitation changes in the FEDERAL REGISTER in the Notice of Funding Availability issued each year.
- (ii) If the Federal Housing Administration (FHA) believes that high construction costs warrant an increase in the per unit cost limitation in paragraph (d)(1)(i)(B) of this section, the HA must demonstrate to HUD's satisfaction that a higher average per unit amount is necessary to conduct this program, and that every appropriate step has been taken to contain the

amount of the rehabilitation within the published per unit cost limitation established at that time, plus the cost of the required fire and safety improvements. These higher amounts will be determined as follows:

- (A) HUD may approve a higher per unit amount up to, but not to exceed, an amount computed by multiplying the HUD-approved High Cost Percentage for Base Cities (used for computing FHA high cost area adjustments) for the area, by the current published cost limitation plus the cost of the required fire and safety improvements.
- (B) HUD may, on a structure-bystructure basis, increase the level approved in paragraph (d)(1)(i) of this section to up to an amount computed by multiplying 2.4 by the current published cost limitation plus the cost of the required fire and safety improvements.
- (2) In approving changes to initial contract rents during rehabilitation in accordance with \$882.408(d), the revised initial contract rents may not reflect an average per unit rehabilitation cost that exceeds the limitation specified in paragraph (d)(1) of this section.
- (3) If the structure contains four or fewer SRO units, the Fair Market Rent for that size structure (the Fair Market Rent for a 1-, 2-, 3-, or 4-bedroom unit, as applicable) must be used to determine the Fair Market Rent limitation instead of using the separate Fair Market Rent for each SRO unit. To determine the Fair Market Rent limitation for each SRO unit, the Fair Market Rent for the structure must be apportioned equally to each SRO unit.
- (4) Contract rents must not include the costs of providing supportive services, transportation, furniture, or other nonhousing costs, as determined by HUD. SRO program assistance may be used for efficiency units selected for rehabilitation under this program, but the gross rent (contract rent plus any Utility Allowance) for these units will be no higher than for SRO units (i.e., 75 percent of the 0-bedroom Moderate Rehabilitation Fair Market Rent).

(Approved by the Office of Management and Budget under control number 2506–0131)

 $[61~{\rm FR}~48057,~{\rm Sept.}~11,~1996,~{\rm as~amended~at}~63~{\rm FR}~23855,~{\rm Apr.}~30,~1998]$

§ 882.806 Agreement to enter into housing assistance payments contract.

- (a) Rehabilitation period—(1) Agreement. Before the owner begins any rehabilitation, the HA must enter into an Agreement with the owner in the form prescribed by HUD.
- (2) Timely performance of work. (i) After execution of the Agreement, the Owner must promptly proceed with the rehabilitation work as provided in the Agreement. If the work is not so commenced, diligently continued, or completed, the PHA will have the right to rescind the Agreement, or take other appropriate action.
- (ii) The Agreement must provide that the work must be completed and the contract executed within 12 months of execution of the ACC. HUD may reduce the number of units or the amount of the annual contribution commitment if, in HUD's determination, the HA fails to demonstrate a good faith effort to adhere to this schedule or if other reasons justify reducing the number of units
- (3) Inspections. The PHA must inspect, as appropriate, during rehabilitation to ensure that work is proceeding on schedule and is being accomplished in accordance with the terms of the Agreement, particularly that the work meets the acceptable levels of workmanship and materials specified in the work write-up.
- (4) Changes. (i) The Owner must submit to the PHA for approval any changes from the work specified in the Agreement which would alter the design or the quality of the required rehabilitation. The PHA may condition its approval of such changes on a reduction of the Contract Rents. If changes are made without prior PHA approval, the PHA may determine that Contract Rents must be reduced or that the Owner must remedy any deficiency as a condition for acceptance of the unit(s).
- (ii) Contract rents may not be increased except in accordance with §§ 882.408(d) and 882.805(d)(2).
- (b) Completion of rehabilitation—(1) Notification of completion. Section 882.507(a) applies to this program.

- (2) Evidence of completion. Section 882.507(b) applies to this program, except that §882.507(b)(2)(iv), concerning lead-based paint requirements, does not apply.
- (3) Actual cost and rehabilitation loan certifications. Section 882.507(c) applies to this program, except that contract rents must be established in accordance with §882.805(d).
- (4) Review and inspections. Section 882.507(d) applies to this program.
- (5) Acceptance. Section 882.507(e) applies to this program.

(Approved by the Office of Management and Budget under control number 2502-0367)

[61 FR 48057, Sept. 11, 1996, as amended at 63 FR 23856, Apr. 30, 1998]

§ 882.807 Housing assistance payments

- (a) Time of execution. Upon PHA acceptance of the unit(s) and certifications pursuant to §882.507, the Contract will be executed by the Owner and the PHA. The effective date must be no earlier than the PHA inspection which provides the basis for acceptance as specified in §882.507(e).
- (b) Term of contract. The contract for any unit rehabilitated in accordance with this program must be for a term of 10 years. The contract must give the HA the option to renew the contract for an additional 10 years.
- (c) Changes in contract rents from agreement. The contract rents may be higher or lower than those specified in the Agreement, in accordance with §882.805(d).
- (d) *Unleased unit(s)*. At the time of execution of the Contract, the Owner will be required to submit a list of dwelling unit(s) leased and not leased as of the effective date of the Contract.
- (e) Contract rents at end of rehabilitation loan term. For a contract in which the initial contract rent was based upon a loan term shorter than 10 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 plus all subsequent adjustments.

(Approved by the Office of Management and Budget under control number 2502–0367)

[61 FR 48057, Sept. 11, 1996, as amended at 63 FR 23856, Apr. 30, 1998]

§882.808 Management.

- (a) Outreach to homeless individuals and appropriate organizations. (1) The HA or the owner must undertake outreach efforts to homeless individuals so that they may be brought into the program. The outreach effort should include notification to emergency shelter providers and other organizations that could provide referrals of homeless individuals. If the owner conducts the outreach effort, the owner must notify the HA so that it may provide referrals of homeless individuals.
- (2) Additional outreach concerns. If the procedures that the HA or owner intends to use to publicize the availability of this program are unlikely to reach persons of any particular race, color, religion, sex, age, national origin, or mental or physical disability who may qualify for admission to the program, the HA or owner must establish additional procedures that will ensure that such persons are made aware of the availability of the program. The HA or owner must also adopt and implement procedures to ensure that interested persons can obtain information concerning the existence and location of services and facilities that are accessible to persons with disabilities.
- (3) First priority for homeless individuals. Homeless individuals must have the first priority for occupancy of housing rehabilitated under this pro-
- (b) Individual participation—(1) Initial determination of individual eligibility. Section 882.514(a) applies to this program.
- (2) Owner selection of individuals. The owner must rent all vacant units under contract to homeless individuals located through HA or owner outreach efforts and determined by the HA to be eligible. The owner is responsible for tenant selection and may refuse any individual, provided the owner does not unlawfully discriminate. If the owner

rejects an individual, and the individual believes that the owner's rejection was the result of unlawful discrimination, the individual may reguest the assistance of the HA in resolving the issue and may also file a complaint with HUD's Office of Fair Housing and Equal Opportunity in accordance with 24 CFR 103.25. If the individual requests the assistance of the HA, and if the HA cannot resolve the complaint promptly, the HA should advise the individual that he or she may file a complaint with HUD, and provide the individual with the address of the nearest HUD Office of Fair Housing and Equal Opportunity.

- (3) Briefing of individuals. Section 882.514(d) applies to this program, except that §882.514(d)(1)(vi) does not apply.
- (4) Continued participation of individual when contract is terminated. Section 882.514(e) applies to this program.
- (5) Individuals determined by the HA to be ineligible. Section 882.514(f) applies to this program. In addition, individuals are not precluded from exercising other rights if they believe they have been discriminated against on the basis of age.
- (c) Lease. Sections 882.403(d) and 882.511(a) apply to this program. In addition, the lease must limit occupancy to one eligible individual.
- (d) Security and utility deposits. Section 882.414 applies to this program.
- (e) Rent adjustments. Section 882.410 applies to this program.
- (f) Payments for vacancies. Section 882.411 applies to this program.
- (g) Subcontracting of owner services. Section 882.412 applies to this program.
- (h) Responsibility of the individual. Section 882.413 applies to this program.
- (i) Reexamination of individual income—(1) Regular reexaminations. The HA must reexamine the income of all individuals at least once every 12 months. After consultation with the individual and upon verification of the information, the HA must make appropriate adjustments in the Total Tenant Payment in accordance with 24 CFR part 5, subpart F, and verify that only one individual is occupying the unit. The HA must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Pay-

- ment. At each regular reexamination, the HA must follow the requirements of 24 CFR part 5, subpart E concerning verification of immigration status of any new family member.
- (2) Interim reexaminations. The individual shall supply such certification, release, information, or documentation as the PHA or HUD determines to be necessary, including submissions required for interim reexaminations of individual income and determinations as to whether only one individual is occupying the unit. In addition §882.515(b) shall apply.
- (3) Continuation of Housing Assistance Payments. Section 882.515(d) applies to this program.
- (j) Overcrowded units. If the HA determines that anyone other than, or in addition to, the eligible individual is occupying an SRO unit assisted under this program, the HA must take all necessary action, as soon as reasonably feasible, to ensure that the unit is occupied by only one eligible individual.
- (k) Adjustment of utility allowance. Section 882.510 applies to this program.
- (1) Termination of tenancy. Section 882.511 applies to this program. For provisions requiring termination of assistance when the HA determines that a family member is not a U.S. citizen or does not have eligible immigration status, see 24 CFR part 5, subpart E for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, or for provisions concerning deferral of termination of assistance.
- (m) Reduction of number of units covered by contract. Section 882.512 applies to this program.
- (n) Maintenance, operation, and inspections. Section 882.516 applies to this program.
- (o) *HUD review of contract compliance*. Section 882.517 applies to this program.
- (p) Records and reports. Each recipient of assistance under this subpart must keep any records and make any reports that HUD may require within the time-frame required.
- (q) Participation of homeless individuals. (1) Each approved applicant receiving assistance under this program,

except HAs, must provide for the participation of not less than one homeless individual or formerly homeless individual on the board of directors or other equivalent policymaking entity of such applicant, to the extent that the entity considers and makes policies and decisions regarding the rehabilitation of any housing with assistance under this subpart. This requirement is waived if the applicant is unable to meet this requirement and presents a plan that HUD approves to consult with homeless or formerly homeless individuals in considering and making such policies and decisions.

(2) To the maximum extent practicable, each approved applicant must involve homeless individuals and families, through employment, volunteer services, or otherwise, in rehabilitating and operating facilities assisted under this subpart, and in providing services for occupants of such facilities.

(Approved by the Office of Management and Budget under control number 2506-0131)

[61 FR 48057, Sept. 11, 1996, as amended at 63 FR 23857, Apr. 30, 1998]

§ 882.809 Waivers.

Section 5.405(b) of this title does not apply to this program.

§882.810 Displacement, relocation, and acquisition.

- (a) Minimizing displacement. (1) Consistent with the other goals and objectives of this part, owners must assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the project upon its completion.
- (2) Whenever a building/complex is rehabilitated, and some but not all of the rehabilitated units will be assisted upon completion of the rehabilitation, the relocation requirements described in this section apply to the occupants of each rehabilitated unit, whether or not Section 8 assistance will be provided for the unit.

- (b) Temporary relocation. The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:
- (1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation;
- (2) Appropriate advisory services, including reasonable advance written notice of:
- (i) The date and approximate duration of the temporary relocation;
- (ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period:
- (iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the project upon completion; and
- (iv) The assistance required under paragraph (b)(1) of this section.
- (c) Relocation assistance for displaced persons. A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601-4655) and implementing regulations in 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601-19) and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority is located in an area of minority concentration, such person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.
- (d) Real property acquisition requirements. The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.
- (e) Appeals. A person who disagrees with the HA's determination concerning whether the person qualifies as

a displaced person, or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the HA. A person who is dissatisfied with the HA's determination on his or her appeal may submit a written request for review of that determination to the HUD field office.

- (f) Responsibility of HA. (1) The HA must certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations in 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the HA to comply with these provisions.
- (2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs may be paid for with local public funds or funds available from other sources. The cost of HA advisory services for temporary relocation of tenants to be assisted under the program also may be paid from preliminary administrative funds.
- (3) The HA must maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The HA must maintain data on the racial, ethnic, gender, and disability status of displaced persons.
- (g) Definition of displaced person. (1) For purposes of this section, the term displaced person means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term displaced person includes, but may not be limited to:
- (i) A person who moves permanently from the real property after receiving notice requiring such move, if the move occurs on or after the date the owner submits to the HA the owner proposal that is later approved;
- (ii) A person, including a person who moves from the property before the date the owner submits the proposal to the HA, if the HA or HUD determines that the displacement resulted directly

from acquisition, rehabilitation, or demolition for the assisted project; or

- (iii) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the execution of the Agreement between the owner and the HA (or, for projects assisted under subpart H of this part, after the "initiation of negotiations" (see paragraph (h) of this section)), if the move occurs before the tenant is provided a written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon its completion. Such reasonable terms and conditions must include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:
- (A) The tenant's monthly rent before the execution of the agreement and estimated average monthly utility costs; or
- (B) Thirty percent of gross household income.
- (C) For projects assisted under subpart H of this part, the amount cannot exceed the greater of the tenant's monthly rent before the "initiation of negotiations" and estimated average monthly utility costs; or (if the tenant is low-income) the total tenant payment, as determined under 24 CFR 5.613, or (if the tenant is not low-income) 30 percent of gross household income: or
- (iv) A tenant-occupant of a dwelling, who is required to relocate temporarily, but does not return to the building/complex, if either:
- (A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or
- (B) Other conditions of the temporary relocation are not reasonable; or
- (v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the building/complex, if either:
- (A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

Pt. 883

- (B) Other conditions of the move are not reasonable.
- (2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a displaced person (and is not eligible for relocation assistance under the URA or this section), if:
- (i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, or local law, or other good cause, and the HA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance:
- (ii) The person moved into the property after the submission of the preliminary proposal (or application, if there is no preliminary proposal), and before signing a lease and commencing occupancy, received written notice of the project and its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a displaced person (or for any assistance provided under this section) as a result of the project:
- (iii) The person is ineligible under 49 CFR 24.2(g)(2); or
- (iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.
- (3) The HA may request, at any time, HUD's determination of whether a displacement is or would be covered by this section.
- (h) Definition of initiation of negotiations. For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of private-owner rehabilitation or demolition of the real property, the term initiation of negotiations means the execution of the Agreement between the owner and the HA.

(Approved by the Office of Management and Budget under OMB control number 2506-0121)

[61 FR 48056, Sept. 11, 1996. Redesignated and amended at 63 FR 23857, Apr. 30, 1998]

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PRO-GRAM—STATE HOUSING AGEN-CIES

Subpart A—Summary and Guide

Sec.

883.101 General.

883.105 Applicability of part 883 in effect as of February 29, 1980.

883.106 Applicability and relationships between HUD and State agencies.

Subpart B [Reserved]

Subpart C—Definitions and Other Requirements

883.301 Applicability.

883.302 Definitions.

883.306 Limitation on distributions.

883.307 Financing.

883.308 Adjustments to reflect changes in terms of financing

883.310 Property standards.

883.313 Audit.

Subparts D–E [Reserved]

Subpart F—Housing Assistance Payments Contract

883.601 Applicability.

883.602 The contract.

883.603 Term of contract.

883.604 Maximum annual commitment and project account.

883.605 Leasing to eligible families.

883.606 Administration fee.

883.607 Default by owner and/or agency.

883.608 Notice upon contract expiration.

Subpart G-Management

883.701 Cross-reference.

AUTHORITY: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

SOURCE: 45 FR 6889, Jan. 30, 1980, unless otherwise noted.

Subpart A—Summary and Guide

§883.101 General.

(a) The purpose of the Section 8 program is to provide decent, safe and sanitary housing for low-income families through the use of a system of housing assistance payments. These needs may be met by statewide or special purpose housing agencies established by the various States.

(b) The regulations in this part 883 contain the policies and procedures applicable to the Section 8 program for these State agencies.

[61 FR 13592, Mar. 27, 1996]

§883.105 Applicability of part 883 in effect as of February 29, 1980.

- (a) Part 883, in effect as of February 29, 1980, applies to projects for which the initial application was submitted on or after the February 29, 1980, effective date. (See 24 CFR part 883, revised as of April 1, 1980.) Projects for which applications or proposals were submitted before the February 29, 1980, effective date of part 883 have been processed under the part 883 regulations and procedures in effect at the date of submission. If, however, the agency notified HUD within 60 calendar days of the February 29, 1980, effective date of the part 883 regulations that they chose to have the provisions of part 883, in effect as of February 29, 1980, apply to a specific case, it must have promptly modified the application(s) and proposal(s) to comply.
- (b) Subpart F of this part, dealing with the HAP contract and subpart G of this part, dealing with management, apply to all projects for which an Agreement was not executed before the February 29, 1980, effective date of part 883. In cases where an Agreement has been executed:
- (1) The Agency, owner and HUD may agree to make the revised subpart F of this part applicable and execute appropriate amendments to the Agreement or Contract:
- (2) The Agency, Owner and HUD may agree to make the revised subpart G of this part applicable (with or without the limitation on distributions) and execute appropriate amendments to the Agreement or Contract.
- (c) Section 883.708, Termination of Tenancy and Modifications of Leases, applies to new families who begin occupancy or execute a lease on or after 30 days following the February 29, 1980, effective date of part 883. This section also applies to families not covered by the preceding sentence, including families currently under lease, who have a lease in which a renewal becomes effective on or after the 60th day following the February 29, 1980 effective date of

part 883. A lease is considered renewed when both the landlord and the family fail to terminate a tenancy under a lease permitting either to terminate.

(d) Notwithstanding the provisions of paragraph (b) of this section, the provisions of 24 CFR part 5 (concerning preferences for selection of applicants) apply to all projects, regardless of when am Agreement was executed.

[61 FR 13592, Mar. 27, 1996]

§ 883.106 Applicability and relationships between HUD and State agencies.

- (a) Applicability. This subpart A applies to contract authority set aside for a State Agency.
- (b) General responsibilities and relationships. Subject to audit and review by HUD to assure compliance with Federal requirements and objectives, Housing Finance Agencies (HFAs) shall assume responsibility for project development and for supervision of the development, management and maintenance functions of owners.
- (c) Certifications and HUD monitoring. (1) Generally, when reviewing any of the certifications of an HFA required by this part, HUD shall accept the certification as correct. If HUD has substantial reason to question the correctness of any element in a certification, HUD shall promptly bring the matter to the attention of the HFA and ask it to provide documentation supporting the certifications. When the HFA provides such evidence, HUD will act in accordance with the HFA's judgment or evaluation unless HUD determines that the certification is clearly not supported by the documentation.
- (2) HUD will periodically monitor the activities of HFA's participating under this part only with respect to Section 8 or other HUD programs. This monitoring is intended primarily to ensure that certifications submitted and projects operated under this part reflect appropriate compliance with Federal law and requirements.

[61 FR 13592, Mar. 27, 1996]

Subpart B [Reserved]

§883.301

Subpart C—Definitions and Other Requirements

§883.301 Applicability.

The provisions of this subpart are applicable to newly constructed and substantially rehabilitated housing allocated contract authority under subpart B of this part and processed and constructed under the Fast Tract Procedures of subpart D. The definitions contained in §883.302 and the provisions of §883.307(b) regarding review and approval of financing documents, however, apply to all of this part.

§883.302 Definitions.

The terms Fair Market Rent (FMR), HUD, and Public Housing Agency (PHA) are defined in 24 CFR part 5.

ACC (Annual Contributions Contract). The contract between the State Agency and HUD under which HUD commits to provide the Agency with the funds needed to make housing assistance payments to the Owner and to pay the Agency for administrative fees in cases where it is eligible for them.

Agency. See State Agency.

Agreement—(Agreement to enter into Housing Assistance Payments Contract). The agreement between the owner and the State Agency on new construction and substantial rehabilitation projects which provides that, upon satisfactory completion of the project in accordance with the HUD-approved proposal or final proposal, the Agency will enter into a Housing Assistance Payments Contract with the owner.

 $\ensuremath{\textit{Annual Income}}$. As defined in part 5 of this title.

Assisted unit. A dwelling unit eligible for assistance under a Contract.

Application. A request, submitted by a State Agency, to assign a portion of its set-aside to a specific jurisdiction or project.

Contract—(Housing Assistance Payments Contract). The Contract entered into by the owner and the State Agency upon satisfactory completion of a new construction or substantial rehabilitation project which sets forth the rights and duties of the parties with respect to the project and the payments under the Contract.

Contract Rent. The total amount of rent specified in the Contract as pay-

able by the Agency and the tenant to the owner for an assisted unit. In the case of the rental of only a manufactured home space, "contract rent" is the total rent specified in the Contract as payable by the Agency and the tenant to the owner for rental of the space, including fees or charges for management and maintenance services with respect to the space, but excluding utility charges for the manufactured home.

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

Existing Housing. Housing assisted under a contract entered into pursuant to 24 CFR part 882. (See subpart E of this part.)

Fast Track procedures. The procedures contained in subpart D for processing and construction of new construction and substantial rehabilitation projects. In order to be eligible for these procedures, a State Agency must provide permanent financing without Federal mortgage insurance or a Federal guarantee except coinsurance under Section 244 of the National Housing Act.

Financing Cost Contingency (FCC). The maximum amount of contract authority which may be used to amend the Annual Contributions Contract (ACC) and Housing Assistance Payments Contract (HAP Contract) to provide increased contract rents to cover higher than anticipated debt service on the loan for a new construction or substantial rehabilitation project.

Gross Rent. As defined in part 813 of this chapter.

Household type. The three household types are (1) elderly and handicapped, (2) family, and (3) large family.

Housing Assistance Payment. The payment made to the Owner of an assisted unit by the State Agency as provided in the Contract. Where the unit is leased to an eligible Family, the payment is the difference between the Contract Rent and the Tenant Rent. An additional payment is made to the Family when the Utility Allowance is greater than Total Tenant Payment. In the case of a Family renting only a manufactured home space as provided in §883.303(i), the Housing Assistance Payment is the difference between

Gross Rent and the Total Tenant Payment, but such payment may not exceed the Contract Rent for the space, and no additional payment is made to the Family. A Housing Assistance Payment, known as a "vacancy payment", may be made to the Owner when an assisted unit is vacant, as provided in § 883.712.

Housing Assistance Plan (HAP). A housing plan submitted by a unit of general local or State government and approved by HUD as being acceptable under the standards of 24 CFR part 570.

Housing type. The three housing types are new construction, substantial rehabilitation, and existing housing/moderate rehabilitation.

HFA (Housing Finance Agency). A State Agency which provides permanent financing for newly constructed or substantially rehabilitated housing processed under subpart D and financed without Federal mortgage insurance or a Federal guarantee except coinsurance under Section 244 of the National Housing Act.

Independent Public Accountant. Certified Public Accountant or a licensed or registered public accountant, none of which has a business relationship with the owner or State Agency except for the performance of audit, systems work and tax preparation. If not certified, the Independent Public Accountant must have been licensed or registered by a regulatory authority of a State or other political subdivision of the United States on or before December 31, 1970. In States that do not regulate the use of the title "public accountant," only Certified Public Accountants may be used.

Moderate rehabilitation. The improvement of dwelling units in accordance with HUD requirements, under 24 CFR part 882.

New construction. Housing for which construction starts after execution of an Agreement, or housing which is already under construction when the Agreement is executed provided that:

(a) At the date an application is submitted to HUD, a substantial amount of construction (generally at least 25 percent) remains to be completed;

(b) At the date of application to HUD, the project cannot be completed

and occupied by eligible families without assistance under this part; and

(c) At the time construction was initiated, all of the parties reasonably expected that the project would be completed without assistance under this part.

Override. The difference between an HFA's cost of borrowing on obligations issued to finance a new construction or substantial rehabilitation project and the lending rate at which they provide permanent financing for the project.

Owner. Any private person or entity (including a cooperative) or a public entity, having the legal right to lease or sublease dwelling units assisted under this part. The term Owner also includes the person or entity submitting a proposal to a State Agency under this part.

Partially-assisted Project. A project for non-elderly families under this part which includes more than 50 units, of which the number of assisted units does not exceed the greater of (a) 20 percent of the units in the project, rounded to the next highest whole number of units, or (b) the minimum percentage required by State law as a condition of HFA permanent financing, if the Assistant Secretary approves such minimum percentage for purposes of applicability of this definition.

Permanent financing. An Agency is determined to provide permanent financing if HUD determines that (a) the Agency permanently finances a project from its own funds, including the sale of its obligations; or (b) permanent financing for projects developed or administered by the Agency is provided by the State government or by an agency or instrumentality thereof other than the Agency; or (c) the permanent financing (by a public or private entity other than the Agency) is backed by the commitment of the Agency to assume the risks of loss on default or foreclosure of the loan.

Project Account. A specifically identified and segregated account for each project which is established in accordance with §883.604(b) out of the amounts by which the maximum Annual Contributions Contract commitment exceeds the amount actually paid out under the ACC each year.

§883.306

Proposal. A proposal for a project that is submitted by an HFA to HUD for Section 8 assistance under this part.

Rent. In the case of an assisted unit in a cooperative project, rent means the carrying charges payable to the cooperative with respect to occupancy of the unit.

Replacement cost—(a) New construction. The estimated construction cost of the project when the proposed improvements are completed. The replacement cost may include the land, the physical improvements, utilities within the boundaries of the land, architect's fees, miscellaneous charges incident to construction as approved by the Assistant Secretary.

(b) Substantial rehabilitation. The sum of the "as is" value before rehabilitation of the property as determined by the Agency and the estimated cost of rehabilitation, including carrying and finance charges.

Single Room Occupancy (SRO) Housing. A unit for occupancy by a single eligible individual capable of independent living, which does not contain food preparation and/or sanitary facilities and is located within a multifamily structure consisting of more than 12 units.

Secretary. The Secretary of Housing and Urban Development (or designee).

Small Project. A project for non-elderly families under this part which includes a total of 50 or fewer units (assisted and unassisted).

State Agency (Agency). An agency which has been notified by HUD in accordance with §883.203 that it is authorized to apply for a set-aside and/or to use the Fast Track Procedures of this part.

Substantial rehabilitation. (a) The improvement of a property to decent, safe and sanitary condition in accordance with the standards of this part from a condition below these standards. Substantial Rehabilitation may vary in degree from gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as Substantial Rehabilitation under this definition.

(b) Substantial Rehabilitation may also include renovation, alteration or

remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part, or the repair or replacement of major building systems or components in danger of failure.

- (c) Housing on which rehabilitation work has already started when the Agreement is executed is eligible for assistance as a Substantial Rehabilitation project under this part provided:
- (1) At the date of application to HUD, a substantial amount of construction (generally at least 25 percent) remains to be completed;
- (2) At the date of application to HUD, the project cannot be completed and occupied by eligible families without assistance under this part; and
- (3) At the time construction was initiated, all of the parties reasonably expected that the project would be completed without assistance under this part.

Tenant Rent. The monthly amount defined in, and determined in accordance with part 813 of this chapter.

Total Tenant Payment. The monthly amount defined in, and determined in accordance with part 813 of this chapter.

Utility Allowance. As defined in part 813 of this chapter, made or approved by HUD.

Utility reimbursement. As defined in part 813 of this chapter.

Vacancy payments. The housing assistance payment made to the owner by the State Agency for a vacant, assisted unit if certain conditions are fulfilled as provided in the Contract. The amount of vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

Very Low-Income Family. As defined in part 813 of this chapter.

[45 FR 6889, Jan. 30, 1980, as amended at 45 FR 56326, Aug. 22, 1980; 48 FR 12708, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 49 FR 19946, May 10, 1984; 61 FR 5213, Feb. 9, 1996; 61 FR 13592, Mar. 27, 1996; 63 FR 46579, Sept. 1, 1998; 70 FR 77744, Dec. 30, 2005]

§883.306 Limitation on distributions.

- (a) Non-profit owners are not entitled to distributions of project funds.
- (b) For the life of the Contract, project funds may only be distributed

to profit-motivated owners at the end of each fiscal year of project operation following the effective date of the Contract and after all project expenses have been paid, or funds have been set aside for payment, and all reserve requirements have been met. The first year's distribution may not be made until the HFA certification of project costs, (See §883.411), where applicable, has been submitted to HUD. The HFA must certify that distributions will not exceed the following maximum returns:

- (1) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 6 percent return on the value, in subsequent years, as determined in accordance with HUD guidelines, of the approved initial equity. Any such adjustments will be made in accordance with a Notice in the FEDERAL REGISTER. The HFA may approve a lesser increase or no increase in subsequent years' distributions.
- (2) For projects for non-elderly families the first year's distribution will be limited to 10 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 10 percent return on the value, in subsequent years, as determined in accordance with HUD guidelines, of the approved initial equity. Any such adjustments will be made in accordance with a Notice in the FEDERAL REGISTER. The HFA may approve a lesser increase or no increase in subsequent years' distributions.
- (c) For the purpose of determining the allowable distribution, an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by the HFA at cost certification (See §883.411), or as specified in the Proposal where cost certification is not required, unless the owner justifies a higher equity contribution through cost certification documentation accepted by the HFA.

- (d) Any short-fall in return may be made up from surplus project funds in future years.
- (e) If the HFA determines at any time that surplus project funds are more than the amount needed for project operations, reserve requirements and permitted distributions, the HFA may require the excess to be placed in a separate account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess project funds must be remitted to HUD.
- (f) Owners of small projects or partially assisted projects are exempt from the limitation on distributions contained in paragraphs (b) through (d) of this section.
- (g) HUD may permit increased distributions of surplus, in excess of the amounts otherwise permitted, to profit-motivated owners who participate in a HUD-approved initiative or program to preserve below-market housing stock. The increased distributions will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the owner is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the owner.
- (h) Any State or local law or regulation that restricts distributions to an amount lower than permitted by this section or permitted by the Commissioner under this paragraph (h) is prempted as provided by section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997.

[45 FR 6889, Jan. 30, 1980, as amended at 65 FR 61075, Oct. 13, 2000; 65 FR 68891, Nov. 15, 2000]

§883.307 Financing.

(a) Types of financing. A State Agency that used the Fast Track Procedures formerly in this part must provide permanent financing for any new construction or substantial rehabilitation project without Federal mortgage insurance, except coinsurance under section 244 under the National Housing Act (12 U.S.C. 1701 et seq). Obligations issued by the HFA for this purpose may be taxable under section 802 of the Housing and Community Development

§883.308

Act of 1974 (42 U.S.C. 1440) or tax-exempt under section 103 of the Internal Revenue Code (26 U.S.C. 103), 24 CFR part 811 or other Federal Law.

- (b) HUD approval. (1) A State Agency, prior to receiving HUD approval of its first New Construction or Substantial Rehabilitation Proposal using contract authority under this part, must submit copies of the documents relating to the method of financing Section 8 projects to HUD for review. These documents shall include bond resolutions or indentures, loan agreements, regulatory agreements, notes, mortgages or deeds of trust and other related documents, if any, but does not need to include the "official statement" or copies of the prospectus for individual bond issues. HUD review will be limited to making certain that the documents are not inconsistent with or in violation of these regulations and the administrative procedures used to implement them. After review, HUD must notify the Agency that the documents are acceptable or, if unacceptable, will request clarification or changes. This review and approval will meet the requirements of 24 CFR 811.107(a).
- (2) When an Agency which has received HUD approval of its financing documents proposes substantive changes in them which affect the Section 8 program, the revised documents must be submitted for review. HUD review will be limited to the areas indicated in paragraph (b)(1) of this section and must be carried out promptly. HUD will notify the Agency that the revised documents are acceptable, or, if unacceptable, will request clarification or changes.
- (3) The review and approval of financing documents required under 24 CFR part 811 will constitute HUD approval under this section.
- (4) The Agency must retain in its files, and make available for HUD inspection, the documentation relating to its financing of Section 8 projects, including any relating to the certifications of compliance with applicable Department of Treasury or HUD regulations (24 CFR part 811) regarding taxexempt financing.
- (c) Pledge of Contracts. The HFA or owner may pledge, or offer as security for any loan or obligation, an Agree-

ment, Contract, or ACC entered into pursuant this part provided that such security is in connection with a project constructed pursuant to this part. Any pledge of the Agreement, Contract, or ACC, or payments thereunder will be limited to the amounts payable under the Contract or ACC in accordance with its terms. If the pledge or other document provides that all payments will be paid directly to the HFA, other mortgagee or the trustee for bondholders, the HFA, other mortgagee or trustee may make all payments or deposits required under the mortgage or trust indenture and remit any excess to the owner.

- (d) Foreclosure and other transfers. In the event of assignment, sale, or other disposition of the project or the contracts agreed to by the HFA and approved by HUD (which approval shall not be unreasonably delayed or withheld), foreclosure, or assignment of the mortgage or deed in lieu of foreclosure,
- (1) The Agreement, the Contract and the ACC will continue in effect, and
- (2) Housing assistance payments will continue in accordance with the terms of the Contract, unless approval to amend or terminate the Agreement, the Contract or the ACC has been obtained from the Assistant Secretary.
- (e) In the case of a newly constructed or substantially rehabilitated manufactured home park, the principal amount of any mortgage attributable to the rental spaces in the park may not exceed an amount per space determined in accordance with §207.33(b) of this title.

[45 FR 6889, Jan. 30, 1980, as amended at 45 FR 56327, Aug. 22, 1980; 48 FR 12709, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 61 FR 13592, Mar. 27, 1996]

§883.308 Adjustments to reflect changes in terms of financing.

- (a) Certifications of projected financing terms. When an HFA, under this part, provides permanent financing for a project through the issuance of obligations and these are not sold until after the contract rents for a project have been set, the HFA must submit, with the Proposal, a certification of:
- (1) Its projected rate of borrowing (net interest cost), based on a reasonable evaluation of market conditions,

on obligations issued to provide interim and permanent financing for the project,

- (2) The projected cost of borrowing to the owner on interim financing for the project.
- (3) The projected loan amount for the project,
- (4) The projected cost of borrowing and the term of the permanent financing to be provided to the owner for the project,
- (5) The projected annual debt service for the permanent financing on which the Contract Rents are based, and
 - (6) The override, if any.
- (b) Revised certifications. If, at any time prior to the execution of the Agreement, the terms and conditions of financing change, other than the HFA's projected cost of borrowing, the HFA must submit revised certifications based upon the new terms.
- (c) Certifications of actual financing terms. After a project has been permanently financed, the HFA must submit a certification which specifies the actual financing terms. The items that must be included in this certification include:
- (1) The HFA's actual cost of borrowing (net interest cost) on obligations from which funds were used to permanently finance the project.
- (2) The override, if any, added to the actual cost of borrowing on obligations in setting the rate of lending to the owner,
- (3) The annual debt service to the owner for the permanent financing on which contract rents are based; and,
- (4) The actual loan amount and the term on which the annual debt service is based.
- (d) Reduction of Contract Rents. If the actual debt service to the owner under the permanent financing is lower than the anticipated debt service on which the Contract Rents were based, the initial Contract Rents, or the Contract Rents currently in effect, must be reduced commensurately, and the amount of the savings credited to the project account.
- (e) Increase of Contract Rents. This paragraph (e) applies only if the HFA is using its set-aside for the project and it is processed under subpart D. If the actual debt service to the owner under

- the permanent financing is higher than the anticipated debt service on which the Contract Rents are based, the initial Contract Rents or the Contract Rents currently in effect may, if sufficient contract and budget authority is available, be increased commensurately based on the certification submitted under paragraph (c) of this section. The amount of this increase may not exceed the amount of the Financing Cost Contingency (FCC) authorized but not reserved for the project at the time the proposal is approved. The adjustment must not exceed the amount necessary to reflect an increase in debt service (based on the difference between the projected and actual terms of the permanent financing) resulting from an increase over the projected interest rate of not more than:
- (1) One and one-half percent if the projected override was three-fourths of one percent or less, or
- (2) One percent if such projected override was more than three-fourths of one percent but not more than one percent, or
- (3) One-half of one percent if such projected override was more than one percent.
- (f) Recoupment of savings in financing costs. In the event that interim financing is continued after the first year of the term of the Contract and the debt service of the interim financing for any period of three months after such first year is less than the anticipated debt service under the permanent financing on which the Contract Rents were based, an appropriate amount reflecting the savings in financing cost will be credited by HUD to the Project Account and withheld from housing assistance payments payable to the owner. If during the course of the same year there is any period of three months in which the debt service is greater than the anticipated debt service under the projected permanent financing, an adjustment will be made so that only the net amount of savings in debt service for the year is credited by HUD to the Project Account and withheld from housing assistance payments to the owner. No increased payments will be made to the owner on account of any net excess for the year of actual

§883.310

interim debt service over the anticipated debt service under the permanent financing. Nothing in this paragraph will be construed as requiring a permanent reduction in the Contract Rents or precluding adjustments of Contract Rents in accordance with paragraphs (d) or (e) of this section.

- (g) Compliance with other regulations. The HFA must also submit a certification specifying:
- (1) That the terms of financing, the amount of the obligations issued with respect to the project and the use of the funds will be in compliance with any regulation governing the issuance of the obligations, e.g., Department of the Treasury regulations regarding arbitrage or HUD regulations regarding Tax Exemption of Obligations of Public Housing Agencies (24 CFR part 811), and
- (2) That the override, if any, on the permanent financing for the project will not be greater than the projected override nor greater than the override allowed for the borrowing as a whole under applicable regulations, e.g., the Department of Treasury regulations regarding arbitrage. The certifications required under 24 CFR 811.107(a)(2) will be sufficient to meet the certification requirements of this paragraph (g).

§883.310 Property standards.

- (a) New Construction. Projects must comply with:
 - (1) [Reserved]
- (2) In the case of manufactured homes, the Federal Manufactured Home Construction and Safety Standards, pursuant to Title VI of the Housing and Community Development Act of 1974, and 24 CFR part 3280:
- (3) In the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards,
- (4) HUD requirements pursuant to Section 209 of the Housing and Community Development Act of 1974 for projects for the elderly or the handicapped;
- (5) HUD requirements pertaining to noise abatement and control: and
- (6) Applicable state and local laws, codes, ordinances, and regulations.
- (b) Substantial Rehabilitation. Projects must comply with:
- (1) [Reserved]

- (2) In the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards,
- (3) HUD requirements pursuant to Section 209 of the HCD Act for projects for the elderly or the handicapped;
- (4) HUD requirements pertaining to noise abatement and control;
- (5) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title.
- (6) Applicable State and local laws, codes, ordinances, and regulations.
- (c) Smoke detectors—(1) Performance requirement. After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.
- (2) Acceptability criteria. The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

[45 FR 6889, Jan. 30, 1980, as amended at 50 FR 9269, Mar. 7, 1985; 57 FR 33851, July 30, 1992; 63 FR 46579, Sept. 1, 1998; 64 FR 50227, Sept. 15, 1999]

§ 883.313 Audit.

- (a) Where housing assistance under the Section 8 Program is provided for projects developed by State agencies, these agencies shall follow audit requirements in 24 CFR part 44.
- (b) Where a nonprofit organization is the eligible owner of a project receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.

[50 FR 39092, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986, as amended at 57 FR 33257, July 27, 1992]

Subparts D-E [Reserved]

Subpart F—Housing Assistance Payments Contract

§883.601 Applicability.

The provisions of this subpart apply to new construction and substantial rehabilitation projects using contract authority allocated under subpart B, Allocation and Assignment of Contract Authority, or processed and constructed under subpart D, Fast Track Procedures.

§883.602 The contract.

- (a) Contract. The Housing Assistance Payments Contract sets forth rights and duties of the owner and State Agency with respect to the project and the Housing Assistance payments.
- (b) Housing Assistance Payments to Owners under the Contract. The Housing Assistance Payments made under the Contract are:
- (1) Payments to the owner to assist eligible families leasing assisted units, and
- (2) Payments to the owner for vacant assisted units ("vacancy payments") if the conditions specified in §880.611 of this chapter are satisfied.

The housing assistance payments are made monthly by the State Agency upon proper requisition by the owner, except payments for vacancies of more than 60 days, which are made semi-annually by the Agency upon proper requisition by the owner.

- (c) Amount of Housing Assistance Payments to the Owner. (1) The amount of the housing assistance payments made to the owner of a unit being leased by an eligible family is the difference between the contract rent for the unit and the tenant rent payable by the family.
- (2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the first 60 days of vacancy, subject to the conditions in §880.611 of this chapter. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as the Agency directs in accordance with HUD guidelines.

- (3) For a vacancy that exceeds 60 days, a housing assistance payment for the vacant unit will be made, subject to the conditions in §880.611 of this chapter, in an amount equal to the principal and interest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.
- (d) Payment of utility reimbursement. Where applicable, the Utility Reimbursement will be paid to the Family as an additional Housing Assistance Payment. The Contract will provide that the Owner will make this payment on behalf of the Agency. Funds will be paid to the Owner in trust solely for the purpose of making this additional payment. If the Family and the utility company consent, the Owner may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

[45 FR 6889, Jan. 30, 1980, as amended at 49 FR 19946, May 10, 1984; 61 FR 13593, Mar. 27, 1996]

§883.603 Term of contract.

- (a) New Construction. The term of the Contract will be governed by the following provisions:
- (1) For assisted units in a project financed with the aid of a loan insured by the Federal government (including coinsurance under Section 244 of the National Housing Act) or a loan made, guaranteed or intended for purchase by the Federal government and for assisted units in newly constructed manufactured home parks, the term of the Contract will be 20 years.
- (2) For assisted units in a project owned by or financed by a loan or loan guarantee from a State or local agency, where the assisted units are intended for occupancy by non-elderly families and where it is located in an area designated by the Assistant Secretary as one requiring special financial assistance, the Contract will be for an initial term of 20 years for any dwelling unit, with provision for renewal for additional terms of not more than 5 years each. The total term of initial and renewal terms will not exceed the lesser of (i) 40 years for any dwelling unit, or (ii) the term of the permanent financing (but not less than 20 years).

§883.604

- (3) For assisted units in all other projects, the Contract will be for an initial term of 20 years for any dwelling unit, with provision for renewal for additional terms of not more than 5 years each. The total term of initial and renewal terms will not exceed the lesser of (i) 30 years for any dwelling unit, or (ii) the term of the permanent financing (but not less than 20 years).
- (b) Substantial Rehabilitation. The Contract will be for a term which is consistent with paragraph (b)(1) and with paragraph (b) (2), (3), or (4) of this section.
- (1) The Contract term will cover the longest term, but not less than 20 years, of a single credit instrument covering:
 - (i) The cost of rehabilitation or
 - (ii) The existing indebtedness, or
- (iii) The cost of rehabilitation and the refinancing of the existing indebtedness, or
- (iv) The cost of rehabilitation and the acquisition of the property; and
- (2) For assisted units in a project financed with the aid of a loan (including coinsurance under Section 244 of the National Housing Act), or a loan made, guaranteed or intended for purchase by the Federal Government, and for assisted units in a substantially rehabilitated manufactured home park, the term of the Contract will not exceed 20 years; or
- (3) For assisted units in a project owned or financed by a loan or loan guarantee from a State or local agency where the assisted units are intended for occupancy by non-elderly families and where it is located in an area designated by the Assistant Secretary as one requiring special financial assistance, the Contract will be for an initial term of 20 years for any dwelling unit. There will be a provision for renewal for additional terms of not more than 5 years each. The total of initial and renewal terms will not exceed the lesser of (i) 40 years for any dwelling unit, or (ii) the term of the permanent financing (but not less than 20 years); or
- (4) For assisted units in projects financed other than as described in paragraph (b) (2) or (3) of this section, the Contract will be for an initial term of 20 years for any dwelling unit. There will be a provision for renewal for addi-

tional terms of not more than 5 years each. The total of initial and renewal terms will not exceed the lesser of (i) 30 years for any dwelling unit, or (ii) the term of the permanent financing (but not less than 20 years).

(c) Staged Projects. If a project is completed in stages, the term of the Contract must relate separately to the units in each stage unless the Agency and the owner agree that only the units in the first stage will be assisted for the maximum term of the Contract. The total Contract term, for the units in all stages, beginning with the effective date of the Contract for the first stage, may not exceed the overall maximum term allowable for any one unit under this section, plus two years.

[45 FR 56327, Aug. 22, 1980, as amended at 48 FR 12710, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984]

§883.604 Maximum annual commitment and project account.

- (a) Maximum annual commitment. The maximum annual contribution that may be contracted for in the ACC is the total of the contract rents and utility allowances for all assisted units in the project, plus the HUD-approved fees, if any, for State Agency administration of the Contract. (See §883.606)
- (b) Project Account. (1) A project account will be established and maintained by HUD as a specifically identified and segregated account for each project. The account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the ACC each year. Payments will be made from this account for housing assistance payments (and fees for Agency administration, if appropriate) when needed to cover increases in contract rents or decreases in tenant rents and for other costs specifically approved by the Secretary.
- (2) Whenever a HUD-approved estimate of required payments under the ACC for a fiscal year exceeds the maximum annual commitment and would cause the amount in the project account to be less than 40 percent of the maximum, HUD will, within a reasonable period of time, take such additional steps authorized by Section

8(c)(6) of the 1937 Act, as may be necessary, to assure that payments under the ACC will be adequate to cover increases in contract rents and decreases in tenant rents.

[45 FR 6889, Jan. 30, 1980, as amended at 61 FR 13593, Mar. 27, 1996]

§883.605 Leasing to eligible families.

The provisions of 24 CFR 880.504, including subpart L of 24 CFR part 5 pertaining to the selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking apply, subject to the requirements of §883.105.

[75 FR 66261, Oct. 27, 2010]

§883.606 Administration fee.

- (a) The State Agency is responsible for administration of the Contract subject to periodic review and audit by HUD
- (b) The Agency is entitled to a reasonable fee, determined by HUD, for administering a Contract on newly constructed or substantially rehabilitated units provided there is no override on the permanent loan granted by the Agency to the owner for a project containing assisted units.

§883.607 Default by owner and/or agency.

- (a) Rights of Owner if Agency defaults under Agreement or Contract. The ACC, the Agreement and the Contract will provide that, in the event of failure of the Agency to comply with the Agreement or Contract with the owner, the owner will have the right, if he/she is not in default, to demand that HUD investigate. HUD will first give the Agency a reasonable opportunity to take corrective action. If HUD determines that a substantial default exists, HUD will assume the Agency's rights and obligations under the Agreement or Contract and meet the obligations of the Agency under the Agreement or Contract including the obligation to enter into the Contract.
- (b) Rights of HUD if Agency defaults under ACC. The ACC will provide that, if the Agency fails to comply with any of its obligations, HUD may determine

that there is a substantial default and require the Agency to assign to HUD all of its rights and interests under the Contract; however, HUD will continue to pay annual contributions in accordance with the terms of the ACC and the Contract. Before determining that an Agency is in substantial default, HUD will give the Agency a reasonable opportunity to take corrective action.

- (c) Rights of Agency and HUD if Owner defaults under Contract. (1) The Contract will provide that if the Agency determines that the owner is in default under the Contract, the Agency will notify the owner, and lender, if applicable, with a copy to HUD,
- (i) Of the actions required to be taken to cure the default.
- (ii) Of the remedies to be applied by the Agency including specific performance under the Contract, abatement of housing assistance payments and recovery of overpayments, where appropriate; and
- (iii) That, if he/she fails to cure the default, the Agency has the right to terminate the Contract or to take other corrective action, in its discretion.
- (2) If the Agency provided the permanent financing, the Contract will also provide that HUD has an independent right to determine whether the owner is in default and to take corrective action and apply appropriate remedies, except that HUD will not have the right to terminate the Contract without proceeding in accordance with paragraph (c) of this section.

§883.608 Notice upon contract expiration.

The provisions of §880.508 of this chapter apply, subject to the requirements of §883.105.

[61 FR 13593, Mar. 27, 1996]

Subpart G-Management

§883.701 Cross-reference.

All of the provisions of part 880, subpart F, of this chapter apply to projects assisted under this part, subject to the requirements of §883.105. For purposes of this subpart G, all references in part 880, subpart F, of this chapter to "contract administrator"

Pt. 884

shall be construed to refer to "Agency".

[61 FR 13593, Mar. 27, 1996]

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

Subpart A—Applicability, Scope and Basic Policies

Sec.

884.101 Applicability and scope.

884.102 Definitions.

884.104 Maximum total annual contract commitment and project account (private-owner or PHA-owner projects).

884.105 Maximum total ACC commitment and project account (private-owner/PHA projects).

884.106 Housing assistance payments to owners.

884.108 Term of housing assistance payments contract.

884.108a Notice upon contract expiration.

884.109 Rent adjustments.

884.110 Types of housing and property standards.

884.114 Financing.

884.115 Security and utility deposits.

884.116 Establishment of income limit schedules; 30 percent occupancy by very-low income families.

884.117 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

884.118 Responsibilities of the owner.

884.119 Responsibility for contract administration and defaults (private-owner and PHA-owner projects).

884.120 Responsibility for contract administration and defaults (private-owner/PHA projects).

884.121 Rights of owner if PHA defaults under agreement (private-owner/PHA projects).

884.122 Separate project requirement.

884.123 Conversions.

884.124 Audit.

Subpart B—Project Development and Operation

884.212 Project completion.

884.213 Execution of housing assistance payments contract.

884.214 Marketing.

884.215 Lease requirements.

884.216 Termination of tenancy.

884.217 Maintenance, operation and inspections.

884.218 Reexamination of family income and composition.

884.219 Overcrowded and underoccupied units.

884.220 Adjustment of utility allowances.

884.221 Continued family participation.

884.222 Inapplicability of low-rent public housing model lease and grievance procedures.

884.223 Leasing to eligible families.

884.223a Preference for occupancy by elderly families.

884.224 HUD review of contract compliance. 884.225 PHA reporting requirements. [Reserved]

AUTHORITY: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

SOURCE: 41 FR 47168, Oct. 27, 1976, unless otherwise noted. Redesignated at 45 FR 6909, Jan. 30, 1980.

Subpart A—Applicability, Scope and Basic Policies

§884.101 Applicability and scope.

(a) The policies and procedures in subparts A and B of this part apply to the making of Housing Assistance Payments on behalf of Eligible Families leasing newly constructed housing pursuant to the provisions of section 8 of the 1937 Act. They are applicable only to proposals submitted by the Department of Agriculture/Farmers Home Administration (now the Department of Agriculture/Rural Housing and Community Development Service) that have been charged against the set-aside of section 8 contract authority specifically established for projects to be funded under section 515 of title V of the Housing Act of 1949 (42 U.S.C. 1485).

(b) For the purpose of these subparts A and B, "new construction" shall mean newly constructed housing for which, prior to the start of construction, an Agreement to Enter into Housing Assistance Payments Contract is executed between the Owner and HUD or a Public Housing Agency.

[41 FR 47168, Oct. 27, 1976, as amended at 61 FR 13593, Mar. 27, 1996]

§884.102 Definitions.

The terms Fair Market Rent (FMR), HUD, Public housing agency (PHA), and Secretary are defined in 24 CFR part 5.

Agreement to enter into housing assistance payments contract ("agreement").

(a) In the case of a Private-Owner

Project or a PHA-Owner Project, a written agreement between the Owner and HUD that, upon satisfactory completion of the housing in accordance with the HUD-approved Proposal and submission by RHCDS of the required certifications, HUD will enter into a Housing Assistance Payments Contract with the Owner.

(b) In the case of a Private-Owner/PHA Project, a written agreement between the private owner and the PHA, approved by HUD, that, upon satisfactory completion of the housing in accordance with the HUD-approved Proposal and submission by RHCDS of the required certifications, the PHA will enter into a Housing Assistance Payments Contract with the Private Owner.

Annual contributions contract ("ACC"). In the case of a Private-Owner/PHA Project, a written agreement between HUD and the PHA to provide annual contributions to the PHA with respect to the project.

Annual income. As defined in part 5 of this title.

Contract. See definition of Housing Assistance Payments Contract.

Contract rent. The rent payable to the Owner under his Contract including the portion of the rent payable by the Family. In the case of a cooperative, the term "Contract Rent" means charges under the occupancy agreements between the members and the cooperative.

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

Drug-related criminal activity. The illegal manufacture, sale, distribution, use or possession with the intent to manufacture, sell, distribute, or use, of a controlled substance as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802.

Family. As defined in part 5 of this title.

HCD Act. The Housing and Community Development Act of 1974.

Housing Assistance Payment. The payment made by the contract administrator to the Owner of an assisted unit as provided in the Contract. Where the unit is leased to an eligible Family, the payment is the difference between the

Contract Rent and Tenant Rent. An additional Housing Assistance Payment is made to the Family when the Utility Allowance is greater than the Total Tenant Payment. A Housing Assistance Payment may be made to the Owner when a unit becomes vacant, in accordance with the terms of the Contract.

Housing assistance payments contract ("Contract"). (a) In the case of a Private-Owner Project or a PHA-Owner Project, a written contract between the Owner and HUD for the purpose of providing housing assistance payments to the Owner on behalf of Eligible Families.

(b) In the case of a Private-Owner/PHA Project, a written contract between the private Owner, and the PHA, approved by HUD, for the purpose of providing housing assistance payments to the Owner on behalf of Eligible Families.

Income. Income from all sources of each member of the household as determined in accordance with criteria established by HUD and as defined in 24 CFR part 5, subpart F.

Lease. A written agreement between an Owner and an Eligible Family for the leasing of a Decent, Safe, and Sanitary dwelling unit in accordance with the applicable Contract, which agreement is in compliance with the provisions of this part.

Local housing assistance plan. A housing assistance plan submitted by a unit of general local government and approved by HUD under Section 104 of the HCD Act or, in the case of a unit of general local government not participating under Title I of the HCD Act, a housing plan which contains the elements set forth in Section 104(a)(4) of the HCD Act and which is approved by the Secretary as meeting the requirements of Section 213 of that Act.

Low-income family. As defined in part 5 of this title.

Owner. Any private person or entity, including a cooperative or a PHA, having the legal right to lease or sublease newly constructed dwelling units.

PHA-owner proposal and PHA-owner project. A proposal for a project under this part (and the resulting project) to be owned by a PHA throughout the term of the Agreement and Contract

§884.104

where such Agreement and Contract are to be entered into between the PHA and HUD.

Private-owner/PHA proposal and private-owner/PHA project. A proposal for a project under this part (and the resulting project) to be owned by a private Owner throughout the term of the Agreement and Contract where such Agreement and Contract are to be entered into between the private Owner and the PHA pursuant to an ACC between the PHA and HUD. The term also covers the situation where the ACC is with one PHA and the Owner is another PHA.

Private-owner proposal and private-owner project. A proposal for a project under this part (and the resulting project) to be owned by a private Owner throughout the term of the Agreement and Contract where such Agreement and Contract are to be entered into between the private Owner and HUD.

Project account. The account established and maintained in accordance with §884.104 or §884.105.

Proposal. A proposal for a Private-Owner or PHA-Owner/PHA Project to provide newly constructed housing submitted to HUD by RHCDS on the prescribed RHCDS form.

RHCDS. The Rural Housing and Community Development Service.

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Very low-income family. As defined in part 5 of this title.

[41 FR 47168, Oct. 27, 1976, as amended at 42 FR 63745, Dec. 19, 1977. Redesignated at 45 FR 6909, Jan. 30, 1980, and amended at 48 FR 12710, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 49 FR 19947, May 10, 1984; 50 FR 38795, Sept. 25, 1985; 61 FR 5213, Feb. 9, 1996; 61 FR 13593, Mar. 27, 1996; 61 FR 47382, Sept. 6, 1996; 63 FR 46579, Sept. 1, 1998; 65 FR 16723, Mar. 29, 2000; 70 FR 77744. Dec. 30, 20051

§884.104 Maximum total annual contract commitment and project account (private-owner or PHA-owner projects).

- (a) Maximum total annual contract commitment. The maximum total annual housing assistance payments that may be committed under the Contract shall be the total of the Gross Rents for all the Contract units in the project.
- (b) *Project account*. In order to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family Incomes:
- (1) A Project Account shall be established and maintained in an amount as determined by the Secretary consistent with his responsibilities under Section 8(c)(6) of the Act, out of amounts by which the maximum annual Contract commitment per year exceeds amounts paid under the Contract for any year. This account shall be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the purposes of (i) housing assistance payments, and (ii) other costs specifically authorized or approved by the Secretary.
- (2) Whenever a HUD-approved estimate of required housing assistance payments for a fiscal year exceeds the maximum annual Contract commitment, and would cause the amount in the Project Account to be less than an amount equal to 40 percent of such maximum annual Contract commitment, HUD shall, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) "the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts."

§884.105 Maximum total ACC commitment and project account (private-owner/PHA projects).

(a) Maximum total ACC commitment. The maximum total annual contribution that may be contracted for in the

ACC for a project shall be the total of the Contract Rents plus any utility allowances for all the Contract units in the project, plus a fee for the regular costs of PHA administration. HUD-approved preliminary costs for administration (including administrative costs in connection with PHA activities related to relocation of occupants) shall be payable out of this total.

(b) Project account. In order to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family Incomes:

(1) A Project Account shall be established and maintained, in an amount as determined by the Secretary consistent with his responsibilities under Section 8(c)(6) of the 1937 Act, out of amounts by which the maximum ACC commitment per year exceeds amounts paid under the ACC for any year. This account shall be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the purposes of (i) housing assistance payments and (ii) other costs specifically authorized or approved by the Secretary.

(2) Whenever a HUD-approved estimate of required Annual Contribution exceeds the maximum ACC commitment then in effect, and would cause the amount in the Project Account to be less than an amount equal to 40 percent of such maximum ACC commitment, HUD shall, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the 1937 Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) 'the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance tracts.

[41 FR 47168, Oct. 27, 1976, as amended at 61 FR 13593, Mar. 27, 1996; 65 FR 16723, Mar. 29, 2000]

§ 884.106 Housing assistance payments to owners.

(a) General. Housing Assistance Payments shall be paid to Owners for units

under lease by eligible families, in accordance with the Contract and as provided in this section. These Housing Assistance Payments will cover the difference between the Contract Rent and the Tenant Rent. Where applicable, the Utility Reimbursement will be paid to the Family as an additional Housing Assistance Payment. The Contract will provide that the Owner will make this payment on behalf of the contract administrator. Funds will be paid to the Owner in trust solely for the purpose of making this additional payment. If the Family and the utility company consent, the Owner may pay the utility reimbursement jointly to the Family and the utility company or directly to the utility company. No Section 8 assistance may be provided for any unit occupied by an Owner; however, cooperatives are considered rental housing, rather than Owner-occupied housing, for this purpose.

(b) Vacancies during rent-up. If a Contract Unit is not leased as of the effective date of the Contract, the Owner shall be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract, in accordance with the procedure set forth in §884.213(b): Provided, That the Owner: (1) Commenced marketing and otherwise complied with §884.211(e), (2) has taken and continues to take all feasible actions to fill the vacancy, including, but not limited to, contacting applicants on his waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (3) has not rejected any eligible applicant, except for good cause acceptable to HUD or the PHA, as the case may be.

(c) Vacancies after rent-up. (1) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days; provided, however, That if the Owner collects any of the Family's share of the rent for this period in an amount

§884.108

which, when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to HUD or as HUD may direct. (See also § 884.115). The Owner shall not be entitled to any payment under this paragraph (c)(1) unless he: (i) Immediately upon learning of the vacancy, has notified HUD or the PHA, as the case may be, of the vacancy or prospective vacancy and the reasons for the vacancy, and (ii) has taken and continues to take the actions specified in paragraphs (b) (2) and (3) of this section.

- (2) If the Owner evicts an Eligible Family, he shall not be entitled to any payment under paragraph (c)(1) of this section unless the request for such payment is supported by a certification that: (i) He gave such Family a written notice of the proposed eviction, stating the grounds and advising the Family that it had 10 days within which to present its objections to the Owner in writing or in person and (ii) the proposed eviction was not in violation of the Lease or the Contract or any applicable law.
- (d) Debt-service vacancy payments. (1) If a unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the owner may submit a claim to receive additional housing assistance payments on a semiannual basis with respect to the vacant unit in an amount equal to the principal and interest payments required to amortize the portion of the debt attributable to that unit for the period of the vacancy, whether the vacancy commenced during rent-up or after rent-up.
- (2) Additional payments under this paragraph (d) for any unit shall not be for more than 12 months for any vacancy period, and shall be made only if:
- (i) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed.
- (ii) The Owner has taken and is continuing to take the actions specified in paragraphs (b) (1), (2) and (3) or paragraphs (c)(1) (i) and (ii) and (c)(2) of this section, as appropriate.
- (iii) The owner has demonstrated, in connection with the semiannual claim on a form and in accordance wih the standards prescribed by HUD with re-

spect to the period of the vacancy, that the project is not providing the owner with revenues at least equal to the project costs incurred by the owner and that the amount of the payments requested is not in excess of the amount needed to make up the deficiency.

- (iv) The owner has submitted to HUD or the PHA, as appropriate, in connection with the semiannual claim, a statement with relevant supporting evidence that there is a reasonable prospect that the project can achieve financial soundness within a reasonable time. The statement shall indicate the causes of the deficiency; the corrective steps that have been and will be taken; and the time by which it is expected that the project revenues will at least equal project costs without the additional payments provided under this paragraph.
- (3) HUD or the PHA, as appropriate, may deny any claim for additional payments or suspend or terminate payments if it determines that, based on the owner's statement and other evidence, there is not a reasonable prospect that the project can achieve financial soundness within a reasonable time.
- (e) Prohibition of double compensation for vacancies. The Owner shall not be entitled to housing assistance payments with respect to vacant units under this section to the extent he is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the HCD Act or payments under §884.115).

[41 FR 47168, Oct. 27, 1976, as amended at 42 FR 12983, Mar. 7, 1977; 43 FR 33880, Aug. 1, 1978. Redesignated at 45 FR 6909, Jan. 30, 1980; 49 FR 19947, May 10, 1984]

§ 884.108 Term of housing assistance payments contract.

(a) Except in the case of a Contract described in paragraph (b) of this section, the Contract shall be for an initial term of 20 years: *Provided*, That at the end of such Contract term and at the request of RHCDS, HUD may, subject to the availability of contract and budget authority, authorize the execution of a new Contract providing for a

total Contract term of an additional 20 years.

- (b) In the case of a Contract under which housing assistance payments are made with respect to a project owned by a State or local agency, the total Contract term may be equal to the term of such financing but may not exceed 40 years for any dwelling unit.
- (c) If the project is completed in stages, the dates for the initial and the renewal terms shall be separately related to the units in each stage: Provided, however, That the total Contract term for the units in all the stages, beginning with the effective date of the Contract with respect to the first stage, may not exceed the overall maximum term allowable for any one unit, plus two years.
- [41 FR 47168, Oct. 27, 1976. Redesignated at 45 FR 6909, Jan. 30, 1980, and amended at 48 FR 12710, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 61 FR 13593. Mar. 27, 1996]

§884.108a Notice upon contract expiration.

- (a) The Contract will provide that the owner will notify each assisted family, at least 90 days before the end of the Contract term, of any increase in the amount the family will be required to pay as rent which may occur as a result of its expiration. If the Contract is to be renewed but with a reduction in the number of units covered by it, this notice shall be given to each family who will no longer be assisted under the Contract.
- (b) The notice provided for in paragraph (a) of this section shall be accomplished by: (1) Sending a letter by first class mail, properly stamped and addressed, to the family at its address at the project, with a proper return address, and (2) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by afffixing the notice to the door. Service shall not be considered to be effective until both required notices have been accomplished. The date on which the notice shall be considered to be received by the family shall be the date on which the owner mails the first class letter provided for in this paragraph, or the date on which

the notice provided for in this paragraph is properly given, whichever is later.

- (c) The notice shall advise each affected family that, after the expiration date of the Contract, the family will be required to bear the entire cost of the rent and that the owner will be free (to the extent the project is not otherwise regulated by HUD) to alter the rent without HUD approval, but subject to any applicable requirements or restrictions under the lease or under State or local law. The notice shall also state: (1) The actual (if known) or the estimated rent which will be charged following the expiration of the Contract; (2) the difference between the rent and the Total Tenant Payment toward rent under the Contract; and (3) the date the Contract will expire.
- (d) The owner shall give HUD a certification that families have been notified in accordance with this section with an example of the text of the notice attached.
- (e) This section applies to all Contracts entered into pursuant to an Agreement executed on or after October 1, 1981, or entered into pursuant to an Agreement executed before October 1, 1981, but renewed or amended on or after October 1, 1984.

[49 FR 31284, Aug. 6, 1984]

§884.109 Rent adjustments.

- (a) Funding of adjustments. Housing assistance payments will be made in increased amounts commensurate with Contract Rent adjustments under this paragraph, up to the maximum amount authorized under the Contract. (See §§ 884.104 and 884.105).
- (b) Automatic annual adjustments. (1) Automatic Annual Adjustment Factors will be determined by HUD at least annually; interim revisions may be made as market conditions warrant. Such Factors and the basis for their determination will be published in the FEDERAL REGISTER. These published Factors will be reduced appropriately by HUD where utilities are paid directly by Families.
- (2) On each anniversary date of the Contract, the Contract Rents shall be adjusted by applying the applicable Automatic Annual Adjustment Factor

§884.110

most recently published by HUD. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted rents be less than the Contract Rents on the effective date of the Contract.

- (c) Special additional adjustments. Special additional adjustments shall be granted, when approved by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract Units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs (i.e., assessments, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by automatic annual adjustments. The Owner shall submit to HUD financial statements which clearly support the increase.
- (d) Overall limitation. Notwithstanding any other provisions of this part, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD: Provided, however, That this limitation shall not be construed to prohibit differences in rents between assisted and comparable unassisted units to the extent that such differences may have existed with respect to the initial Contract Rents.

§884.110 Types of housing and property standards.

- (a) Newly constructed single-family houses and multifamily structures may be utilized in this program. Congregate housing may be developed for elderly, disabled, or handicapped Families and individuals. Except in the case of housing predominantly for the elderly, high-rise elevator projects for Families with children may not be utilized unless HUD determines there is no practical alternative.
- (b) Participation in this program requires compliance with:
 - (1) [Reserved]
- (2) In the case of congregate housing, the appropriate HUD guidelines and standards:

- (3) HUD requirements pursuant to section 209 of the HCD Act for projects for the elderly, disabled, or handicapped:
- (4) HUD requirements pertaining to noise abatement and control; and
- (5) Applicable State and local laws, codes, ordinances, and regulations.
- (c) Housing assisted under this part shall be modest in design. Amenities in projects assisted under this part (except partially assisted projects) will be limited to those amenities, as determined by HUD, which are generally provided in unassisted, decent, safe and sanitary housing for low-income families, in the market area. The use of more durable, high-quality materials to control or reduce maintenance, repair and replacement costs will not be considered an excess amenity.
- (d) Smoke detectors—(1) Performance requirement. After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.
- (2) Acceptability criteria. The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

[48 FR 12710, Mar. 28, 1983, as amended at 57 FR 33852, July 30, 1992; 63 FR 46579, Sept. 1, 1998]

§884.114 Financing.

- (a) *Types*. Eligible projects under this program shall be financed under Section 515, Title V of the Housing Act of 1949.
- (b) Use of contract as security for financing. (1) An Owner may pledge, or offer as security for any loan or obligation, an Agreement or Contract entered into pursuant to this part: Provided, however, That such security is in connection with a project constructed pursuant to this part, and the terms of the financing or any refinancing have

been approved by HUD. It is the Owner's responsibility to request such approval in sufficient time before he needs the financing to permit review of the method and terms of the financing and the instrument of pledge, offer or other assignment that HUD is requested to approve.

- (2) Any pledge of the Agreement, Contract, or ACC, or payments thereunder, shall be limited to the amounts payable under the Contract or ACC in accordance with its terms.
- (3) In the event of foreclosure and in the event of assignment or sale agreed to by HUD, housing assistance payments shall continue in accordance with the Terms of the Contract.

§884.115 Security and utility deposits.

- (a) An Owner may require Families to pay a security deposit in an amount equal to one month's Gross Family Contribution. If a Family vacates its unit, the Owner, subject to State and local laws, may utilize the deposit as reimbursement for any unpaid rent or other amount owed under the Lease. If the Family has provided a security deposit, and it is insufficient for such reimbursement, the Owner may claim reimbursement from HUD or the PHA, as appropriate, not to exceed an amount equal to the remainder of one month's Contract Rent. Any reimbursement under this section shall be applied first toward any unpaid rent. If a Family vacates the unit owing no rent or other amount under the Lease or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.
- (b) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. All security deposit funds shall be deposited by the Owner in a segregated bank account, and the balance of this account, at all times, shall be equal to the total amount collected from tenants then in occupancy, plus any accrued interest. The Owner shall comply with all State and local laws regarding interest payments on security deposits.
- (c) Families shall be expected to obtain the funds to pay security and util-

ity deposits, if required, from their own resources and/or other private or public sources.

§ 884.116 Establishment of income limit schedules; 30 percent occupancy by very-low income families.

- (a) HUD will establish schedules of Income limits for determining whether families qualify as Low-Income Families and Very Low-Income Families.
- (b) In the leasing of units, the Owner shall comply with HUD requirements concerning the permissible income levels of families, as prescribed in part 5 of this title.

[41 FR 47168, Oct. 27, 1976. Redesignated at 45 FR 6909, Jan. 30, 1980, and amended at 49 FR 19947, May 10, 1984; 65 FR 16723, Mar. 29, 2000]

§ 884.117 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

To be eligible to become an owner of housing assisted under this part, the owner (other than a PHA) must meet the disclosure and verification requirements for Social Security and Employer Identification Numbers, as provided by 24 CFR part 5.

(Approved by the Office of Management and Budget under control number 2502–0204)

[54 FR 39707, Sept. 27, 1989, as amended at 61 FR 13593, Mar. 27, 1996]

§884.118 Responsibilities of the owner.

- (a) The Owner shall be responsible (subject to post-review or audit by HUD or the PHA, as the case may be) for management and maintenance of the project. These responsibilities shall include but not be limited to:
- (1) Payment for utilities and services (unless paid directly by the Family), insurance and taxes;
- (2) Performance of all ordinary and extraordinary maintenance;
- (3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with part 5 of this title; selection of families, including verification of income, provision of Federal selection preferences in accordance with 24 CFR part 5, obtaining and verifying Social Security Numbers submitted by applicants (as provided by 24 CFR part 5), obtaining signed consent forms from applicants for the

§ 884.119

obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in 24 CFR part 5), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria:

- (4) Collection of Tenant Rents;
- (5) Termination of tenancies, including evictions:
- (6) Preparation and furnishing of information required under the Contract;
- (7) Reexamination of family income and composition; redetermination, as appropriate, of the amount of Tenant Rent and the amount of housing assistance payment in accordance with part 5 of this title; obtaining and verifying Social Security Numbers submitted by participants, as provided by 24 CFR part 5; and obtaining signed consent forms from participants for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5;
- (8) Redetermination of amount of Tenant Rent and amount of housing assistance payment in accordance with part 5 of this title as a result of an adjustment by the PHA or HUD, as appropriate, of any applicable Utility Allowance; and
- (9) Compliance with equal opportunity requirements issued by RHCDS and HUD with respect to project operation.
- (b) Subject to HUD approval, any Owner may contract with any private or public entity to perform for a fee the services required by paragraph (a) of this section: Provided, That such contract shall not relieve the Owner of his responsibilities or obligations. However, no entity which is responsible for administration of the Contract (for example, a PHA in the case of a Private-Owner/PHA Project) may contract to perform management and maintenance of the project: Provided, however, That this prohibition shall not preclude management by the PHA in the event it takes possession as the result of foreclosure or assignment in lieu of foreclosure. (See, however, §884.123(b), which permits conversion of a Private-

Owner/PHA Project to a Private-Owner Project.)

(Approved by the Office of Management and Budget under control number 2502–0204)

[41 FR 47168, Oct. 27, 1976. Redesignated at 45 FR 6909, Jan. 30, 1980, and amended at 49 FR 19947, May 10, 1984; 51 FR 11227, Apr. 1, 1986; 53 FR 847, Jan. 13, 1988; 53 FR 1162, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39707, Sept. 27, 1989; 56 FR 7540, Feb. 22, 1991; 60 FR 14845, Mar. 20, 1995; 61 FR 13593, Mar. 27, 1996; 65 FR 16723, Mar. 29, 2000]

§884.119 Responsibility for contract administration and defaults (private-owner and PHA-owner projects).

- (a) Contract administration. HUD is responsible for administration of the Contract. HUD may contract with another entity for the performance of some or all of its Contract administration functions.
- (b) Defaults by owner. The Contract shall contain a provision to the effect (1) that if HUD determines that the Owner is in default under the Contract, HUD shall notify the Owner (with a copy to RHCDS) of the actions required to be taken to cure the default and of the remedies to be applied by HUD including abatement of housing assistance payments and recovery of overpayments, where appropriate; and (2) that if he fails to cure the default, HUD has the right to terminate the Contract or to take other corrective action.

[41 FR 47168, Oct. 27, 1976, as amended at 61 FR 13593, Mar. 27, 1996]

§ 884.120 Responsibility for contract administration and defaults (private-owner/PHA projects).

- (a) Contract administration. The PHA is primarily responsible for administration of the Contract, subject to review and audit by HUD.
- (b) Defaults by PHA and/or owner. (1) The ACC and the Contract shall contain a provision to the effect that in the event of failure of the PHA to comply with the Contract with the Owner, the Owner shall have the right, if he is not in default, to demand that HUD determine, after notice to the PHA giving it a reasonable opportunity to take

corrective action, whether a substantial default exists, and if HUD determines that such a default exists, that HUD assure that the obligations of the PHA to the Owner are carried out.

(2) The ACC shall contain a provision to the effect that if the PHA fails to comply with any of its obligations (including specifically failure to enforce its rights under the Contract, in the event of any default by the Owner, to achieve compliance to the satisfaction of HUD or to terminate the Contract in whole or in part, as directed by HUD), HUD may, after notice to the PHA giving it a reasonable opportunity to take corrective action, determine that there is a substantial default and require the PHA to assign to HUD all of the PHA's rights and interests under the Contract. In such case, HUD will continue to pay annual contributions in accordance with the terms of the ACC and the Contract.

(3) The Contract shall contain a provision to the effect (i) that if the PHA determines that the Owner is in default under the Contract, the PHA shall notify the Owner, with a copy to HUD and RHCDS, of the actions required to be taken to cure the default and of the remedies to be applied by the PHA including abatement of housing assistance payments and recovery of overpayments, where appropriate; and (ii) that if he fails to cure the default, the PHA has the right to terminate the Contract or to take other corrective action, in its discretion or as directed by HUD.

 $[41\ {\rm FR}\ 47168,\ {\rm Oct.}\ 27,\ 1976,\ {\rm as}\ {\rm amended}\ {\rm at}\ 61\ {\rm FR}\ 13593,\ {\rm Mar.}\ 27,\ 1996]$

§884.121 Rights of owner if PHA defaults under agreement (private-owner/PHA projects).

The ACC and the Agreement shall contain a provision to the effect that in the event of failure of the PHA to comply with the Agreement with the Owner, the Owner shall have the right, if he is not in default, to demand that HUD determine, after notice to the PHA giving it a reasonable opportunity to take corrective action, whether a substantial default exists, and if HUD determines that such a default exists, that HUD assume the PHA's rights and obligations under the Agreement, and

carry out the obligations of the PHA under the Agreement, including the obligation to enter into the Contract.

§884.122 Separate project requirement.

- (a) In the case of a Private-Owner Project or a PHA-Owner Project, each Agreement and Contract shall constitute a separate project.
- (b) In the case of a Private-Owner/PHA Project such project may not include more than one type of Section 8 assistance, shall be processed with a separate ACC List and ACC Part I and shall be assigned a separate project number. All new construction units to be placed under a single Contract shall comprise a separate project. However, the field office director may designate as a single project the units to be covered by two or more such Contracts for new construction projects where:
- (1) The units are placed under ACC on the same date; and
- (2) Such consolidation is necessary in the interest of administrative efficiency.

§884.123 Conversions.

- (a) Conversion of private-owner project to private-owner/PHA project. HUD may request the Owner of a Private-Owner Project and an appropriate PHA to agree, if they are willing, to a conversion of any such project to a Private-Owner/PHA Project if HUD determines that such conversion would promote efficient project administration.
- (b) Conversion of private-owner/PHA project to private-owner project. The Private Owner and the PHA, in the case of a Private-Owner/PHA Project, may request HUD to agree to a conversion of any such project to a Private-Owner or PHA-Owner Project. HUD shall agree to such conversion if it determines it to be in the best interest of the project.

§ 884.124 Audit.

(a) Where a State or local government is the eligible owner of a project, or is a contract administrator under §884.119 or §884.120, receiving financial assistance under this part, the audit requirements in 24 CFR part 44 shall apply.

§884.212

(b) Where a nonprofit organization is the eligible owner of a project, receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.

[50 FR 39092, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986, as amended at 57 FR 33257, July 27, 1992]

Subpart B—Project Development and Operation

§884.212 Project completion.

- (a) FmHA certifications upon completion. Upon completion of the project, FmHA shall inspect the project and, if determined to be acceptable, submit to the HUD field office the following certifications:
- (1) The project has been completed in accordance with the requirements of the Agreement;
- (2) The project is in good and tenantable condition;
- (3) There are no defects or deficiencies in the project other than punchlist items, or incomplete work awaiting seasonal opportunity;
- (4) There has been no change in management capability.
- (b) *HUD review*. HUD shall promptly review the certifications submitted pursuant to paragraphs (a) and (b) of this section (see § 884.203(b)).
- (c) *HUD acceptance*. If HUD determines from the review that the certifications are acceptable in accordance with these subparts, the project shall be accepted.
- (d) Acceptance where defects or deficiencies reported. If the only defects or deficiencies are punchlist items or incomplete items awaiting seasonal opportunity, the project may be accepted and the Contract executed. If the Owner fails to complete the items within a reasonable time to the satisfaction of HUD (and the PHA, if applicable), HUD may, after consultation with FmHA, upon 30 days notice to the Owner (and the PHA, if applicable), terminate the Contract and/or exercise its other rights thereunder or, if the Contract is with a PHA, cancel its approval of the Contract and require its termination and/or exercise its other rights under the Contract and the ACC.
- (e) Arbitration. In the event the Owner disputes HUD determinations,

he may submit the controversy to third-party arbitration at his expense, provided that the arbitration is advisory only.

(f) Completion in stages. If the project is to be completed in stages, the procedures of this section shall apply to each stage.

§884.213 Execution of housing assistance payments contract.

(a) Time of execution. Upon acceptance of the project by HUD pursuant to §884.212, the Contract shall be executed first by the Owner and then by HUD, or, in the case of a Private-Owner/PHA Project, executed by the Owner and the PHA and then approved by HUD.

(b) Unleased units. At the time of execution of the Contract, HUD (or the PHA, as appropriate) shall examine the lists of dwelling units leased and not leased, referred to in §884.211(e) and shall determine whether or not the Owner has met his obligations under that section with respect to any unleased units. HUD (or the PHA, as appropriate) shall state in writing its determination with respect to the unleased units and for which of those units it will make housing assistance payments. The Owner shall indicate in writing his concurrence with this determination or his disagreement, reserving his rights to claim housing assistance payments for the unleased units pursuant to the Contract, without prejudice by reason of his signing the Contract. Copies of all documents referred to this paragraph shall be furnished to HUD in the case of a Private-Owner/PHA Project.

§884.214 Marketing.

- (a) Compliance with equal opportunity requirements. Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's FmHA-approved Affirmative Fair Housing Marketing Plan, if required, and with all regulations relating to fair housing advertising including use of the equal opportunity logotype statement and slogan in all advertising. Projects shall be managed and operated without regard to race, color, creed, religion, sex, or national origin.
- (b) Eligibility, selection and admission of families. (1) The owner is responsible

for determination of eligibility of applicants in accordance with the procedure of 24 CFR part part 5, selection of families from among those determined to be eligible (including provision of Federal selection preferences in accordance with 24 CFR part 5), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with schedules and criteria established by HUD.

(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.

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).

- (3) If the Owner determines that the applicant is eligible on the basis of Income and family composition and is otherwise acceptable but the Owner does not have a suitable unit to offer, the Owner shall place such Family on his waiting list and so advise the Family.
- (4) If the Owner determines that the applicant is eligible on the basis of Income and family composition and is otherwise acceptable and if the Owner has a suitable unit, the Owner and the Family shall enter into a Lease. Such Lease shall be on the form of Lease included in the Owner's approved Final Proposal and shall otherwise be in con-

formity with the provisions of this part.

- (5) Records on applicant families and approved Families shall be maintained by the Owner so as to provide HUD with racial, ethnic and gender data and shall be retained by the Owner for three years.
- (6) In the case of a PHA-Owner project, (i) if the PHA places a Family on its waiting list, it shall notify the Family of the approximate date of availability of a suitable unit insofar as such date can be reasonably determined, and (ii) if the PHA determines that an applicant is ineligible on the basis of income or family composition, or that the PHA is not selecting the applicant for other reasons, the PHA shall promptly send the applicant a letter notifying him of the determination and the reasons and that the applicant 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 applicant shall not be admitted, the PHA shall so notify the applicant in writing and such notice shall inform the applicant that he has the right to request a review by HUD of the PHA's determination. The procedures of this subparagraph do not preclude the applicant from exercising his other rights if he believes he is being discriminated against on the basis of race, color, creed, religion, sex, or national origin. The PHA shall 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.
- (7) See 24 CFR part 5 for the informal review provisions for the denial of a Federal selection preference.
- (8) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see part 5 of this title for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration

§884.215

status, and those without eligible immigration status) in lieu of denial of assistance.

[41 FR 47168, Oct. 27, 1976. Redesignated at 45 FR 6909, Jan. 30, 1980, and amended at 53 FR 1162, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 60 FR 14845, Mar. 20, 1995; 61 FR 9047, Mar. 6, 1996; 61 FR 13594, Mar. 27, 1996; 65 FR 16723, Mar. 29, 2000]

$\S 884.215$ Lease requirements.

The Lease shall contain all required provisions specified in paragraph (b) of this section and none of the prohibited provisions listed in paragraph (c) of this section.

(a) Term of lease. The term of the Lease shall be for not less than one year. The Lease may (or, in the case of a Lease for a term of more than one year, shall) contain a provision permitting termination upon 30 days advance written notice by either party.

(b) Required provisions. The Lease between the Owner (Lessor) and the Family (Lessee) shall contain the following provisions:

ADDENDUM TO LEASE

The following additional Lease provisions are incorporated in full in the Lease between (Lessor) and (Lessor) and (dwelling unit: . In case of any conflict between these and any other provisions of the Lease, these provisions shall prevail.

- a. The total rent shall be \$_____ per month.
- b. Of the total rent, \$ shall be payable by or at the direction of the Department of Housing and Urban Development ("HUD") as housing assistance payments on behalf of the Lessee and \$ shall be payable by the Lessee. These amounts shall be subject to change by reason of changes in the Lessee's family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD-established schedules and criteria; or by reason of adjustment by HUD, or the PHA, if appropriate, of any applicable Allowance for Utilities and Other Services. Any such change shall be effective as of the date stated in a notification to the Lessee.
- c. The Lessor shall not discriminate against the Lessee in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.
- d. The Lessor shall provide the following services and maintenance:

services	and r	naint	tenance	:	
T					

By	
Date	
Lessee	
Date	

- (c) Prohibited provisions. Lease clauses which fall within the classifications listed below shall not be included in any Lease.
- (1) Confession of judgment. Prior consent by tenant to any lawsuit the landlord may bring against him in connection with the Lease and to a judgment in favor of the landlord.
- (2) Distraint for rent or other charges. Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which the landlord has determined the tenant has failed to perform.
- (3) Exculpatory clause. Agreement by tenant not to hold the landlord or landlord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents.
- (4) Waiver of legal notice to tenant prior to actions for eviction or money judgments. Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.
- (5) Waiver of legal proceedings. Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or any determination by a court of the rights and liabilities of the parties.
- (6) Waiver of jury trial. Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's right to a trial by jury.
- (7) Waiver of right to appeal judicial error in legal proceedings. Authorization to the landlord's lawyer to waive the tenant's right to appeal on the ground of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.
- (8) Tenant chargeable with costs of legal actions regardless of outcome. Agreement by the tenant to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court finds in favor of the tenant.

(Omission of such clause does not mean that the tenant as a party to a lawsuit may not be obligated to pay attorney's fee or other costs if he loses the suit.)

§884.216 Termination of tenancy.

- (a) The owner is responsible for termination of tenancies, including evictions. However, conditions for payment of housing assistance payments for any resulting vacancies must be as set forth in §884.106(c)(1). Failure of the family to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, shall be grounds for termination of tenancy. For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, including the applicable informal requirements, see 24 CFR part 5 and also for provisions concerning assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.
- (b) Termination of tenancy for criminal activity by a covered person is subject to 24 CFR 5.858 and 5.859, and termination of tenancy for alcohol abuse by a covered person is subject to 24 CFR 5.860.
- (c) In actions or potential actions to terminate tenancy, the Owner shall follow 24 CFR part 5, subpart L in all cases where domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

[56 FR 7541, Feb. 22, 1991, as amended at 60 FR 14845, Mar. 20, 1995; 61 FR 13594, Mar. 27, 1996; 61 FR 47382, Sept. 6, 1996; 66 FR 28798, May 24, 2001; 73 FR 72343, Nov. 28, 2008; 75 FR 66261, Oct. 27, 2010]

§884.217 Maintenance, operation and inspections.

(a) Maintenance and operation. The Owner shall maintain and operate the project so as to provide Decent, Safe, and Sanitary housing and he shall provide all the services, maintenance and utilities which he agrees to provide

under the Contract, subject to abatement of housing assistance payments or other applicable remedies if he fails to meet these obligations.

- (b) Inspection prior to occupancy. Prior to occupancy of any unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on forms prescribed by HUD, that they have inspected the unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria provided in the prescribed forms. Copies of these reports shall be kept on file by the Owner for at least three years.
- (c) Periodic inspections. HUD (or the PHA, as appropriate) will inspect or cause to be inspected each Contract unit and related facilities at least annually and at such other times (including prior to initial occupancy and rerenting of any unit) as HUD (or the PHA) may determine to be necessary to assure that the Owner is meeting his obligation to maintain the units in Decent, Safe, and Sanitary condition and to provide the agreed upon utilities and other services. HUD (or the PHA) will take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the Owner and the Family of its determination.
- (d) Units not decent, safe, and sanitary. If HUD (or the PHA, as appropriate) notifies the Owner that he has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, HUD (or the PHA) may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments, even if the Family continues to occupy the unit. If, however, the Family wishes to be rehoused in another dwelling unit with Section 8 assistance and HUD (or the PHA) does not have other Section 8 funds for such purposes, HUD (or the PHA) may use the abated housing assistance payments for the purpose of rehousing the Family in another dwelling unit. Where this is done, the Owner shall be notified that he will be entitled to resumption of housing assistance payments for the vacated dwelling unit if:

§884.218

- (1) The unit is restored to Decent, Safe, and Sanitary condition;
- (2) The Family is willing to and does move back to the restored dwelling unit: and
- (3) A deduction is made for the expenses incurred by the Family for both moves.

§884.218 Reexamination of family income and composition.

(a) Regular reexaminations. The owner must reexamine the income and composition of all families at least once each year. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 5 of this title and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose and verify Social Security Numbers, as provided by 24 CFR part 5. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5. At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of 24 CFR part 5 concerning verification of the immigration status of any new family member.

(b) Interim reexaminations. The family must comply with provisions of its lease regarding interim reporting of changes in income. If the owner receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total

Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified. See 24 CFR 750.10(d)(2)(i) for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5. At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of 24 CFR part 5 concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) Continuation of housing assistance payments. A family's eligibility for Housing Assistance Payments continues until the Total Tenant Payment equals the Contract Rent plus any utility allowance, or until the family loses eligibility for continued occupancy under Farmer's Home Administration regulations. However, eligibility also may be terminated in accordance with HUD requirements, for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5. For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see 24 CFR part 5 and also for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

[56 FR 7541, Feb. 22, 1991, as amended at 60 FR 14845, Mar. 20, 1995; 61 FR 13594, Mar. 27, 1996; 65 FR 16723, Mar. 29, 2000]

§884.219 Overcrowded and underoccupied units.

If HUD or the PHA, as the case may be, determines that a Contract unit assisted under this part is not Decent. Safe, and Sanitary by reason of increase in Family size, or that a Contract unit is larger than appropriate for the size of the Family in occupancy, housing assistance payments with respect to such unit will not be abated, unless the Owner fails to offer the Family a suitable unit as soon as one becomes vacant and ready for occupancy. In the case of an overcrowded unit, if the Owner does not have any suitable units or if no vacancy of a suitable unit occurs within a reasonable time, HUD (or the PHA) will assist the Family in finding a suitable dwelling unit and require the Family to move to such a unit as soon as possible. The Owner may receive housing assistance payments for the vacated unit if he complies with the requirements of §884.106(c)(1).

§884.220 Adjustment of utility allowances.

In connection with annual and special adjustments of contract rents, the owner must submit an analysis of the project's Utility Allowances. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analvsis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the project owner must advise the Secretary and request approval of new Utility Allowances. Whenever a Utility Allowance for a unit is adjusted, the owner will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment for the unit.

(Approved by the Office of Management and Budget under control number 2502-0161)

[50 FR 39098, Sept. 27, 1985]

§ 884.221 Continued family participation.

A Family must continue to occupy its approved unit to remain eligible for participation in the Housing Assistance Payments Program except that if the Family (a) wishes to vacate its unit at the end of the Lease term (or prior thereto but in accordance with the provisions of the Lease), or (b) is required to move for reasons other than violation of the Lease on the part of the Family, and if the Family wishes to receive the benefit of housing assistance payments in another approvable unit, the Family should give reasonable notice of the circumstances to HUD or to the PHA, as appropriate, so that HUD or the PHA may have the opportunity to consider the Family's request.

§884.222 Inapplicability of low-rent public housing model lease and grievance procedures.

Model lease and grievance procedures established by HUD for PHA-owned low-rent public housing are applicable only to PHA-Owner Projects under the Section 8 Housing Assistance Payments Program.

§884.223 Leasing to eligible families.

(a) Availability of units for occupancy by Eligible Families. During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with §884.214; (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to HUD (or the PHA in accordance with HUD guidelines and at the direction of HUD, as appropriate). If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families,

§884.223a

one or more units may be leased to ineligible families with the prior approval of HUD (or the PHA in accordance with HUD guidelines and at the direction of HUD, as appropriate). Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

- (b) Reduction of number of units covered by Contract. HUD (or the PHA at the direction of HUD, as appropriate), after consultation with the Farmers Home Administration, may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:
- (1) The owner fails to comply with the requirements of paragraph (a) of this section; or
- (2) Notwithstanding any prior approval by HUD (or the PHA at the direction of HUD, as appropriate) to lease such units to ineligible families, HUD (or the PHA at the direction of HUD, as appropriate) determines that the inability to lease units to eligible families is not a temporary problem.
- (c) Restoration. HUD will agree to an amendment of the ACC or the Contract, as appropriate, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:
- (1) HUD determines that the restoration is justified by demand;
- (2) The owner otherwise has a record of compliance with his or her obligations under the Contract; and
- (3) Contract and budget authority are available.
- (d) Applicability. In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time will continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.

- (e) Termination of assistance for failure to establish citizenship or eligible immigration status. If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with 24 CFR part 5 because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in 24 CFR part 5, the owner shall comply with the provisions of 24 CFR part 5 concerning assistance to mixed families, and deferral of termination of assistance.
- (f) Subpart L of 24 CFR part 5 applies to selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking.

[49 FR 31398, Aug. 7, 1984, as amended at 53 FR 847, Jan. 13, 1988; 53 FR 6601, Mar. 2, 1988; 59 FR 13653, Mar. 23, 1994; 60 FR 14846, Mar. 20, 1995; 61 FR 13594, Mar. 27, 1996; 73 FR 72343, Nov. 28, 2008; 75 FR 66261, Oct. 27, 2010]

§ 884.223a Preference for occupancy by elderly families.

- (a) Election of preference for occupancy by elderly families—(1) Election by owners of eligible projects. (i) An owner of a project assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an "eligible project") may, at any time, elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.
- (ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an "elderly project." "Elderly families" refers to families whose heads of household, their spouses or sole members are 62 years or older.

- (iii) An owner who elects to provide a preference to elderly families in accordance with this section is required to notify families on the waiting list who are not elderly that the election has been made and how the election may affect them if:
- (A) The percentage of disabled families currently residing in the project who are neither elderly nor near-elderly (hereafter, collectively referred to as "non-elderly disabled families") is equal to or exceeds the minimum required percentage of units established for the elderly project in accordance with paragraph (c)(1) of this section, and therefore non-elderly families on the waiting list (including non-elderly disabled families) may be passed over for covered section 8 units; or
- (B) The project, after making the calculation set forth in paragraph (c)(1) of this section, will have no units set aside for non-elderly disabled families.
- (iv) An owner who elects to give a preference for elderly families in accordance with this section shall not remove an applicant from the project's waiting list solely on the basis of having made the election.
- (2) HUD approval of election not required. (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in parapaph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project's eligibility through the production of all relevant documentation in the possession of the owner that pertains to the original design of the project.
- (ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations under the Fair Housing Act (42 U.S.C. 3601 through 3619), or compliance reviews and complaint investigations under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.

- (b) Determining projects eligible for preference for occupancy by elderly families—(1) Evidence supporting project eligibility. Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this section, shall consist of at least one item from the sources ("primary" sources) listed in paragraph (b)(1)(i) of this section, or at least two items from the sources ("secondary" sources) listed in paragraph (b)(1)(ii) of this section:
- (i) Primary sources. Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: the application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan commitment; the bid invitation; the owner's management plan, or any underwriting or financial document collected at or before loan closing; or
- (ii) Secondary sources. Two or more sources of evidence such as: lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older; evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with more than fifty percent of efficiency and one-bedroom units [a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of "elderly families") from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of "elderly families" which includes disabled families]; or any other relevant type of historical data,

§884.223a

unless clearly contradicted by other comparable evidence.

- (2) Sources in conflict. If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of preferences for elderly families as provided by this section based upon primary sources alone. In any case where primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families, including those cases where sources documents conflict, secondary sources may be used to establish the use for which the project was originally designed.
- (c) Reservation of units in elderly projects for non-elderly disabled families. The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph (c)(1) of this section for occupancy by non-elderly disabled families.
- (1) Minimum number of units to be reserved for non-elderly disabled families. The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:
- (i) The number of units equivalent to the higher of—
- (A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and
- (B) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families upon January 1, 1992; or
- (ii) 10 percent of the number of units assisted under this part in the eligible project.
- (2) Option to reserve greater number of units for non-elderly disabled families. The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of

units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.

- (d) Secondary preferences. An owner of an elderly project also may elect to establish secondary preferences in accordance with the provisions of this paragraph (d) of this section.
- (1) Preference for near-elderly disabled families in units reserved for elderly families. If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c) of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.
- (2) Preference for near-elderly disabled families in units reserved for non-elderly disabled families. If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units to disabled families who are near-elderly families.
- (e) Availability of units to families without regard to preference. An owner shall make vacant units in an elderly project generally available to otherwise eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section if either:
- (1) The owner has adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, reserve preference, and secondary preference has been given, to fill all the vacant units; or
- (2) The owner has *not* adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, and reserve preference has been given to fill all the vacant units.

- (f) Determination of insufficient number of applicants qualifying for preference. To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:
- (1) Conduct marketing in accordance with §884.214(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section: and
- (2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such fami-
- (g) Prohibition of evictions. An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

[59 FR 65855, Dec. 21, 1994, as amended at 61 FR 9047, Mar. 6, 1996; 65 FR 16723, Mar. 29,

§884.224 HUD review of contract compliance.

HUD will review project operation at such intervals as it deems necessary to ensure that the Owner is in full compliance with the terms and conditions of the Contract. Equal Opportunity review may be conducted with the scheduled HUD review or at any time deemed appropriate by HUD.

§884.225 PHA reporting requirements. [Reserved]

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PRO-**GRAM—SPECIAL ALLOCATIONS**

Subpart A—Additional Assistance Program for Projects With HUD-Insured and **HUD-Held Mortgages**

Sec.

886.101 Applicability.

886.102 Definitions.

886.103 Allocation of Section 8 contract authority.

- 886 104 Invitations to participate.
- 886.105 Content of application; Disclosure.

886 106 Notices.

Approval of applications. 886.107

- 886.108 Maximum annual contract commitment
- 886.109 Housing assistance payments to owners.

886.110 Contract rents.

886.111 Term of contract.

886.111a Notice upon contract expiration.

886.112 Rent adjustments.

886.113 Physical condition standard; physical inspection requirements. 886.114 Equal opportunity requirements.

886.115 [Reserved]

886.116 Security and utility deposits.

886.117 [Reserved]

886.118 Amount of housing assistance payments in projects receiving other HUD assistance.

886.119 Responsibilities of the owner.

886.120 Responsibility for contract administration.

886.121 Marketing.

886.122 [Reserved]

886.123 Maintenance, operation and inspections. 886.124 Reexamination of family income and

composition. 886.125 Overcrowded and underoccupied

units.

886.126 Adjustment of utility allowances.

886.127 Lease requirements.

886.128 Termination of tenancy

886.129 Leasing to eligible families. 886.130 HUD review of contract compliance.

886.131 Audit.

886.132 Tenant selection.

886.138 Displacement, relocation, and acquisition.

Subpart B [Reserved]

Subpart C—Section 8 Housing Assistance Program for the Disposition of HUD-**Owned Projects**

886 301 Purpose.

886.302 Definitions.

886.303 Allocation and reservation of Section 8 contract authority and budget authority

886.304 Project eligibility criteria.

886.305 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

886.306 Notices.

886.307 Physical condition standards; physical inspection requirements.

886.308 Maximum total annual contract commitment.

886.309 Housing assistance payment to owners.

886.310 Initial contract rents. 886.311 Term of contract.

886.311a Notice upon contract expiration.

§886.101

886.312 Rent adjustments.

886.313 Other Federal requirements.

886.314 Financial default.

886.315 Security and utility deposits.

886.316-886.317 [Reserved]

886.318 Responsibilities of the owner.

886.319 Responsibility for contract administration.

886.320 Default under the contract.

886.321 Marketing.

886.322 [Reserved]

886.323 Maintenance, operation, and inspections.

886.324 Reexamination of family income and composition.

886.325 Overcrowded and underoccupied units.

886.326 Adjustment of utility allowances.

886.327 Lease requirements.

886.328 Termination of tenancy

886.329 Leasing to eligible families.

886.329a Preferences for occupancy by elderly families.

886.330 Work write-ups and cost estimates.

886.331 Agreement to enter into housing assistance payments contract.

886.332 Rehabilitation period.

886.333 Completion of rehabilitation.

886.334 Execution of housing assistance payments contract.

886.335 HUD review of agreement and contract compliance.

886.336 Audit.

886.337 Selection preferences.

886.338 Displacement, relocation, and acquisition.

AUTHORITY: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611-13619.

Subpart A—Additional Assistance Program for Projects With HUD-Insured and HUD-Held Mortgages

SOURCE: 42 FR 5603, Jan. 28, 1977, unless otherwise noted.

§886.101 Applicability.

(a) The policies and procedures of this subpart apply to Housing Assistance Payments under Section 8 of the United States Housing Act of 1937 on behalf of Eligible Families in Eligible Projects (see definitions in §886.102).

(b) The primary goal of the Section 8 Loan Management Set-Aside Program is to reduce claims on the Department's insurance fund by aiding those FHA-insured or Secretary-Held projects with immediately or potentially serious financial difficulties. A first priority should be given to

projects with presently serious financial problems, which are likely to result in a claim on the insurance fund in the near future. To the extent resources remain available, assistance also may be provided to projects with potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing a claim on the insurance fund within approximately the next five years.

 $[42\ FR\ 5603,\ Jan.\ 28,\ 1977,\ as\ amended\ at\ 53\ FR\ 3368,\ Feb.\ 5,\ 1988]$

§886.102 Definitions.

The terms Fair Market Rent (FMR), HUD, Public Housing Agency (PHA), and Secretary are defined in 24 CFR part 5. Act. The United States Housing Act of 1937

Annual income. As defined in part 5 of this title.

Contract (See Section 8 Contract).

Contract Rent. The rent payable to the Owner as required by HUD in connection with its mortgage insurance and/or lending functions, including the portion of the rent payable by the Family, not to exceed the amount stated in the Section 8 Contract as such amount may be adjusted in accordance with §886.112. In the case of a cooperative, the term "Contract Rent" means charges under the occupancy agreements between the members and the cooperative.

Decent, Safe, and Sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

Eligible Project. Any existing subsidized or unsubsidized multifamily residential project that is subject to a mortgage insured or any section of the National Housing Act; any such project subject to a mortgage that has been assigned to the Secretary; any such project acquired by the Secretary and thereafter sold under a Secretary-held purchase money mortgage; or a project for the elderly financed under section 202 of the Housing Act of 1959 (except projects receiving assistance under 24 CFR part 885).

Family. As defined in part 5 of this title.

HCD Act. The Housing and Community Development Act of 1974.

Housing Assistance Payment. The payment made by HUD to the Owner of an assisted unit as provided in the Contract. Where the unit is leased to an eligible Family, the payment is the difference between the Contract Rent and the Tenant Rent. An additional Housing Assistance Payment is made when the Utility Allowance is greater than the Total Tenant Payment. A Housing Assistance Payment may be made to the Owner when a unit is vacant, in accordance with §886.109.

Income. Income from all sources of each member of the household as determined in accordance with criteria established by HUD and as defined in part 5 of this title.

Lease. A written agreement between the owner and a family for leasing of a decent, safe and sanitary dwelling unit to the family.

Low-income family. As defined in part 5 of this title.

Owner. The mortgagor of record under a multifamily project mortgage insured, or held by the Secretary, including purchase money mortgages; the owner of a Section 202 project.

Project. See § 886.101.

Project Account. The account established and maintained in accordance with §886.108.

Section 8 Contract ("Contract"). A written Contract between the Owner of an Eligible Project and HUD for providing Housing Assistance Payments to the Owner on behalf of Eligible Families pursuant to this part.

Subsidized Rent. In Section 221(d)(3) BMIR, Section 202, or Section 236 projects, the rent payable to the project, based on the particular circumstances of any assisted tenant in the absence of any Housing Assistance Payment.

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Very low-income family. As defined in part 5 of this title.

[42 FR 5603, Jan. 28, 1977, as amended at 42 FR 63745, Dec. 19, 1977; 49 FR 19948, May 10, 1984; 50 FR 38795, Sept. 25, 1985; 53 FR 3368, Feb. 5, 1988; 61 FR 5213, Feb. 9, 1996; 63 FR 46579, Sept. 1, 1998; 65 FR 16723, Mar. 29, 2000; 70 FR 77744, Dec. 30, 2005]

§886.103 Allocation of Section 8 contract authority.

HUD will allocate to field offices contract authority for Section 8 project commitments for metropolitan and nonmetropolitan areas in conformance with Section 213(d) of the HCD Act.

§886.104 Invitations to participate.

- (a) HUD shall identify Eligible Projects which are most likely to meet the selection criteria set forth in §886.117, and shall invite the Owners of such projects to make application for Section 8 assistance under this part.
- (b) An Owner of an Eligible Project who has not been notified pursuant to paragraph (a) of this section may also make application for such assistance.

§886.105 Content of application; Disclosure.

Applications shall be in the form and in accordance with the instructions prescribed by HUD, and shall include:

- (a) Information on Gross Income, family size, and amount of rent paid to the project by Families currently in residence;
- (b) Information on vacancies and turnover:
- (c) Estimate of effect of the availability of Section 8 assistance on marketability of units in the project;
- (d) For projects having a history of financial default, financial difficulties or deferred maintenance, a plan and a schedule for remedying such defaulted or deferred obligations;
- (e) Total number of units by unit size (by bedroom count) for which Section 8 assistance is requested; and
- (f) Affirmative Fair Housing Marketing Plan on a HUD-prescribed form. To be eligible to become an owner of housing assisted under this subpart, the owner must meet the disclosure

§ 886.106

and verification requirements for Social Security and Employer Identification Numbers, as provided by part 5, subpart B, of this title.

(Approved by the Office of Management and Budget under control number 2502-0204)

[42 FR 5603, Jan. 28, 1977, as amended at 54 FR 39708, Sept. 27, 1989; 61 FR 11118, Mar. 18, 1996]

§ 886.106 Notices.

- (a) Within 10 days of receipt of each completed application by the HUD field office, the field office shall send to the chief executive officer of the unit of general local government in which the proposed assistance is to be provided, a notification in a form prescribed by HUD for purposes of compliance with Section 213 of the HCD Act.
- (b) If an application is approved, HUD shall send to the Owner a notice of application approval. If an application can be approved only on certain conditions, HUD shall notify the Owner of the conditions and specify a time limit by which those conditions must be met. If an application is disapproved, HUD shall so notify the Owner by letter indicating the reasons for disapproval.

 $[42\ {\rm FR}\ 5603,\ {\rm Jan.}\ 28,\ 1977,\ {\rm as}\ {\rm amended}\ {\rm at}\ 53\ {\rm FR}\ 3368,\ {\rm Feb.}\ 5,\ 1988]$

§886.107 Approval of applications.

HUD shall approve applications, after considering all pertinent information including comments (if any) received during the comment period from the unit of general local government, based on the following criteria:

- (a) The Owner's Affirmative Fair Housing Marketing Plan is approvable.
- (b) The HUD-approved unit rents are approvable within the Fair Market Rent limitations contained in §886.110.
- (c) The residential units meet the housing quality standards set forth in §886.113, except for such variations as HUD may approve. Local climatic or geological conditions or local codes are examples which may justify such variations.
- (d) A significant number of residents, or potential residents, in the case of projects having a vacancy rate over 10 percent, are eligible for and in need of Section 8 assistance.

- (e) The infusion of Section 8 assistance into the subject project should not affect other HUD-related multifamily housing within the same neighborhood in a substantially adverse manner. Examples of such adverse effects are (1) substantial move-outs from nearby HUD-related projects precipitated by much lower rents in the subject project, or (2) substantial diversion of prospective applicants from such projects to the subject project.
- (f) A first priority is given to HUD-Insured or Secretary-Held projects with presently serious financial problems, which are likely to result in a claim on the insurance fund in the near future. To the extent resources remain available, assistance also may be provided to projects with potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing a claim on the insurance funds within approximately the next five years.
- (g) The infusion of Section 8 assistance into the subject project solves an identifiable problem, e.g., high vacancies and/or turnover, and provides a reasonable assurance of long-term project viability. A determination of long-term viability shall be based upon the following considerations:
- (1) The project is not subject to any serious problems that are non-economic in nature. Examples of such problems are poor location, structural deficiencies or disinterested ownership.
- (2) The Owner is in substantial compliance with the Regulatory Agreement. Owners are not diverting project funds for personal use. No dividends are being paid during any period of financial difficulty.
- (3) The management agent is in substantial compliance with the management agreement. The current management agreement has been approved by HUD. Financial records are adequately kept. Occupancy requirements are being met. Marketing and maintenance programs are being carried out in an adequate manner, based upon available financial resources.
- (4) The project's problems are primarily the result of factors beyond the control of the present ownership and management.

- (5) The major problems are traceable to an inadequate cash flow.
- (6) The infusion of Section 8 assistance will solve the cash flow problem by:
- (i) Making it possible to grant needed rent increases:
- (ii) Reducing turnover, vacancies and collection losses.
- (7) The Owner's plan for remedying any deferred maintenance, financial problems, or other problems is realistic and achievable. There is positive evidence that the Owner will carry out the plan. Examples of such evidence are the Owner's past performance in correcting problems and, in the case of profit-motivated Owners, any cash contributions made to correct project problems.
- (h) Any plan submitted pursuant to §886.105(d) is found by HUD to be adequate.

§ 886.108 Maximum annual contract commitment.

- (a) Number of units assisted. Based on analysis of housing assistance needs of families residing or expected to reside in the project, HUD shall determine the number of units to be assisted up to 100 percent of the units in the project. All units currently assisted under section 23 or section 8 shall be converted and included under the Contract pursuant to this subpart, unless the parties to the Lease or Contract object to such conversion. Units assisted under section 101 of the Housing and Urban Development Act of 1965 or under section 236(f)(2) of the National Housing Act shall not be included under the Contract pursuant to this subpart unless the Owner proposes and HUD approves such conversion.
- (b) Maximum annual Contract commitment. The maximum annual housing assistance payments that may be committed under the Contract shall be that amount which, when paid annually over the term of the Contract, is determined by HUD to be sufficient to provide for all housing assistance payments and fees under the Contract.
- (c) *Project Account*. In order to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family Incomes:

- (1) A Project Account shall be established and maintained, in an amount as determined by the Secretary consistent with his responsibilities under section 8(c)(6) of the Act, out of amounts by which the maximum annual Contract commitment per year exceeds amounts paid under the Contract for any year. This account shall be established and maintained by HUD for each project as a specifically identified and segregated account, and payment shall be made therefrom only for the purposes of (i) housing assistance payments, and (ii) other costs specifically authorized or approved by the Secretary.
- (2) Whenever a HUD-approved estimate of required housing assistance payments for a fiscal year exceeds the maximum annual Contract commitment, and would cause the amount in the Project Account to be less than an amount equal to 40 percent of such maximum annual Contract commitment, HUD shall, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) "the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts.'

§ 886.109 Housing assistance payments

- (a) General. Housing Assistance Payments shall be paid to Owners for units under lease by eligible families, in accordance with the Contract and as provided in this section. These Housing Assistance Payments will cover the difference between the Contract Rent and the Tenant Rent. Where applicable, the Utility Reimbursement will be paid to the Family as an additional Housing Assistance Payment. The Contract will provide that the Owner will make this payment on behalf of HUD. Funds will be paid to the Owner in trust solely for the purpose of making this additional payment. If the Family and the utility company consent, the Owner may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.
- (b) No Section 8 assistance may be provided for any unit occupied by an

§886.110

Owner; cooperatives are considered rental housing.

(c) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner shall receive housing assistance payments in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding 60 days: Provided, however, That if the Owner collects any of the Family's share of the rent for this period, or applies security deposits for unpaid rent. in amounts which when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to HUD or as HUD may direct. (See also §886.116.) The Owner shall not be entitled to any payment under this paragraph unless he:

(1) Immediately upon learning of the vacancy, has notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy, and

- (2) Has taken and continues to take all feasible actions to fill the vacancy including, but not limited to, contacting applicants on his waiting list (if any), and advising them of the availability of the unit, and
- (3) Has not rejected any eligible applicant except for good cause.

 $[42\ FR\ 5603,\ Jan.\ 28,\ 1977,\ as\ amended\ at\ 49\ FR\ 19948,\ May\ 10,\ 1984]$

§886.110 Contract rents.

- (a) The sum of the Contract Rents plus an Allowance for Utilities and Other Services shall not exceed the published Section 8 Fair Market Rents for Existing Housing, except that they may be exceeded by:
- (1) Up to 10 percent if the Field Office Director determines that special circumstances warrant such higher rents, or
- (2) By up to 20 percent where the Regional Administrator determines that special circumstances warrant such higher rents, and in either case, such higher rents meet the test of reasonableness in paragraph (c) of this section.
- (b) In the case of any project completed not more than six years prior to the application for assistance under that part, or in the case of units converted to Section 8 which were pre-

viously assisted under Section 101 of the Housing and Urban Development Act of 1965 or Section 236(f)(2) of the National Housing Act, contract rents plus any allowance for utilities and other services may be as high as 75 percent of the published Section 8 Fair Market Rents for New Construction, which limitation may be increased: (1) By up to 10 percent if the Field Office Director determines that special circumstances warrant such higher rents, or (2) by up to 20 percent where the Regional Administrator determines that special circumstances warrant such higher rents, and in either case, such higher rents meet the test of reasonableness contained in paragraph (c) of this section. The project shall be converted using the current HUD approved rent level established pursuant to 24 CFR 207.19(e)(2)(i).

(c) In any case, HUD shall determine and so certify that the Contract Rents for the project do not exceed rents which are reasonable for the location, quality, amenities, facilities, and management and maintenance services in relation to the rents paid for comparable units in the private unassisted market, nor shall the Contract Rents exceed the rents charged by the Owner to unassisted Families for comparable units. HUD shall maintain for three years all certifications and relevant documentation under this paragraph

[42 FR 5603, Jan. 28, 1977, as amended at 48 FR 36103, Aug. 9, 1983; 48 FR 56949, Dec. 27, 1983]

§886.111 Term of contract.

A Contract may be for an initial term of not more than 5 years, renewable for successive 5 year terms by agreement between HUD and the Owner: *Provided*, That the total Contract term, including renewals, shall not exceed 15 years.

§886.111a Notice upon contract expiration.

(a) The Contract will provide that the owner will notify each assisted family, at least 90 days before the end of the Contract term, of any increase in the amount the family will be required to pay as rent which may occur as a result of its expiration. If the Contract is to be renewed but with a reduction in the number of units covered by it, this notice shall be given to each family who will not longer be assisted under the Contract.

- (b) The notice provided for in paragraph (a) of this section shall be accomplished by: (1) Sending a letter by first class mail, properly stamped and addressed, to the family at its address at the project, with a proper return address, and (2) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be considered to be effective until both required notices have been accomplished. The date on which the notice shall be considered to be received by the family shall be the date on which the owner mails the first class letter provided for in this paragraph, or the date on which the notice provided for in this paragraph is properly given, whichever is later.
- (c) The notice shall advise each affected family that, after the expiration date of the Contract, the family will be required to bear the entire cost of the rent and that the owner will be free (to the extent the project is not otherwise regulated by HUD) to alter the rent without HUD approval, but subject to any applicable requirements or restrictions under the lease or under State or local law. The notice shall also state: (1) The actual (if known) or the estimated rent which will be charged following the expiration of the Contract: (2) the difference between the rent and the Total Tenant Payment toward rent under the Contract; and (3) the date the Contract will expire.
- (d) The owner shall give HUD a certification that families have been notified in accordance with this section with an example of the text of the notice attached.
- (e) This section applies to all Contracts executed, renewed or amended on or after October 1, 1984.

[49 FR 31285, Aug. 6, 1984]

§886.112 Rent adjustments.

This section applies to adjustments of the dollar amount stated in the Contract as the Maximum Unit Rent. It does not apply to adjustments in rents payable to Owners as required by HUD in connection with its mortgage insurance and/or lending functions.

- (a) Funding of adjustments. Housing Assistance Payments will be made in increased amounts commensurate with Contract Rent adjustments up to the maximum annual amount of housing assistance payments specified in the Contract pursuant to §886.108(b).
- (b) Annual adjustments. The contract rents may be adjusted annually, or more frequently, at HUD's option, either (1) on the basis of a written request for a rent increase submitted by the owner and properly supported by substantiating evidence, or (2) by applying, on each anniversary date of the contract, the applicable Automatic Annual Adjustment Factor most recently published by HUD in the FEDERAL REG-ISTER in accordance with 24 CFR part 888, subpart B. Published Automatic Annual Adjustment Factors will be reduced appropriately by HUD where utilities are paid directly by Families. If HUD requires that the owner submit a written request, HUD, within a reasonable time, shall approve a rental schedule that is necessary to compensate for any increase in taxes (other than income taxes) and operating and maintenance costs over which owners have no effective control, or shall deny the increase stating the reasons therefor. Increases in taxes and maintenance and operating costs shall be measured against levels of such expenses in comparable assisted and unassisted housing in the area to ensure that adjustments in the Contract Rents shall not result in material differences between the rents charged for assisted and comparable unassisted units. Contract Rents may be adjusted upward or downward as may be appropriate; however, in no case shall the adjusted rents be less than the contract rents on the effective date of the contract.
- (c) Special additional adjustments. Special additional adjustments shall be

§886.113

granted, when approved by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the Contract units which have resulted from substantial general increases in real property taxes, utility rates or similar costs (i.e., assessment, and utilities not covered by regulated rates), but only if and to the extent that the Owner clearly demonstrates that such general increases have caused increases in the Owner's operating costs which are not adequately compensated for by automatic annual adjustments. The Owner shall submit to HUD financial statements which clearly support the increase.

- (d) Overall limitation. Notwithstanding any other provisions of the subpart, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD.
- (e) Incorporation of rent adjustments. Any adjustment in Maximum Unit Rents shall be incorporated into the Contract by a dated addendum to the Contract establishing the effective date of the adjustment.

[42 FR 5603, Jan. 28, 1977, as amended at 45 FR 59149, Sept. 8, 1980; 47 FR 24700, June 8, 1982]

§886.113 Physical condition standard; physical inspection requirements.

- (a) General. Housing used in this program must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.
- (b) Space and security. In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.
 - (c)-(h) [Reserved]
- (i) Lead based paint. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to activities under this program.
 - $(j)\!\!-\!\!(m) \; [Reserved]$

- (n) Congregate housing. In addition to the foregoing standards, the following standards apply to congregate housing:
- (1) The unit shall contain a refrigerator of appropriate size.
- (2) The central dining facility (and kitchen facility, if any) shall contain suitable space and equipment to store, prepare and serve food in a sanitary manner, and there shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

[42 FR 5603, Jan. 28, 1977, as amended at 52 FR 1895, Jan. 15, 1987; 52 FR 9828, Mar. 27, 1987; 53 FR 20802, June 6, 1988; 57 FR 33852, July 30, 1992; 63 FR 46579, Sept. 1, 1998; 64 FR 50227, Sept. 15, 1999]

§ 886.114 Equal opportunity requirements.

Participation in the program authorized in this subpart requires compliance with (a) Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and section 3 of the Housing and Urban Development Act of 1968; and (b) all rules, regulations, and requirements issued pursuant thereto.

§ 886.115 [Reserved]

§886.116 Security and utility deposits.

(a) An Owner may require Families to pay a security deposit in an amount up to, but not more than, one month's Gross Family Contribution. If a Family vacates its unit, the Owner, subject to State and local laws, may utilize the deposit as reimbursement for any unpaid rent or other amount owed under the Lease. If the Family has provided a security deposit and it is insufficient for such reimbursement, the Owner may claim reimbursement from HUD, not to exceed an amount equal to the remainder of one month's Contract Rent. Any reimbursement under this section shall be applied first toward any unpaid rent. If a Family vacates the unit owing no rent or other amount under the Lease or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

- (b) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. All security deposit funds shall be deposited by the Owner in a segregated bank account, and the balance of this account, at all times, shall be equal to the total amount collected from tenants then in occupancy, plus any accrued interest. The Owner shall comply with all State and local laws regarding interest payments on security deposits.
- (c) Families shall be expected to obtain the funds to pay security and utility deposits, if required, from their own resources and/or other private or public sources.

§886.117 [Reserved]

§886.118 Amount of housing assistance payments in projects receiving other HUD assistance.

- (a) For any Section 221(d)(3) BMIR, Section 236, or Section 202 project, the Housing Assistance Payment shall be the amount by which the rent payable by the eligible Family under Section 8 is less than the subsidized rent (which subsidy shall not be reduced by reason of any Section 8 assistance).
- (b) In no event may any tenant benefit from more than one of the following subsidies: Rent Supplements, Section 236 deep subsidies, Section 23 leasing assistance, and Section 8 housing assistance.
- $[42\ {\rm FR}\ 5603,\ {\rm Jan.}\ 28,\ 1977,\ {\rm as}\ {\rm amended}\ {\rm at}\ 49\ {\rm FR}\ 19948,\ {\rm May}\ 10,\ 1984]$

§886.119 Responsibilities of the owner.

- (a) The Owner shall be responsible for management and maintenance of the project in conformance with requirements of the Regulatory Agreement. These responsibilities shall include but not be limited to:
- (1) Payment for utilities and services (unless paid directly by the Family), insurance and taxes;
- (2) Performance of all ordinary and extraordinary maintenance;
- (3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with part 5 of this title; selection of families, includ-

ing verification of income, in accordance with part 5 of this title, obtaining and verifying Social Security Numbers submitted by applicants (as provided by part 5, subpart B, of this title), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in part 5, subpart B, of this title), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.

- (4) Collection of Tenant Rents:
- (5) Termination of tenancies, including evictions;
- (6) Preparation and furnishing of information required under the Contract;
- (7) Reexamination of family income and composition, redetermination, as appropriate, of the amount of Tenant Rent and the amount of housing assistance payment in accordance with part 5 of this title; collection of rent; obtaining and verifying participant Social Security Numbers, as provided by part 5, subpart B, of this title; and obtaining signed consent forms from participants for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by part 5, subpart B, of this title.
- (8) Redeterminations of amount of Tenant Rent and amount of Housing Assistance Payment in accordance with part 5 of this title as a result of an adjustment by HUD of any applicable Utility Allowance; and
- (9) Compliance with equal opportunity requirements.
- (b) In the event of a financial default under the project mortgage, HUD shall have the right to make subsequent Housing Assistance Payments to the mortgagee until such time as the default is cured, or, at the option of the mortgagee and subject to HUD approval, until some other agreed-upon time.
- (c) Subject to HUD approval, any Owner may contract with any private or public entity to perform for a fee the services required by paragraph (a) of

§886.120

this section: *Provided*, That such contract shall not shift any of the Owner's responsibilities or obligations.

(Approved by the Office of Management and Budget under control number 2502–0204)

[42 FR 5603, Jan. 28, 1977, as amended at 49 FR 19948, May 10, 1984; 51 FR 11227, Apr. 1, 1986; 53 FR 847, Jan. 13, 1988; 53 FR 1165, Jan. 15, 1988; 53 FR 3368, Feb. 5, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39708, Sept. 27, 1989; 56 FR 7542, Feb. 22, 1991; 60 FR 14846, Mar. 20, 1995; 61 FR 9047, Mar. 6, 1996; 61 FR 11119, Mar. 18, 1996; 65 FR 16723, Mar. 29, 2000]

§ 886.120 Responsibility for contract administration.

(a) HUD is responsible for administration of the Contract. HUD may contract with another entity for the performance of some or all of its Contract administration functions.

(b) The Contract shall contain a provision to the effect (1) that if HUD determines that the Owner is not in compliance under the Contract, HUD shall notify the Owner of the actions required to be taken to restore compliance and of the remedies to be applied by HUD including abatement of Housing Assistance Payments and recovery of overpayments, where appropriate; and (2) that if he fails to comply, HUD has the right to terminate the Contract or to take other corrective action. A default under the Regulatory Agreement shall be treated as noncompliance under the Contract.

§886.121 Marketing.

(a) Marketing of units and selection of Families by the Owner shall be in accordance with the Owner's HUD-approved Affirmative Fair Housing Marketing Plan, if required, and with all regulations relating to fair housing advertising including use of the equal opportunity logotype, statement, and slogan in all advertising. Projects shall be managed and operated without regard to race, color, creed, religion, sex, or national origin.

(b) The Owner shall comply with the applicable provisions of the Contract, this subpart A, and the procedures of part 5 of this title in taking applications, selecting families, and all related determinations.

(c) For the informal hearing provisions related to denial of assistance

based upon failure to establish citizenship or eligible immigration status, see part 5, subpart E, of this title for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.

[42 FR 5603, Jan. 28, 1977, as amended at 53 FR 1166, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 60 FR 14846, Mar. 20, 1995; 65 FR 16723, Mar. 29, 2000]

§ 886.122 [Reserved]

§ 886.123 Maintenance, operation and inspections.

(a) Maintenance and operation. The Owner shall maintain and operate the project so as to provide Decent, Safe, and Sanitary housing and he shall provide all the services, maintenance and utilities which he agrees to provide under the Contract, subject to abatement of housing assistance payments or other applicable remedies if he fails to meet these obligations.

(b) Inspection prior to occupancy. Prior to occupancy of any unit by a Family, the Owner and the Family shall inspect the unit and both shall certify, on forms prescribed by HUD that they have inspected the unit and have determined it to be Decent, Safe, and Sanitary in accordance with the criteria provided in the prescribed forms. Copies of these reports shall be kept on file by the Owner for at least three years.

(c) Periodic inspections. HUD will inspect or cause to be inspected a reasonable sample of contract units at least annually and at such other times as may be necessary to assure that the owner is meeting his contractual obligations. HUD will take into account complaints by occupants and any other information coming to its attention in scheduling inspections and shall notify the owner of its determination.

(d) Units not Decent, Safe, and Sanitary. If HUD notifies the Owner that he has failed to maintain a dwelling unit in Decent, Safe, and Sanitary condition and the Owner fails to take corrective action within the time prescribed in the notice, HUD may exercise any of its rights or remedies under the Contract, including abatement of housing

assistance payments, even if the Family continues to occupy the unit.

[42 FR 5603, Jan. 28, 1977, as amended at 43 FR 60157, Dec. 26, 1978]

§886.124 Reexamination of family income and composition.

(a) Regular reexaminations. The owner must reexamine the income and composition of all families at least once each year. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 5 of this title and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose and verify Social Security Numbers. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see part 5, subpart B, of this title. At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of part 5, subpart E, of this title concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of part 5, subpart E, of this title concerning verification of the immigration status of any new family member.

(b) Interim reexaminations. The family must comply with provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified. See part 5, subpart B, of this

title for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see part 5, subpart B, of this title. At any interim reexamination after June 19, 1995, when there is a new family member, the owner shall follow the requirements of part 5, subpart E, of this title concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) Continuation of housing assistance payments. A family's eligibility for housing assistance payments will continue until the Total Tenant Payment equals the Gross Rent. The termination of eligibility will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the Contract. However, eligibility also may be terminated in accordance with program requirements, for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by part 5, subpart B, of this title, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by part 5, subpart B, of this title. For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see part 5, subpart E, of this title for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance

 $[56\ FR\ 7542,\ Feb.\ 22,\ 1991,\ as\ amended\ at\ 60\ FR\ 14846,\ Mar.\ 20,\ 1995;\ 61\ FR\ 11119,\ Mar.\ 18,\ 1996;\ 65\ FR\ 16723,\ Mar.\ 29,\ 2000]$

§886.125 Overcrowded and underoccupied units.

If HUD determines that a contract unit assisted under this part is not Decent, Safe, and Sanitary by reason of increase in Family size or that a Contract unit is larger than appropriate for the size of the Family in occupancy, housing assistance payments with respect to such unit will not be abated, unless the Owner fails to offer the Family a suitable unit as soon as one becomes vacant and ready for occupancy. The Owner may receive housing assistance payments for the vacated unit if he complies with the requirements of §886.109.

§ 886.126 Adjustment of utility allowances.

When the owner requests HUD approval of adjustment in Contract Rents under §886.112, an analysis of the project's Utility Allowances must be included. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the owner must advise the Secretary and request approval of new Utility Allowances.

(Approved by the Office of Management and Budget under control numbers 2502–0352 and 2502–0354)

[51 FR 21863, June 16, 1986]

§886.127 Lease requirements.

- (a) Term of lease. (1) The term of a lease, including a new lease or a lease amendment, executed by the owner and the family must be for at least one year, or the remaining term of the contract if the remaining term of the contract is less than one year.
- (2) During the first year of the lease term, the owner may not terminate the tenancy for "other good cause" under 24 CFR 247.3(a)(3), unless the termination is based on family malfeasance or nonfeasance. For example, during the first year of the lease term, the owner may not terminate the tenancy for "other good cause" based on the

failure by the family to accept the offer of a new lease.

- (3) The lease may contain a provision permitting the family to terminate the lease on 30 days advance written notice to the owner. In the case of a lease term for more than one year, the lease must contain this provision.
- (b) Required and prohibited provisions. The lease between the owner and the family must comply with HUD regulations and requirements, and must be in the form required by HUD. The lease may not contain any of the following types of prohibited provisions:
- (1) Admission of guilt. Agreement by the family (i) to be sued, (ii) to admit guilt, or (iii) to a judgment in favor of the owner, in a court proceeding against the family in connection with the lease.
- (2) Treatment of family property. Agreement by the family that the owner may take or hold family property, or may sell family property, without notice to the family and a court decision on the rights of the parties.
- (3) Excusing owner from responsibility. Agreement by the family not to hold the owner or the owner's agents responsible for any action or failure to act, whether intentional or negligent.
- (4) Waiver of notice. Agreement by the family that the owner does not need to give notice of a court proceeding against the family in connection with the lease, or does not need to give any notice required by HUD.
- (5) Waiver of court proceeding for eviction. Agreement by the family that the owner may evict the family (i) without instituting a civil court proceeding in which the family has the opportunity to present a defense, or (ii) before a decision by the court on the rights of the parties.
- (6) Waiver of jury trial. Agreement by the family to waive any right to a trial by jury.
- (7) Waiver of appeal. Agreement by the family to waive the right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.
- (8) Family chargeable with legal costs regardless of outcome. Agreement by the family to pay lawyer's fees or other legal costs of the owner, even if the family wins in a court proceeding by

the owner against the family. (However, the family may have to pay these fees and costs if the family loses.)

[53 FR 3368, Feb. 5, 1988]

§886.128 Termination of tenancy.

Part 247 of this title (24 CFR part 247) applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR parts 247 and 5 shall apply. For cases involving, or allegedly involving, domestic violence, dating violence, stalking, or criminal activity directly relating to such violence, the provisions of 24 CFR part 5, subpart L, apply. The provisions of 24 CFR part 5, subpart E, of this title concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance also shall apply.

[75 FR 66261, Oct. 27, 2010]

§ 886.129 Leasing to eligible families.

(a) Availability of units for occupancy by Eligible Families. During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with §886.121; (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to HUD. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of HUD. Failure on the part of the owner to comply with these requirements is a violation

of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.

- (b) Reduction of number of units covered by Contract. HUD may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:
- (1) The owner fails to comply with the requirements of paragraph (a) of this section: or
- (2) Notwithstanding any prior approval by HUD to lease such units to ineligible families, HUD determines that the inability to lease units to eligible families is not a temporary problem
- (c) Restoration. HUD will agree to an amendment of the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:
- (1) HUD determines that the restoration is justified by demand;
- (2) The owner otherwise has a record of compliance with his or her obligations under the Contract; and
- (3) Contract and budget authority are available.
- (d) *Applicability*. Paragraphs (a) and (b) of this section apply to Contracts executed on or after October 3, 1984.
- (e) Termination of assistance for failure to establish citizenship or eligible immigration status. If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with part 5, subpart E, of this title because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in part 5, subpart E, of this title, the owner shall comply with the provisions of part 5,

subpart E, of this title concerning assistance to mixed families, and deferral of termination of assistance.

[49 FR 31399, Aug. 7, 1984, as amended at 53 FR 847, Jan. 13, 1988; 53 FR 6601, Mar. 2, 1988; 60 FR 14846, Mar. 20, 1995; 65 FR 16724, Mar. 29, 2000]

§886.130 HUD review of contract compliance.

HUD will review project operation at such intervals as it deems necessary to ensure that the Owner is in full compliance with the terms and conditions of the Contract. Equal Opportunity review may be conducted with the scheduled HUD review or at any time deemed appropriate by HUD.

§886.131 Audit.

- (a) Where a State or local government is the eligible owner of a project, or is a contract administrator under §886.120, receiving financial assistance under this part, the audit requirements in 24 CFR part 44 shall apply.
- (b) Where a nonprofit organization is the eligible owner of a project, receiving financial assistance under this part, the audit requirements of 24 CFR part 45 shall apply.
- [50 FR 39092, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986, as amended at 57 FR 33257, July 27, 1992]

§886.132 Tenant selection.

Subpart F of 24 CFR part 5 governs selection of tenants and occupancy requirements applicable under this subpart A of part 886. Subpart L of 24 CFR part 5 applies to selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking.

[75 FR 66261, Oct. 27, 2010]

§886.138 Displacement, relocation, and acquisition.

(a) Minimizing displacement. Consistent with the other goals and objectives of this part, owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organization, and

farms) as a result of a project assisted under this part.

- (b) *Temporary relocation*. The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided;
- (1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent/utility costs; and
- (2) Appropriate advisory services, including reasonable advance written notice of:
- (i) The date and approximate duration of the temporary relocation;
- (ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period:
- (iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation; and
- (iv) The provisions of paragraph (b)(1) of this section.
- (c) Relocation assistance for displaced persons. A "displaced person" (as defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601-19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.
- (d) Real property acquisition requirements. The acquisition of real property for a project is subject to the URA and

the requirements described in 49 CFR part 24, subpart B.

- (e) Appeals. A person who disagrees with the Owner's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the owner. A low-income person who is dissatisfied with the owner's determination on such appeal may submit a written request for review of that determination to the HUD Field Office.
- (f) Responsibility of owner. (1) The owner shall certify (i.e., provide assurance of compliance, as required by 49 CFR part 24) that he or she will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The owner is responsible for such compliance notwithstanding and third party's contractual obligation to the owner to comply with these provisions.
- (2) The cost of providing required relocation assistance is an eligible project cost to the same extent and in the same manner as other project costs. Such costs also may be paid for with funds available from other sources.
- (3) The owner shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The owner shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.
- (g) Definition of displaced person. (1) for purposes of this section, the term displaced person means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:
- (i) After notice by the owner to move permanently from the property, if the move occurs on or after the date of the submission of the application to HUD:
- (ii) Before submission of the application to HUD, if HUD determines that the displacement resulted directly

from acquisition, rehabilitation, or demolition for the assisted project; or

- (iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs;
- (A) The tenant moves after execution of the Housing Assistance Payments Contract, and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:
- (1) The tenant's monthly rent before execution of the Housing Assistance Payments Contract and estimated average monthly utility costs; or
- (2) The total tenant payment, as determined under part 5 of this title, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income;
- (B) The tenant is required to relocate temporarily, does not return to the building/complex, and either:
- (1) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or
- (2) Other conditions of the temporary relocation are not reasonable; or
- (C) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.
- (2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:
- (i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, received written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" (or for assistance under this section) as a result of the project:

- (iii) The person is ineligible under 49 CFR 24.2(g)(2); or
- (iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.
- (3) The owner may ask HUD, at any time, to determine whether a displacement is or would be covered by this section.
- (h) Definition of initiation of negotiations. For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term "initiation of negotiations" means the owner's execution of the Housing Assistance Payments Contract.

(Approved by Office of Management and Budget under OMB Control Number 2506–0121)

[58 FR 43721, Aug. 17, 1993. Redesignated at 59 FR 36643, July 18, 1994, as amended at 65 FR 16724, Mar. 29, 2000]

Subpart B [Reserved]

Subpart C—Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects

SOURCE: 44 FR 70365, Dec. 6, 1979, unless otherwise noted.

§ 886.301 Purpose.

The purpose of this subpart is to provide for the use of Section 8 housing assistance in connection with the sale of HUD-owned multifamily rental housing projects and the foreclosure of HUD-

held mortgages on rental housing projects (as defined in 24 CFR 290.5).

[58 FR 43722, Aug. 17, 1993]

§886.302 Definitions.

The terms Fair Market Rent (FMR), HUD, and Public Housing Agency (PHA) are defined in 24 CFR part 5.

Act. The United States Housing Act of 1937.

Agreement. An Agreement to Enter into a Housing Assistance Payments Contract. See §886.332.

Annual income. As defined in part 5 of this title.

Contract. (See Section 8 contract.)

Contract rent. The rent payable to the owner under the contract, including the portion of the rent payable by the family. In the case of a cooperative, the term "contract rent" means charges under the occupancy agreements between the members and the cooperative.

Decent, safe, and sanitary. Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

Eligible project or project. A multifamily housing project (see 24 CFR part 290):

- (1) For which the disposition in accordance with the provisions of 24 CFR part 290 involves sale with Section 8 housing assistance to enable the project to be used, in whole or in part, to provide housing for lower income families: and
- (2) The units of which are decent, safe, and sanitary.

Family. As defined in part 5 of this title.

HCD Act. The Housing and Community Development Act of 1974.

Housing Assistance Payment. The payment made by the contract administrator to the Owner of an assisted unit as provided in the Contract. Where the unit is leased to an eligible Family, the payment is the difference between the Contract Rent and the Tenant Rent. A Housing Assistance Payment may be made to the Owner when a unit is vacant, in accordance with the terms of the Contract. An additional Housing Assistance Payment is made when the Utility Allowance is greater than the Total Tenant Payment.

Lease. A written agreement between the owner and a family for leasing of decent, safe and sanitary dwelling unit to the family.

Low-income family. As defined in part 5 of this title.

Owner. The purchaser, including a cooperative entity or an agency of the Federal Government, under this subpart, of a HUD-owned project; or the purchaser, including a cooperative entity or an agency of the Federal Government, through a foreclosure sale of a project that was subject to a HUDheld mortgage.

Project account. The account established and maintained in accordance with §886.308.

Rehabilitation. The rehabilitation of an eligible project to upgrade the property to decent, safe, and sanitary condition to comply with the Housing Quality Standards described in §886.307 of this part, or other standards approved by HUD, from a condition below those standards and requiring repairs that may vary in degree from gutting and extensive reconstruction to the cure of deferred maintenance. Rehabilitation may exceed the requirements of §886.307 of this part.

Section 8 contract ("Contract"). A written contract between the owner of an eligible project and HUD providing housing assistance payments to the owner on behalf of eligible families pursuant to this subpart.

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Very low-income family. As defined in part 5 of this title.

[44 FR 70365, Dec. 6, 1979, as amended at 49 FR 19949, May 10, 1984; 50 FR 9269, Mar. 7, 1985; 50 FR 38795, Sept. 25, 1985; 53 FR 3369, Feb. 5, 1988; 58 FR 43722, Aug. 17, 1993; 60 FR 11859, Mar. 2, 1995; 61 FR 5213, Feb. 9, 1996; 63 FR 46580, Sept. 1, 1998; 65 FR 16724, Mar. 29, 2000]

§886.303 Allocation and reservation of Section 8 contract authority and budget authority.

Allocation. The contract authority and budget authority for this program will be provided from the Headquarters reserve authority approved specifically for use in connection with the sale of eligible projects.

§886.304 Project eligibility criteria.

- (a) Selection of projects. HUD shall select projects for sale with assistance under this subpart on the basis of the final disposition programs developed and approved in accordance with part 290 and the requirements of this subpart. In the evaluation of projects, consideration shall be given to whether there are site occupants who would have to be displaced, whether the relocation of site occupants is feasible, and the degree of hardship which displacement might cause.
- (b) Projects needing rehabilitation. A project, which is sold subject to the condition that following sale the project will be rehabilitated by the owner so as to become decent, safe and sanitary, will be sold with an Agreement that Section 8 assistance will be provided after the repairs are completed by the owner and the project is inspected and accepted by HUD. In these projects, Section 8 payments may be made only for project units which are determined to be decent, safe and sanitary.
- (c) High-rise elevator projects. High-rise elevator projects for families with children will not be assisted under this subpart unless the final disposition program, prepared in accordance with 24 CFR part 290 indicates that there is a need for assisted housing for families and there is no other practical alternative for providing the needed housing.

[44 FR 70365, Dec. 6, 1979, as amended at 58 FR 43722, Aug. 17, 1993]

§ 886.305 Disclosure and verification of Social Security and Employer Identification Numbers by owners.

To be eligible to become an owner of housing assisted under this subpart, the owner must meet the disclosure

and verification requirements for Social Security and Employer Identification Numbers, as provided by part 5, subpart B, of this title.

(Approved by the Office of Management and Budget under control number 2502–0204)

[54 FR 39709, Sept. 27, 1989; 55 FR 11905, Mar. 30, 1990, as amended at 61 FR 11119, Mar. 18, 1996]

§ 886.306 Notices.

Before a project is approved for sale in accordance with this subpart, and as a part of the process of preparing a disposition recommendation in accordance with 24 CFR part 290, the field office manager must notify in writing the chief executive officer of the unit of general local government in which the project is located (or the designee of that officer) of the proposed sale with housing assistance, and must afford the unit of local government an opportunity to review and comment upon the proposed sale in accordance with 24 CFR part 791. Local government review should address consistency with the housing needs and strategy of the community, rather than strict conformance to the limitations on variations from housing assistance plan goals which are contained in part 791.

[53 FR 3369, Feb. 5, 1988]

§886.307 Physical condition standards; physical inspection requirements.

- (a) General. Housing assisted under this part must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.
- (b) Space and security. In addition to the standards in 24 CFR part 5, subpart G, the dwelling unit must have a living room, a kitchen area, and a bathroom. The dwelling unit must have at least one bedroom or living/sleeping room for each two persons.
 - (c)-(h) [Reserved]
- (i) Lead-based paint. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to activities under this program.
 - $\hbox{\it (j)-(l) [Reserved]}$

(m) Congregate housing. In addition to the foregoing standards, the following standards apply to congregate housing:

- (1) The unit shall contain and have ready access to a flush toilet which can be used in privacy, a fixed basin with hot and cold running water, and a shower and/or tub equipped with hot and cold running water all in proper operating condition and adequate for personal cleanliness and the disposal of human wastes. These facilities shall utilize an approved public or private disposal system, and shall be sufficient in number so that they need not be shared by more than four occupants. Those units accommodating physically handicapped occupants with wheelchairs or other special equipment shall provide access to all sanitary facilities, and shall provide, as appropriate to needs of the occupants, basins and toilets of appropriate height; grab bars to toilets, showers and/or bathtubs; shower seats; and adequate space for movement.
- (2) The unit shall contain suitable space to store, prepare and serve foods in a sanitary manner. A cooking stove or range, a refrigerator(s) of appropriate size and in sufficient quantity for the number of occupants, and a kitchen sink with hot and cold running water shall be present in proper operating condition. The sink shall drain into an approved private or public system. Adequate space for the storage, preparation and serving of food shall be provided. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).
- (3) The dwelling unit shall afford the Family adequate space and security. A living room, kitchen, dining area, bathroom, and other appropriate social and/ or recreational community space shall be within the unit and the dwelling unit shall contain at least one sleeping room of appropriate size for each two persons. Exterior doors and windows accessible from outside each unit shall be capable of being locked. An emergency exit plan shall be developed and occupants shall be apprised of the details of the plan. Regular fire inspections shall be conducted by appropriate local officials. Readily accessible first

aid supplies and fire extinguishers shall be provided throughout the unit, smoke detectors shall be provided and emergency phone numbers (police, ambulance, fire department, etc.) shall be available at every phone and individual copies shall be provided to each occupant. All emergency and safety features and procedures shall meet applicable State and local standards.

(n) Independent group residence. In addition to the foregoing standards, the standards in 24 CFR 887.467 (a) through (g) apply to independent group residences.

[44 FR 70365, Dec. 6, 1979, as amended at 50 FR 9269, Mar. 7, 1985; 52 FR 1986, Jan. 15, 1987; 57 FR 33852, July 30, 1992; 58 FR 43722, Aug. 17, 1993; 63 FR 46580, Sept. 1, 1998; 64 FR 50227, Sept. 15, 1999]

§886.308 Maximum total annual contract commitment.

- (a) Number of units assisted. Based on the final disposition program developed in accordance with 24 CFR part 290, HUD shall determine the number of units to be assisted up to 100 percent of the units in the project.
- (b) Maximum assistance. The maximum total annual housing assistance payments that may be committed under the contract shall be the total of the gross rents for all the contract units in the project.
- (c) Changes in contract amounts. In order to assure that housing assistance payments will be increased on a timely basis to cover increases in contract rents, changes in family composition, or decreases in family incomes:
- (1) A project account shall be established and maintained, in an amount as determined by HUD consistent with section 8(c)(6) of the Act, out of amounts by which the maximum annual contract commitment per year exceeds amounts paid under the contract for any fiscal year. This account shall be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the purposes of:
- (i) Housing assistance payments, and (ii) Other costs specifically authorized or approved by HUD.
- (2) Whenever a HUD-approved estimate of required housing assistance

payments for a fiscal year exceeds the maximum annual contract commitment, causing the amount in the project account to be less than an amount equal to 40 percent of the maximum annual contract commitment, HUD, within a reasonable period of time, shall take such additional steps authorized by Section 8(c)(6) of the Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) "the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of amending housing assistance contracts.'

§886.309 Housing assistance payment to owners.

- (a) General. Housing Assistance Payments shall be paid to Owners for units under lease by eligible Families, in accordance with the Contract and as provided in this section. These Housing Assistance Payments will cover the difference between the Contract Rent and the Tenant Rent. Where applicable, the Utility Reimbursement will be paid to the Family as an additional Housing Assistance Payment. The Contract will provide that the Owner will make this payment on behalf of HUD. Funds will be paid to the Owner in trust solely for the purpose of making this additional payment. If the Family and the utility company consent, the Owner may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.
- (b) No assistance for owners. No Section 8 assistance may be provided for any unit occupied by an owner. However, cooperatives are considered rental housing rather than owner-occupied housing under this subpart.
- (c) Payments for vacancies from execution of contract to initial occupancy. If a Contract unit which is decent, safe and sanitary and has been accepted by HUD as available as of the effective date of the Contract is not leased within 15 days of the effective date of the Contract, the Owner will be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period

not exceeding 60 days from the effective date of the Contract provided that the Owner (1) has submitted a list of units leased as of the effective date and a list of the units not so leased: (2) 60 days prior to the completion of the rehabilitation or the date the agreement was executed, whichever is later, had notified the PHA of any units which the owner anticipated would be vacant on the anticipated effective date of the contract: (3) has taken and continues to take all feasible actions to fill the vacancy including, but not limited to: contracting applicants on the Owner's waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the units in a manner specifically designed to reach low-income families; and (4) has not rejected any eligible applicant except for good cause acceptable to HUD.

(d) Payments for vacancies after initial occupancy. If an eligible family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the owner may receive housing assistance payments for so much of the month in which the Family vacates the unit as the unit remains vacant. Should the unit remain vacant, the Owner may receive from HUD a housing assistance payment in the amount of 80 percent of Contract Rent for a vacancy period not exceeding an additional month. However, if the owner collects any of the family's share of the rent for this period, the payment must be reduced to an amount which, when added to the family's payments, does not exceed 80 percent of the Contract Rent. Any such excess shall be reimbursed by the Owner to HUD or as HUD may direct. (See also §886.315.) The owner shall not be entitled to any payment under this paragraph unless he or she: (1) Immediately upon learning of the vacancy, has notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy, and (2) has made and continues to make a good faith effort to fill the vacancy, including but not limited to, contacting applicants on the waiting list, if any, requesting the PHA and other appropriate sources to refer eligible applicants, and advertising the availability of the unit, and (3) has not rejected any eligible applicant, except for good cause acceptable to HUD.

(e) Payments for units where family is evicted. If the owner evicts a family, the owner shall not be entitled to any payments pursuant to paragraph (d) of this section unless the request for such payment is supported by a certification that the provisions of §886.327 and part 247 of this title have been followed.

(f) Prohibition for double compensation for vacancies. The owner shall not be entitled to housing assistance payments with respect to vacant units under this section to the extent he or she is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the HCD Act or payments under §886.315).

(g) Debt service payments. (1) If a contract unit continues to be vacant after the 60-day period specified in paragraph (c) or (d) of this section, the Owner may submit a claim and receive additional housing assistance payments on a semiannual basis with respect to such a vacant unit in an amount equal to the principal and interest payments required to amortize the portion of the debt attributable to that unit for the period of the vacancy, whether such vacancy commenced during rent-up or after rent-up.

(2) Additional payments under this paragraph (g) for any unit shall not be for more than 12 months for any vacancy period, and shall be made only if:

(i) The unit is not in a project insured under the National Housing Act except pursuant to section 244 of that Act.

(ii) The unit was in decent, safe, and sanitary condition during the vacancy period for which payments are claimed.

(iii) The owner has taken and is continuing to take the actions specified in paragraphs (c)(1), (2) and (3) or paragraphs (d)(1) and (2) of this section, as appropriate.

(iv) The Owner has demonstrated in connection with the semiannual claim on a form and in accordance with the standards prescribed by HUD with respect to the period of the vacancy, that the project is not providing the Owner

with revenues at least equal to the project costs incurred by the Owner, and that the amount of the payments requested is not in excess of that portion of the deficiency which is attributable to the vacant units for the period of the vacancies.

(v) The Owner has submitted, in connection with the semiannual claim, a statement with relevant supporting evidence that there is a reasonable prospect that the project can achieve financial soundness within a reasonable time. The statement shall indicate the causes of the deficiency; the corrective steps that have been and will be taken; and the time by which it is expected that the project revenues will at least equal project costs without the additional payments provided under this paragraph.

(3) HUD may deny any claim for additional payments or suspend or terminate payments if it determines that based on the Owner's statement and other evidence, there is not a reasonable prospect that the project can achieve financial soundness within a reasonable time.

[44 FR 70365, Dec. 6, 1979, as amended at 49 FR 19949, May 10, 1984; 53 FR 3369, Feb. 5, 1988; 58 FR 43722, Aug. 17, 1993]

§886.310 Initial contract rents.

HUD will establish contract rents at levels that, together with other resources available to the purchasers, provide sufficient amounts for the necessary costs of rehabilitating and operating the multifamily housing project and do not exceed 120 percent of the most recently published Section 8 Fair Market Rents for Existing Housing (24 CFR part 888, subpart A).

[60 FR 11859, Mar. 2, 1995]

§886.311 Term of contract.

The contract term for any unit shall not exceed 15 years, except that the term may be less than 15 years as provided under either paragraph (a) or (b) of this section.

(a) The contract term may be less than 15 years if HUD finds that, based on the rental charges and financing for the multifamily housing project to which the contract relates, the financial viability of the project can be maintained under a contract having a term less than 15 years. Where a contract of less than 15 years is provided under this paragraph, the amount of rent payable by tenants of the project for units assisted under such a contract shall not exceed the amount payable for rent under section 3(a) of the United States Housing Act of 1937 for a period of at least 15 years.

(b) The contract term may be less than 15 years if the assistance is provided under a contract authorized under section 6 of the HUD Demonstration Act of 1993, and pursuant to a disposition plan under this part for a project that is determined by the HUD to be otherwise in compliance with this part.

[60 FR 11859, Mar. 2, 1995]

§886.311a Notice upon contract expiration.

(a) The Contract will provide that the owner will notify each assisted family, at least 90 days before the end of the Contract term, of any increase in the amount the family will be required to pay as rent which may occur as a result of its expiration. If the Contract is to be renewed but with a reduction in the number of units covered by it, this notice shall be given to each family who will no longer be assisted under the Contract.

(b) The notice provided for in paragraph (a) of this section shall be accomplished by: (1) Sending a letter by first class mail, properly stamped and addressed, to the family at its address at the project, with a proper return address, and (2) serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be considered to be effective until both required notices have been accomplished. The date on which the notice shall be considered to be received by the family shall be the date on which the owner mails the first class letter provided for in this paragraph, or the date on which the notice provided for in this paragraph is properly given, whichever is later.

- (c) The notice shall advise each affected family that, after the expiration date of the Contract, the family will be required to bear the entire cost of the rent and that the owner will be free (to the extent the project is not otherwise regulated by HUD) to alter the rent without HUD approval, but subject to any applicable requirements or restrictions under the lease or under State or local law. The notice shall also state:
- (1) The actual (if known) or the estimated rent which will be charged following the expiration of the Contract;
- (2) The difference between the rent and the Total Tenant Payment toward rent under the Contract; and
- (3) The date the Contract will expire. (d) The owner shall give HUD a certification that families have been notified in accordance with this section with an example of the text of the notice attached.
- (e) This section shall apply to (1) Contracts involving Substantial Rehabilitation entered into pursuant to Agreements executed on or after October 1, 1981, or Contracts involving Substantial Rehabilitation entered into pursuant to Agreements executed before October 1, 1981, but renewed or amended on or after October 1, 1984 and (2) all other Contracts executed, renewed or amended on or after October 1, 1984.

[49 FR 31285, Aug. 6, 1984]

§886.312 Rent adjustments.

- (a) Limits. Housing assistance payments will be made in amounts commensurate with contract rent adjustments under this paragraph, up to the maximum amount authorized under the contract. (See §886.308.)
- (b) Annual adjustments. The contract rents may be adjusted annually, at HUD's option, either (1) on the basis of a written request for a rent increase submitted by the owner and properly supported by substantiating evidence, or (2) by applying, on each anniversary date of the contract, the applicable automatic annual adjustment factor most recently published by HUD in the FEDERAL REGISTER. If HUD requires that the owner submit a written request, HUD within a reasonable time shall approve a rental schedule that is necessary to compensate for any in-

crease occurring since the last approved rental schedule in taxes (other than income taxes) and operating and maintenance costs over which owners have no effective control, or shall deny the increase stating the reasons therefor. Increases in taxes and maintenance and operating costs shall be measured against levels of such expenses in comparable assisted and unassisted housing in the area to ensure that adjustments in the contract rents shall not result in material differences between the rents charged for assisted and comparable unassisted units. Contract rents may be adjusted upward or downward as may be appropriate; however, in no case shall the adjusted rents be less than the contract rents on the effective date of the contract, provided there was no fraud or mistake adverse to the Department's interest in determining the initial contract rent.

- (c) Special adjustments. Special adjustments in the contract rents shall be requested in writing by the owner and may be authorized by HUD to the extent HUD determines such adjustments are necessary to reflect increases in the actual and necessary expenses of owning and maintaining the contract units which have resulted from substantial general increases in real property taxes, utility rates or similar costs (i.e., assessments and utilities not covered be regulated rates) which are not adequately compensated for by the adjustment authorized by paragraph (b) of this section.
- (d) Comparability between assisted and unassisted units. Notwithstanding any other provisions of this subpart, adjustments as provided in this section shall not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by HUD: Provided, however. That this limitation shall not be construed to prohibit differences in rents between assisted and comparable unassisted units to the extent that such differences may have existed with respect to the initial contract rents assuming no fraud or mistake adverse to the Department's interest.
- (e) Addendums to contract and leases. Any adjustment in contract rents shall be incorporated into the contract and

leases by dated addendums to the contract and leases establishing the effective date of the adjustment.

§886.313 Other Federal requirements.

Participation in this program requires:

- (a) Compliance with (1) title VI of the Civil Rights Act of 1964, title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and Section 3 of the Housing and Urban Development Act of 1968, and (2) all rules, regulations, and requirements issued pursuant thereto.
- (b) Submission of an approvable Affirmative Fair Housing Marketing Plan.
- (c) For projects where rehabilitation is to be completed by or at the direction of the owner, compliance with:
- (1) The Clean Air Act and Federal Water Pollution Control Act;
- (2) Where the property contains nine or more units to be assisted, the requirement to pay not less than the wage rates prevailing in the locality, as predetermined by the Secretary of Labor under the Davis-Bacon Act (40 U.S.C. 276a-276a-5) to all laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) who are employed in the rehabilitation work, and the labor standards provisions contained in the Contract Work Hours and Safety Standards Act, Copeland Anti-Kickback Act, and implementing regulations of the Department of Labor.
- (3) Section 504 of the Rehabilitation Act of 1973:
- (4) The National Historic Preservation Act (Pub. L. 89–665):
- (5) The Archeological and Historic Preservation Act of 1974 (Pub. L. 93–291):
- (6) Executive Order 11593 on Protection and Enhancement of the Cultural Environment, including the procedures prescribed by the Advisory Council on Historic Preservation at 36 CFR part 800:
- (7) The National Environmental Policy Act of 1969;
- (8) The Flood Disaster Protection Act of 1973:
- (9) Executive Order 11988, Flood Plains Management;

(10) Executive Order 11990, Protection of Wetlands.

[44 FR 70365, Dec. 6, 1979, as amended at 57 FR 14760, Apr. 22, 1992]

§ 886.314 Financial default.

In the event of a financial default under the project mortgage, HUD shall have the right to make subsequent housing assistance payments to the mortgagee until such time as the default is cured, or until some other time agreeable to the mortgagee and approved by HUD.

§886.315 Security and utility deposits.

- (a) Amount of deposits. If at the time of the initial execution of the Lease the Owner wishes to collect a security deposit, the maximum amount shall be the greater of one month's Gross Family Contribution or \$50. However, this amount shall not exceed the maximum amount allowable under State or local law. For units leased in place, security deposits collected prior to the execution of a Contract which are in excess of this maximum amount do not have to be refunded until the Family is expected to pay security deposits and utility deposits from its resources and/ or other public or private sources.
- (b) When a Family vacates. If a Family vacates the unit, the Owner, subject to State and local law, may use the security deposit as reimbursement for any unpaid Family Contribution or other amount which the Family owes under the Lease. If a Family vacates the unit owing no rent or other amount under the Lease consistent with State or local law or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance to the Family.
- (c) Interest payable on deposits. In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. The Owner shall comply with all State and local laws regarding interest payments on security deposits.
- (d) Insufficient deposits. If the security deposit is insufficient to reimburse the Owner for the unpaid Family Contribution or other amounts which the Family owes under the Lease, or if the

§§ 886.316-886.317

Owner did not collect a security deposit, the Owner may claim reimbursement from HUD for an amount not to exceed the lesser of: (1) The amount owed the Owner, (2) two months' Contract Rent, minus, in either case, the greater of the security deposit actually collected or the amount of security deposit the owner could have collected under the program (pursuant to paragraph (a) of this section). Any reimbursement under this section must be applied first toward any unpaid Family Contribution due under the Lease and then to any other amounts owed. No reimbursement shall be claimed for unpaid rent for the period after the familv vacates.

§§ 886.316-886.317 [Reserved]

§886.318 Responsibilities of the owner.

- (a) Management and maintenance. The owner shall be responsible for the management and maintenance of the project in accordance with requirements established by HUD. These responsibilities shall include but not be limited to:
- (1) Payment for utilities and services (unless paid directly by the family), insurance and taxes:
- (2) Performance of all ordinary and extraordinary maintenance;
- (3) Performance of all management functions, including the taking of applications; determining eligibility of applicants in accordance with 24 CFR part 5 of this title: selection of families, including verification of income, obtaining and verifying Social Security Numbers submitted by applicants (as provided by part 5, subpart B, of this title), obtaining signed consent forms from applicants for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided in part 5, subpart B, of this title), and other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.
 - (4) Collection of Tenant Rents;
- (5) Preparation and furnishing of information required under the contract;

- (6) Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses; redeterminations, as appropriate, of the amount of Tenant Rent and amount of housing assistance payment in accordance with part 5 of this title; obtaining and verifying Social Security Numbers submitted by participants, as provided by CFR part 750; and obtaining signed consent forms from participants for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by part 5, subpart B, of this title.
- (7) Redeterminations of the amount of Tenant Rent and the amount of housing assistance payment in accordance with part 5 of this title as a result of an adjustment by HUD of any applicable utility allowance;
- (8) Notifying families in writing when they are determined to be qualified for assistance under this subpart where they have not already been notified by HUD prior to sale:
- (9) Reviewing at least annually the allowance for utilities and other services;
- (10) Compliance with equal opportunity requirements; and
- (11) Compliance with Federal requirements set forth in §886.313(c).
- (b) Contracting for Services. Subject to HUD approval, any owner may contract with any private or public entity to perform for a fee the services required by paragraph (a) of this section: Provided, That such contract shall not shift any of the owner's responsibilities or obligations.
- (c) *HUD review*. The owner shall permit HUD to review and audit the management and maintenance of the project at any time.
- (d) Submission of financial and operating statements. After execution of the Contract, the owner must submit to HUD:
- (1) Financial information in accordance with 24 CFR part 5, subpart H; and
- (2) Other statements as to project operation, financial conditions and occupancy as HUD may require pertinent to

administration of the Contract and monitoring of project operations.

(Approved by the Office of Management and Budget under control numbers 2502-0204 and 2505,0052)

[44 FR 70365, Dec. 6, 1979, as amended at 49 FR 19949, May 10, 1984; 53 FR 1169, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 54 FR 39709, Sep. 27, 1989; 56 FR 7542, Feb. 22, 1991; 58 FR 43722, Aug. 17, 1993; 60 FR 14846, Mar. 20, 1995; 61 FR 11119, Mar. 18, 1996; 63 FR 46593, Sept. 1, 1998; 65 FR 16724, Mar. 29, 2000]

§ 886.319 Responsibility for contract administration.

HUD is responsible for administration of the Contract. HUD may contract with another entity for the performance of some or all of its Contract administration functions.

[60 FR 11860, Mar. 2, 1995]

§886.320 Default under the contract.

The contract shall contain a provision to the effect that if HUD determines that the owner is in default under the contract, HUD shall notify the owner of the actions required to be taken to cure the default and of the remedies to be applied by HUD including recovery of overpayments, where appropriate, and that if the owner fails to cure the default within a reasonable time as determined by HUD, HUD has the right to terminate the contract or to take other corrective action, including recission of the sale. When contract termination is under consideration by HUD, HUD shall give eligible families an opportunity to submit written and other comments. Where the project is sold under the arrangement that involves a regulatory agreement between HUD and the owner, a default under the regulatory agreement shall be treated as default under the contract.

§886.321 Marketing.

(a) Marketing in accordance with HUD-Approved Plan. Marketing of units and selection of families by the owner shall be in accordance with the owner's HUD-approved Affirmative Fair Housing Marketing Plan, HUD-approved tenant selection factors and with all regulations relating to fair housing advertising including use of the equal opportunity logotype, statement, and slogan in all advertising. Projects shall be

managed and operated without regard to race, color, creed, religion, sex, or national origin.

(b)(1) HUD will determine the eligibility of assistance of families in occupancy before sales closing. After the sale, the owner shall be responsible for taking applications, selecting families, and all related determinations, in accordance with part 5 of this title. (See especially, 24 CFR part 5, subpart F).

(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, 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. 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.

(3) If the owner determines that the applicant is eligible on the basis of income and family composition and is otherwise acceptable but the owner does not have a suitable unit to offer, the owner shall place such family on the waiting list and so advise the family indicating approximately when a unit may be available.

(4) If the owner determines that the applicant is eligible on the basis of income and family composition and is otherwise acceptable in accordance with the HUD approved tenant selection factors and if the owner has a suitable unit, the owner and the family shall enter into a lease. The lease shall be on a form approved by HUD and shall otherwise be in conformity with the provisions of this subpart.

(5) Records on applicant families and approved families shall be maintained by the owner so as to provide HUD with racial, ethnic, and gender data and

shall be retained by the owner for 3 years.

- (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.
- (7) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see part 5 of this title for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of denial of assistance.
- (c) Initial occupancy. (1) Where rehabilitation is involved, sixty days prior to the completion of the rehabilitation, or when the rehabilitation is begun. whichever is later, the Owner shall determine whether the tenant population of the project generally reflects the racial/ethnic makeup of the housing market area. Based on this determination. the Owner shall then conduct appropriate marketing activities in accordance with a HUD-approved Affirmative Fair Housing Marketing Plan. Such activities may include special outreach to those groups identified as not ordinarily expected to apply for these units without special outreach; notification to PHA's in the housing market area of any anticipated vacancies; and formu-

lation of waiting lists based on the Owner's HUD-approved tenant selection factors.

(2) Where a PHA is notified, the PHA shall notify an appropriate size family (families) on its waiting list of the availability of the unit and refer the family (families) to the owner. (Since the Owner is responsible for tenant selection, the owner is not required to lease to a PHA selected family, but the owner must comply with §886.321(b)(6).)

[44 FR 70365, Dec. 6, 1979, as amended at 53 FR 1169, Jan. 15, 1988; 53 FR 6601, Mar. 2, 1988; 58 FR 43722, Aug. 17, 1993; 60 FR 14846, Mar. 20, 1995; 65 FR 16724, Mar. 29, 2000; 70 FR 77744, Dec. 30, 2005]

§886.322 [Reserved]

§886.323 Maintenance, operation, and inspections.

- (a) Maintain decent, safe, and sanitary housing. The owner shall maintain and operate the project so as to provide decent, safe, and sanitary housing and the owner shall provide all the services, maintenance, and utilities which he or she agrees to provide under the contract and the lease. Failure to do so shall be considered a material default under the contract and Regulatory Agreement, if any.
- (b) HUD inspection. Prior to execution of the contract, HUD shall inspect (or cause to be inspected) each proposed contract unit and related facilities to ensure that they are in decent, safe, and sanitary condition.
- (c) Owner and family inspection. Prior to occupancy of any vacant until by a family, the owner and the family shall inspect the unit and both shall certify that they have inspected the unit and have determined it to be decent, safe, and sanitary. Copies of these reports shall be kept on file by the owner for at least 3 years.
- (d) Annual inspections. HUD will inspect the project (or cause it to be inspected) at least annually and at such other times as HUD may determine to be necessary to assure that the owner is meeting his or her obligation to maintain the units and the related facilities in decent, safe, and sanitary condition and to provide the agreed-upon utilities and other services. HUD will take into account complaints by

occupants and any other information coming to its attention in scheduling inspections and shall notify the owner and the family of its determination regarding the condition of the units.

(e) Failure to maintain decent, safe, and sanitary units. If HUD notifies the owner that he/she has failed to maintain a dwelling unit in decent, safe, and sanitary condition, and the owner fails to take corrective action within the time prescribed in the notice, HUD may exercise any of its rights or remedies under the contract, or Regulatory Agreement, if any, including abatement of housing assistance payments (even if the family continues to occupy the unit) and rescission of the sale. If, however, the family wishes to be rehoused in another dwelling unit, HUD shall provide assistance in finding such a unit for the family.

§886.324 Reexamination of family income and composition.

(a) Regular reexaminations. The owner must reexamine the income and composition of all families at least once each year. Upon verification of the information, the owner must make appropriate adjustments in the Total Tenant Payment in accordance with part 5 of this title and determine whether the family's unit size is still appropriate. The owner must adjust Tenant Rent and the Housing Assistance Payment to reflect any change in Total Tenant Payment and carry out any unit transfer required by HUD. At the time of the annual reexamination of family income and composition, the owner must require the family to disclose and verify Social Security Numbers, as provided by part 5, subpart B, of this title. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see part 5, subpart B, of this title. At the first regular reexamination after June 19, 1995, the owner shall follow the requirements of part 5 of this title concerning obtaining and processing evidence of citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner shall follow the requirements of part 5 of this title

concerning verification of the immigration status of any new family member.

(b) Interim reexaminations. The family must comply with provisions in its lease regarding interim reporting of changes in income. If the owner receives information concerning change in the family's income or other circumstances between regularly scheduled reexaminations, the owner must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the Total Tenant Payment, Tenant Rent and Housing Assistance Payment must be verified. See part 5, subpart B, of this title for the requirements for the disclosure and verification of Social Security Numbers at interim reexaminations involving new family members. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see part 5, subpart B, of this title. At any interim reexamination after June 19, 1995 when there is a new family member, the owner shall follow the requirements of part 5 of this title concerning obtaining and processing evidence of citizenship or eligible immigration status of the new family member.

(c) Continuation of housing assistance payments. A family's eligibility for Housing Assistance Payments will continue until the Total Tenant Payment equals the Contact Rent plus any applicable Utility Allowance. The termination of eligibility at such point will not affect the family's other rights under its lease, nor will such termination preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances during the term of the contract. However, eligibility also may be terminated in accordance with HUD requirements, for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, as provided by part 5, subpart B, of this title, or failure to sign and submit consent forms for the obtaining of wage

and claim information from State Wage Information Collection Agencies, as provided by part 5, subpart B, of this title. For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see part 5, subpart E, of this title for provisions concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and for provisions concerning deferral of termination of assistance.

[56 FR 7543, Feb. 22, 1991, as amended at 60 FR 14847, Mar. 20, 1995; 61 FR 11119, Mar. 18, 1996; 65 FR 16724, Mar. 29, 2000]

§ 886.325 Overcrowded and underoccupied units.

(a) Change in family composition, family's notification. The family shall notify the owner of a change in family composition and shall transfer to an appropriate size dwelling unit, based on family composition, upon appropriate notice by the owner of HUD that such a dwelling unit is available. Such a family shall have priority over a family on the owner's waiting list seeking the same size unit.

(b) Change in family composition, owner's responsibilities. Upon receipt by the owner of a notification by the family of a change in the family size, the owner agrees to offer the family a suitable unit as soon as one becomes vacant and ready for occupancy. If the owner does not have any suitable units or if no vacancy of a suitable unit occurs within a reasonable time, HUD may assist the family in finding a suitable dwelling unit and require the family to move to such unit as soon as possible.

(c) HUD actions if appropriate size unit is not made available. If the owner fails to offer the family a unit appropriate for the size of the family when such unit becomes vacant and ready for occupancy, HUD may abate housing assistance payments to the owner for the unit occupied by the family and assist the family in finding a suitable dwelling unit elsewhere.

[46 FR 19467, Mar. 31, 1981]

§ 886.326 Adjustment of utility allowances.

When the owner requests HUD approval of an adjustment in Contract Rents under §886.312, an analysis of the project's Utility Allowances must be included. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the owner must advise the Secretary and request approval of new Utility Allowances.

(Approved by the Office of Management and Budget under control numbers 2502-0352 and 2502-0354)

[51 FR 21864, June 16, 1986]

§886.327 Lease requirements.

(a) Term of lease. (1) The term of a lease, including a new lease or a lease amendment, executed by the owner and the family must be for at least one year, or the remaining term of the contract if the remaining term of the contract is less than one year.

(2) During the first year of the lease term, the owner may not terminate the tenancy for "other good cause" under 24 CFR 247.3(a)(3), unless the termination is based on family malfeasance or nonfeasance. For example, during the first year of the lease term, the owner may not terminate the tenancy for "other good cause" based on the failure of the family to accept the offer of a new lease.

(3) The lease may contain a provision permitting the family to terminate on 30 days advance written notice to the owner. In this case of a lease term for more than one year, the lease must contain this provision.

(b) Required and prohibited provisions. The lease between the owner and the family must comply with HUD regulations and requirements, and must be in the form required by HUD. The lease may not contain any of the following types of prohibited provisions:

(1) Admission of guilt. Agreement by the family (i) to be sued, and (ii) to admit guilt, or (iii) to a judgment in favor of the owner, in a court proceeding against the family in connection with the lease.

- (2) Treatment of family property. Agreement by the family that the owner may take or hold family property, or may sell family property, without notice to the family and a court decision on the rights of the parties.
- (3) Excusing owner from responsibility. Agreement by the family not to hold the owner or the owner's agents responsible for any action or failure to act, whether intentional or negligent.
- (4) Waiver of notice. Agreement by the family that the owner does not need to give notice of a court proceeding against the family in connection with the lease, or does not need to give any notice required by HUD.
- (5) Waiver of court proceeding for eviction. Agreement by the family that the owner may evict the family (i) without instituting a civil court proceeding in which the family has the opportunity to present a defense, or (ii) before a decision by the court on the rights of the parties.
- (6) Waiver of jury trial. Agreement by the family to waive any right to a trial by jury.
- (7) Waiver of appeal. Agreement by the family to waive the right to appeal, or to otherwise challenge in court, a court decision in connection with the lease.
- (8) Family chargeable with legal costs regardless of outcome. Agreement by the family to pay lawyer's fees or other legal costs of the owner, even if the family wins in a court proceeding by the owner against the family. (However, the family may have to pay these fees and costs if the family loses.)

[53 FR 3369, Feb. 5, 1988]

§886.328 Termination of tenancy.

Part 247 of this title (24 CFR part 247) applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR part 247 and 24 CFR part 5 shall apply. For cases involving, or allegedly involving, domestic violence, dating violence, stalking, or criminal activity directly relating to such violence, the

provisions of 24 CFR part 5, subpart L, apply. The provisions of 24 CFR part 5, subpart E, concerning certain assistance for mixed families (families whose members include those with eligible immigration status, and those without eligible immigration status) in lieu of termination of assistance, and concerning deferral of termination of assistance, also shall apply.

[75 FR 66261, Oct. 27, 2010]

§886.329 Leasing to eligible families.

- (a) Availability of units for occupancy by Eligible Families. During the term of the Contract, an owner shall make available for occupancy by eligible families the total number of units for which assistance is committed under the Contract. For purposes of this section, making units available for occupancy by eligible families means that the owner: (1) Is conducting marketing in accordance with §886.321; (2) has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) has not rejected any such applicant family except for reasons acceptable to HUD. If the owner is temporarily unable to lease all units for which assistance is committed under the Contract to eligible families, one or more units may be leased to ineligible families with the prior approval of HUD. Failure on the part of the owner to comply with these requirements is a violation of the Contract and grounds for all available legal remedies, including specific performance of the Contract, suspension or debarment from HUD programs, and reduction of the number of units under the Contract as set forth in paragraph (b) of this section.
- (b) Reduction of number of units covered by Contract. HUD may reduce the number of units covered by the Contract to the number of units available for occupancy by eligible families if:
- (1) The owner fails to comply with the requirements of paragraph (a) of this section; or
- (2) Notwithstanding any prior approval by HUD to lease such units to ineligible families, HUD determines

§ 886.329a

that the inability to lease units to eligible families is not a temporary problem.

- (c) Restoration. HUD will agree to an amendment of the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:
- (1) HUD determines that the restoration is justified by demand;
- (2) The owner otherwise has a record of compliance with his or her obligations under the Contract; and
- (3) Contract and budget authority are available.
- (d) Applicability. In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all contracts involving substantial rehabilitation. These paragraphs apply to all other Contracts executed on or after October, 3, 1984. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time will continue to lease the unit to that family. However, the Borrower must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.
- (e) Termination of assistance for failure to establish citizenship or eligible immigration status. If an owner who is subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with part 5, subpart E, of this title because the owner determines that the entire family does not have U.S. citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance, or if the family constitutes a mixed family, as defined in part 5, subpart E, of this title, the owner shall comply with the provisions of part 5, subpart E, of this title concerning assistance to mixed families, and deferral of termination of assistance.

(f) Subpart L of 24 CFR part 5 applies to selection of tenants and occupancy requirements in cases where there is involved or claimed to be involved incidents of, or criminal activity related

to, domestic violence, dating violence, or stalking.

[49 FR 31399, Aug. 7, 1984, as amended at 53 FR 847, Jan. 13, 1988; 53 FR 6601, Mar. 2, 1988; 58 FR 43722, Aug. 17, 1993; 59 FR 13653, Mar. 23, 1994; 60 FR 14847, Mar. 20, 1995; 65 FR 16724, Mar. 29, 2000; 73 FR 72343, Nov. 28, 2008; 75 FR 66261, Oct. 27, 2010]

§886.329a Preferences for occupancy by elderly families.

- (a) Election of preference for occupancy by elderly families—(1) Election by owners of eligible projects. (i) An owner of a project involving substantial rehabilitation and assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an "eligible project") may, at any time, elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.
- (ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an "elderly project." "Elderly families" refers to families whose heads of household, their spouses or sole members are 62 years or older.
- (iii) An owner who elects to provide a preference to elderly families in accordance with this section is required to notify families on the waiting list who are not elderly that the election has been made and how the election may affect them if:
- (A) The percentage of disabled families currently residing in the project who are neither elderly nor near-elderly (hereafter, collectively referred to as "non-elderly disabled families") is equal to or exceeds the minimum required percentage of units established for the elderly project in accordance with paragraph (c)(1) of this section, and therefore non-elderly families on the waiting list (including non-elderly disabled families) may be passed over for covered section 8 units; or
- (B) The project, after making the calculation set forth in paragraph (c)(1) of this section, will have no units set aside for non-elderly disabled families.

- (iv) An owner who elects to give a preference for elderly families in accordance with this section shall not remove an applicant from the project's waiting list solely on the basis of having made the election.
- (2) HUD approval of election not required. (i) An owner is not required to solicit or obtain the approval of HUD before exercising the election of preference for occupancy provided in paragraph (a)(1) of this section. The owner, however, if challenged on the issue of eligibility of the project for the election provided in paragraph (a)(1) of this section must be able to support the project's eligibility through the production of all relevant documentation in the possession of the owner that pertains to the original design of the project.
- (ii) The Department reserves the right at any time to review and make determinations regarding the accuracy of the identification of the project as an elderly project. The Department can make such determinations as a result of ongoing monitoring activities, or the conduct of complaint investigations under the Fair Housing Act (42 U.S.C. 3601 through 3619), or compliance reviews and complaint investigations under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and other applicable statutes.
- (b) Determining projects eligible for preference for occupancy by elderly families—(1) Evidence supporting project eligibility. Evidence that a project assisted under this part (or portion of a project) was originally designed primarily for occupancy by elderly families, and is therefore eligible for the election of occupancy preference provided by this section, shall consist of at least one item from the sources ("primary" sources) listed in paragraph (b)(1)(i), or at least two items from the sources ("secondary" sources) listed in paragraph (b)(1)(ii) of this section:
- (i) Primary sources. Identification of the project (or portion of a project) as serving elderly (seniors) families in at least one primary source such as: the application in response to the notice of funding availability; the terms of the notice of funding availability under which the application was solicited; the regulatory agreement; the loan

- commitment; the bid invitation; the owner's management plan, or any underwriting or financial document collected at or before loan closing; or
- (ii) Secondary sources. Two or more sources of evidence such as: lease records from the earliest two years of occupancy for which records are available showing that occupancy has been restricted primarily to households where the head, spouse or sole member is 62 years of age or older: evidence that services for elderly persons have been provided, such as services funded by the Older Americans Act, transportation to senior citizen centers, or programs coordinated with the Area Agency on Aging; project unit mix with more than fifty percent of efficiency and one-bedroom units [a secondary source particularly relevant to distinguishing elderly projects under the previous section 3(b) definition (in which disabled families were included in the definition of "elderly families") from non-elderly projects and which in combination with other factors (such as the number of accessible units) may be useful in distinguishing projects for seniors from those serving the broader definition of "elderly families" which includes disabled families]; or any other relevant type of historical data, unless clearly contradicted by other comparable evidence.
- (2) Sources in conflict. If a primary source establishes a design contrary to that established by the primary source upon which the owner would base support that the project is an eligible project (as defined in this section), the owner cannot make the election of preferences for elderly families as provided by this section based upon primary sources alone. In any case where primary sources do not provide clear evidence of original design of the project for occupancy primarily by elderly families, including those cases where primary sources conflict, secondary sources may be used to establish the use for which the project was originally designed.
- (c) Reservation of units in elderly projects for non-elderly disabled families. The owner of an elderly project is required to reserve, at a minimum, the number of units specified in paragraph

§ 886.329a

- (c)(1) of this section for occupancy by non-elderly disabled families.
- (1) Minimum number of units to be reserved for non-elderly disabled families. The number of units in an elderly project required to be reserved for occupancy by non-elderly disabled families, shall be, at a minimum, the lesser of:
- (i) The number of units equivalent to the higher of—
- (A) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families on October 28, 1992; and
- (B) The percentage of units assisted under this part in the elderly project that were occupied by non-elderly disabled families upon January 1, 1992; or
- (ii) 10 percent of the number of units assisted under this part in the eligible project.
- (2) Option to reserve greater number of units for non-elderly disabled families. The owner, at the owner's option, and at any time, may reserve a greater number of units for non-elderly disabled families than that provided for in paragraph (c)(1) of this section. The option to provide a greater number of units to non-elderly disabled families will not obligate the owner to always provide that greater number to non-elderly disabled families. The number of units required to be provided to non-elderly disabled families at any time in an elderly project is that number determined under paragraph (c)(1) of this section.
- (d) Secondary preferences. An owner of an elderly project also may elect to establish secondary preferences in accordance with the provisions of this paragraph (d) of this section.
- (1) Preference for near-elderly disabled families in units reserved for elderly families. If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of elderly families who have applied for occupancy to fill all the vacant units in the elderly project reserved for elderly families (that is, all units except those reserved for the non-elderly disabled families as provided in paragraph (c) of this section), the owner may give preference for occupancy of such units to disabled families who are near-elderly families.

- (2) Preference for near-elderly disabled families in units reserved for non-elderly disabled families. If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units to disabled families who are near-elderly families.
- (e) Availability of units to families without regard to preference. An owner shall make vacant units in an elderly project generally available to otherwise eligible families who apply for housing without regard to the preferences and reservation of units provided in this section if either:
- (1) The owner has adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, reserve preference, and secondary preference has been given, to fill all the vacant units; or
- (2) The owner has *not* adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, and reserve preference has been given to fill all the vacant units.
- (f) Determination of insufficient number of applicants qualifying for preference. To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:
- (1) Conduct marketing in accordance with §886.321(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section; and
- (2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.
- (g) Prohibition of evictions. An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661)

of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

[59 FR 65857, Dec. 21, 1994, as amended at 65 FR 16724, Mar. 29, 2000]

§ 886.330 Work write-ups and cost estimates.

- (a) HUD preparation of work write-ups. If needed, a work write-up, including plans and specifications, will be made by HUD specifying necessary rehabilitation.
- (b) HUD specifies deficiencies and corrective action. The work write-up will specify deficiencies noted by HUD and describe the manner in which the deficiencies are to be corrected, including minimum acceptable levels of workmanship and materials.
- (c) HUD preparation of cost estimates. HUD shall perform or cause to be performed a cost estimate to complete rehabilitation. The cost of any necessary relocation, as determined by HUD as being necessary to expedite the rehabilitation and the estimated cost to the owner of maintaining project rents at the Section 8 level, as required by HUD prior to execution of the Contract, plus other costs allowable by HUD will be included in the cost estimate. The work write-up and cost estimate shall become part of the disposition package and will be used in determining the sales price of the project.

 $[44\ {\rm FR}\ 70365,\ {\rm Dec.}\ 6,\ 1979,\ {\rm as}\ {\rm amended}\ {\rm at}\ 58\ {\rm FR}\ 43722,\ {\rm Aug.}\ 17,\ 1993]$

§ 886.331 Agreement to enter into housing assistance payments contract

- (a) Execution of agreement. At the sales closing and prior to the Owner's commencement of any rehabilitation under this subpart, HUD will enter into an Agreement with the Owner which contains the following:
- (1) A statement that the Owner agrees to rehabilitate the project unit(s) to make the unit(s) decent, safe, and sanitary in accordance with the work write-up, cost estimates, and this subpart.
- (2) A date by which rehabilitation will have commenced and a deadline date by which the rehabilitated project unit(s) will be completed and ready for occupancy. The Agreement may pro-

- vide for staged rehabilitation, occupancy, and payments under the contract.
- (3) The Contract Rent which will be paid to the Owner once rehabilitation is completed, the Contract is executed, and the unit(s) is/are occupied by an eligible family.
- (4) A date for final inspection of the unit(s) by HUD and the owner shall be specified. This date shall be as soon as possible after the deadline date specified pursuant to paragraph (a)(2) of this section.
 - (5) The term of the contract.
- (b) Agreement part of sales contract. The Agreement will be prepared by HUD and incorporated into the Contract of Sale and Purchase. The Agreement shall include all required information in paragraph (a) of this section and a statement specifying the Owner's responsibility for making relocation payments to Families temporarily displaced.

[44 FR 70365, Dec. 6, 1979, as amended at 58 FR 43722, Aug. 17, 1993]

§886.332 Rehabilitation period.

- (a) Immediate start of rehabilitation after sales closing. After the execution of the Agreement and the sales closing, the owner shall immediately proceed with the rehabilitation work as provided in the Agreement. In the event the work is not immediately commenced, diligently continued, and/or completed by the deadline date stated on the Agreement, HUD will have the right, upon written notification to the owner, to rescind the Agreement and the sale, or take other appropriate action.
- (b) Extensions. Although extensions of time may be granted by HUD upon a written request from the owner stating the grounds for the extension, no increases in Contract Rents shall be granted for delays.
- (c) Changes. (1) The Owner must submit to HUD for approval any changes from the work specified in the Agreement which would materially reduce or alter the Owner's obligations or the quality or amenities of the project. HUD may condition its approval of such changes on a reduction of the Contract Rents. If changes are made without prior HUD approval, HUD will

have the right to take action consistent with the purpose of this subpart, including action intended to preclude the owner from benefiting from a change in the work specified without HUD approval. HUD action shall include but is not limited to reducing the Contract Rents, requiring the owner to remedy the deficiency, or rescission of the Contract of Sale with reimbursement to the owner for the HUD determined reasonable cost of work items completed by the Owner and acceptable to HUD.

(2) Contract Rents for project units being rehabilitated shall not be increased except in accordance with this subpart. Should an increase in Contract Rents be necessitated by changes in local codes or ordinances or other unanticipated changes in work items which could not have been anticipated by HUD, an increase will only be approved if HUD approval is obtained prior to incorporation of any changes in the project.

[44 FR 70365, Dec. 6, 1979, as amended at 58 FR 43722, Aug. 17, 1993]

$\S 886.333$ Completion of rehabilitation.

- (a) Notification of completion. The owner must notify HUD in writing when work is completed and submit to HUD the evidence of completion and cost certifications described in paragraph (b) and (c) of this section.
- (b) *Evidence of completion*. Completion of the project must be evidenced by furnishing HUD with the following:
- (1) A certificate of occupancy and/or other official approvals necessary for occupancy as required by the locality.
- (2) A certification by the owner that:
- (i) The project unit(s) has been completed in accordance with the requirements of the Agreement;
- (ii) The project unit(s) is/are decent, safe, and sanitary;
- (iii) The project unit(s) has/have been rehabilitated in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials;
- (iv) The project was in compliance with applicable HUD lead-based paint regulations at part 35, subparts A, B, H, and R of this title.

- (v) If applicable, the owner has complied with the provisions of the Agreement relating to the payment of not less than prevailing wage rates and that to the best of the owner's knowledge and belief there are no claims of underpayment in alleged violation of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the owner of HUD, the owner shall be required to place a sufficient amount in escrow, as determined by HUD, to assure such payments;
- (vi) There are no defects or deficiencies in the project except for ordinary punchlist items, or incomplete work awaiting seasonal opportunity such as landscaping and heating system test (such excepted items to be specified); and
- (vii) There has been no change in the evidence of management capability or in the proposed management program (if one was required) specified in the approved purchase proposal other than changes approved in writing by HUD in accordance with the Agreement.
- (c) Actual cost and interest rate certifications. The Owner must provide HUD with statements of the actual costs, including the interest rate incurred for the rehabilitation, Contract Rent shortfalls, and any relocation approved by HUD. The owner shall certify that these are the actual costs. HUD shall review and approve these costs subject to post audit.
- (d) Review and inspections. (1) Within fifteen working days of the receipt of the evidence of completion, and the owner's certification of costs, HUD shall review the evidence of completion for compliance with paragraphs (b) and (c) of this section.
- (2) Within the same time period, a HUD representative shall inspect the units, to determine whether the units meet the Housing Quality Standards, the Agreement to Enter into the HAP, and any applicable work write-up.
- (e) If the inspection discloses defects or deficiencies, the inspector shall report these with sufficient detail and information for purposes of paragraphs (g) (1) and (2) of this section.
- (f) Acceptance. If HUD determines from the review and inspection that

the project has been completed in accordance with the Agreement, the project shall be accepted.

- (g) Acceptance where defects or deficiencies reported. If the projects unit(s) are not acceptable under paragraph (f) of this section, the following shall apply:
- (1) If the only defects or deficiencies are punchlist items or incomplete items awaiting seasonal opportunity, the project may be accepted and the contract executed. If the owner fails to complete the items within a reasonable time to the satisfaction of HUD, HUD may, upon 30 days notice to the owner terminate the contract and/or exercise its other rights thereunder, including rescission of the sale.
- (2) If the defects or deficiencies are other than punchlist items or incomplete work awaiting seasonal opportunity, HUD shall determine whether and to what extent the defects or deficiencies can be corrected, what corrections are essential to permit HUD to accept the project, whether and to what extent a reduction of Contract Rents will be required as a condition to acceptance of the project, and the extension of time required for the remaining work to be done. The owner shall be notified of HUD's determinations and, if the owner agrees to comply with the conditions, an addendum to the Agreement shall be entered into, specifying the remaining work, pursuant to which the defects or deficiencies will be corrected and the unit(s) then accepted. If the owner is unwilling to enter into such an addendum or fails to perform under the addendum, the units will not be accepted and appropriate remedies will be sought by HUD. Paragraphs (a) through (g) will apply when the remaining work is completed satis-
- (h) Notification of non-acceptance. If HUD determines that, based on the review of the evidence of completion and inspection, the unit(s) cannot be accepted, the Owner must be promptly notified of this decision and the reasons and steps shall be taken immediately to rescind the sale, or such

other action deemed appropriate by HUD.

[44 FR 70365, Dec. 6, 1979, as amended at 52 FR 1896, Jan. 15, 1987; 58 FR 43723, Aug. 17, 1993; 64 FR 50227, Sept. 15, 1999]

§886.334 Execution of housing assistance payments contract.

- (a) Time of execution. Upon acceptance of the unit(s) by HUD pursuant to §886.333(f), the contract will be executed first by the Owner and then by HUD. The effective date must be no earlier than the HUD inspection which provides the basis for unconditional acceptance.
- (b) Changes in initial contract rents during rehabilitation. (1) The Contract Rents established pursuant to §886.310 and 24 CFR part 290 will be the Contract Rents on the effective date of the Contract except under the following circumstances:
- (i) When, during rehabilitation, work items are discovered which could not reasonably have been anticipated by HUD or are necessitated by an unforeseen change in local codes or ordinances; were not listed in the work write-up prepared by HUD but are deemed by HUD, in writing, to be necessary work; and will require additional expenditures which would make the rehabilitations infeasible at the Contract Rents established in the Agreement. Under these circumstances, HUD will:
- (A) Approve a change order to the rehabilitation contract, or amend the work write-up if there is no rehabilitation contract, specifying the additional work to be accomplished and the additional cost for this work,
- (B) Recompute the Contract Rents, within the limits specified in paragraph (b)(4) of this section, based upon the revised cost estimate, and
- (C) Prepare and execute an amendment to the Agreement stating the additional work required and the revised Contract Rents.
- (ii) When the actual cost of the rehabilitation performed is less than that estimated in the calculation of Contract Rents for the Agreement.

- (iii) When, due to unforeseen factors, the actual certified relocation payments made by the Owner to temporarily relocated Families varies from the cost estimated by HUD.
- (2) Should changes occur as specified in paragraph (b)(1) (ii) or (iii) (either an increase or decrease), HUD may recalculate the Contract Rents and amend the Contract or Agreement, as appropriate, to reflect the revised rents. The rents shall not be recalculated based on increased costs to maintain rents at the Section 8 level during the rehabilitation period.
- (3) HUD must review and approve the Owner's certification that the rehabilitation costs and relocation costs are the actual costs incurred.
- (4) In establishing the revised Contract Rents, HUD must determine that the resulting Contract Rents plus an applicable Utility Allowances do not exceed the Fair Market Rent or the exception rent provided in §886.310 in effect at the time of execution of the Agreement.
- (c) Unleased unit(s). At the time the contract is executed, HUD will provide a list of dwelling unit(s) leased as of the effective date of the Contract and a list of the unit(s) not so leased, if any, and shall determine whether or not the owner has met the obligations with respect to any unleased unit(s) and for which of those unit(s) vacancy payments will be made by HUD. The owner must indicate in writing either concurrence with this determination or disagreement reserving all rights to claim vacancy payments for the unleased unit(s) pursuant to the contract, without prejudice by reason of the owner's signing the contract.

[44 FR 70365, Dec. 6, 1979, as amended at 48 FR 12711, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 65 FR 16427, Mar. 29, 2000]

§886.335 HUD review of agreement and contract compliance.

HUD will review project operations at such intervals as it deems necessary to ensure that the owner is in full compliance with the terms and conditions of the contract, Regulatory Agreement, and Agreement to Enter into a Housing Assistance Contract, if any. The equal opportunity review may be conducted with the scheduled HUD re-

view or at any time deemed appropriate by HUD.

§886.336 Audit.

- (a) Where a State or local government is the eligible owner of a project receiving financial assistance under this part, the audit requirements in 24 CFR part 44 shall apply.
- (b) Where a nonprofit organization is the eligible owner of a project receiving financial assistance under this part, the audit requirements in 24 CFR part 45 shall apply.

[50 FR 39092, Sept. 27, 1985; 51 FR 30480, Aug. 27, 1986, as amended at 57 FR 33257, July 27, 1992]

§886.337 Selection preferences.

Sections 5.410 through 5.430 govern the use of preferences in the selection of tenants under this subpart.

 $[59~{\rm FR}~36647,~{\rm July}~18,~1994,~{\rm as~amended}~{\rm at}~61~{\rm FR}~9047,~{\rm Mar.}~6,~1996]$

§886.338 Displacement, relocation, and acquisition.

- (a) Minimizing displacement. Consistent with the other goals and objectives of this part, owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.
- (b) Temporary relocation. The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:
- (1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent/utility costs; and
- (2) Appropriate advisory services, including reasonable advance written notice of:
- (i) The date and approximate duration of the temporary relocation;
- (ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period:

- (iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation; and
- (iv) The provisions of paragraph (b)(1) of this section.
- (c) Relocation assistance for displaced persons. A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) (42 U.S.C. 4601–4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601-19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.
- (d) Real property acquisition requirements. The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.
- (e) Appeals. A person who disagrees with the owner's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the owner. A low-income person who is dissatisfied with the owner's determination on such appeal may submit a written request for review of that determination to the HUD Field Office.
- (f) Responsibility of owner. (1) The owner shall certify (i.e., provide assurance of compliance, as required by 49 CFR part 24) that he or she will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The owner is responsible for such compliance notwithstanding any third party's contractual obligation to the owner to comply with these provisions.

- (2) The cost of providing required relocation assistance is an eligible project cost to the same extent and in the same manner as other project costs. Such costs may also be paid for with funds available from other sources.
- (3) The owner shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The owner shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.
- (g) Definition of displaced person. (1) For purposes of this section, the term displaced person means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project, including any permanent move from the real property that is made:
- (i) After notice by the owner to move permanently from the property, if the move occurs on or after the date of the submission of the application to HUD;
- (ii) Before submission of the application to HUD, if HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or
- (iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:
- (A) The tenant moves after the execution of the contract to provide Housing Assistance Payments, and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:
- (1) The tenant's monthly rent before execution of the Housing Assistance Payments Contract and estimated average monthly utility costs; or
- (2) The total tenant payment, as determined under part 5 of this title, if

Pt. 888

the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

- (B) The tenant is required to relocate temporarily, does not return to the building/complex, and either:
- (1) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or
- (2) Other conditions of the temporary relocation are not reasonable; or
- (C) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-ofpocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.
- (2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:
- (i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;
- (ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, received written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" (or for assistance under this section) as a result of the project:
- (iii) The person is ineligible under 49 CFR 24.2(g)(2); or
- (iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.
- (3) The owner may ask HUD, at any time, to determine whether a displacement is or would be covered by this section.
- (h) Definition of initiation of negotiations. For purposes of determining the formula for computing the replacement

housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term "initiation of negotiations" means the owner's execution of the Housing Assistance Payments Contract.

(Approved by the Office of Management and Budget under OMB Control Number 2506– 0121)

[58 FR 43723, Aug. 17, 1993, amended at 65 FR 16724, Mar. 29, 2000]

PART 887 [RESERVED]

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT ANNUAL ADJUSTMENT FACTORS

Subpart A—Fair Market Rents

Sec.

888.111 Fair market rents for existing housing: Applicability.

888.113 Fair market rents for existing housing: Methodology.

888.115 Fair market rents for existing housing: Manner of publication.

Subpart B—Contract Rent Annual Adjustment Factors

888.201 Purpose.

888.202 Manner of publication.

888.203 Use of contract rent automatic annual adjustment factors.

888.204 Revision to the automatic annual adjustment factors.

Subpart C—Retroactive Housing Assistance Payments for New Construction, Substantial Rehabilitation, State Finance Agencies, Section 515 Farmers Home Administration, Section 202 Elderly or Handicapped, and Special Allocations Projects

888.301 Purpose and scope.

888.305 Amount of the retroactive Housing Assistance Payments.

888.310 Notice of eligibility requirements for retroactive payments.

888.315 Restrictions on retroactive payments.

888.320 One-time Contract Rent determina-

Subpart D—Retroactive Housing Assistance Payments for Moderate Rehabilitation Projects

888.401 Purpose and scope.

888.405 Amount of the retroactive Housing Assistance Payments.

888.410 Notice of eligibility requirements for retroactive payments.

888.415 Restrictions on retroactive payments.

888.420 One-time Contract Rent determina-

AUTHORITY: 42 U.S.C. 1437f and 3535d.

SOURCE: 50 FR 38796, Sept. 25, 1985, unless otherwise noted.

EDITORIAL NOTE: For revisions and amendments affecting Schedules A, B, C, and D, issued under part 888, but not carried in the Code of Federal Regulations, see the List of CFR Sections Affected, in the Finding Aids section of the printed volume and at www.fdsys.gov.

Subpart A—Fair Market Rents

§888.111 Fair market rents for existing housing: Applicability.

(a) The fair market rents (FMRs) for existing housing are determined by HUD and are used in the Section 8 Housing Choice Voucher Program ("voucher program") (part 982 of this title), Section 8 project-based assistance programs and other programs requiring their use. In the voucher program, the FMRs are used to determine payment standard schedules. In the Section 8 project-based assistance programs, the FMRs are used to determine the maximum initial rent (at the beginning of the term of a housing assistance payments contract).

(b) Fair market rent means the rent, including the cost of utilities (except telephone), as established by HUD, pursuant to this subpart, for units of varying sizes (by number of bedrooms), that must be paid in the market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities.

[64 FR 56911, Oct. 21, 1999]

§888.113 Fair market rents for existing housing: Methodology.

(a) Basis for setting fair market rents. Fair Market Rents (FMRs) are estimates of rent plus the cost of utilities, except telephone. FMRs are housing market-wide estimates of rents that provide opportunities to rent standard quality housing throughout the geographic area in which rental housing units are in competition. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units in the FMR area. FMRs are set at either the 40th or 50th percentile rent-the dollar amount below which the rent for 40 or 50 percent of standard quality rental housing units falls. The 40th or 50th percentile rent is drawn from the distribution of rents of all units that are occupied by recent movers. Adjustments are made to exclude public housing units, newly built units and substandard units.

(b) Setting FMRs at the 40th or 50th percentile rent. Generally HUD will set the FMRs at the 40th percentile rent. HUD will set FMRs at the 50th percentile only in accordance with paragraph (c) of this section.

(c) Setting FMRs at the 50th percentile rent to provide a broad range of housing opportunities throughout a metropolitan area. (1) HUD will set the FMRs at the 50th percentile rent for all unit sizes in each metropolitan FMR area that meets all of the following criteria at the time of annual publication of the FMRs:

(i) The FMR area contains at least 100 census tracts:

(ii) 70 percent or fewer of the census tracts with at least 10 two bedroom rental units are census tracts in which at least 30 percent of the two bedroom rental units have gross rents at or below the two bedroom FMR set at the 40th percentile rent; and

(iii) 25 percent or more of the tenantbased rental program participants in the FMR area reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.

(2) If the FMRs are set at the 50th percentile rent in accordance with paragraph (c)(1) of this section, HUD

§888.113

will set the FMRs at the 50th percentile rent for a total of three years.

- (i) At the end of the three-year period, HUD will continue to set the FMRs at the 50th percentile rent only so long as the concentration measure for the current year is less than the concentration measure at the time the FMR area first received an FMR set at the 50th percentile rent. HUD will publish FMRs based on the 40th percentile rent for FMR areas that do not qualify for continued use of the 50th percentile rent.
- (ii) For purposes of this section, the term "concentration measure" means the percentage of tenant-based rental program participants in the FMR area who reside in the 5 percent of the census tracts within the FMR area that have the largest number of program participants.
- (iii) FMR areas that do not meet the test for continued use of FMRs set at the 50th percentile will be ineligible to use FMRs set at the 50th percentile for a period of three years.
- (iv) A PHA whose jurisdiction includes one or more FMR areas that are no longer eligible to use FMRs set at the 50th percentile may be eligible for a higher payment standard under \$982.503(f).
- (d) FMR Areas. FMR areas are metropolitan areas and nonmetropolitan counties (nonmetropolitan parts of counties in the New England States). With several exceptions, the most current Office of Management and Budget (OMB) metropolitan area definitions of Metropolitan Statistical Areas (MSAs) and Primary Metropolitan Statistical Areas (PMSAs) are used because of their generally close correspondence with housing market area definitions. HUD may make exceptions to OMB definitions if the MSAs or PMSAs encompass areas that are larger than housing market areas. The counties deleted from the HUD-defined FMR areas in those cases are established as separate metropolitan county FMR areas. FMRs are established for all areas in the United States, the District of Columbia, Puerto Rico, the Virgin Islands, and the Pacific Islands.
- (e) Data sources. (1) HUD uses the most accurate and current data available to develop the FMR estimates and

may add other data sources as they are discovered and determined to be statistically valid. The following sources of survey data are used to develop the base-year FMR estimates:

- (i) The most recent decennial Census, which provides statistically reliable rent data.
- (ii) The American Housing Survey (AHS) data, conducted by the Bureau of the Census for HUD. AHS's have comparable accuracy to the decennial Census, and are used to develop between-census revisions for the largest metropolitan areas on a four-year revolving schedule.
- (iii) Random Digit Dialing (RDD) telephone survey data, based on a sampling procedure that uses computers to select statistically random samples of rental housing.
- (iv) Statistically valid information, as determined by HUD, presented to HUD during the public comment and review period.
- (2) Base-year FMRs are updated and trended to the midpoint of the program year they are to be effective using Consumer Price Index (CPI) data for rents and for utilities or using rent-change factors obtained from the RDD regional surveys. The RDD rent-change factors are developed annually for the metropolitan and nonmetropolitan parts of the HUD-specified geographic regions not covered by CPI surveys, and are used to update the base-year FMR estimates within these regions.
- (f) Unit size adjustments. (1) For most areas the ratios developed from the most recent decennial Census are applied to the two-bedroom FMR estimates to derive FMRs for other bedroom sizes. Exceptions to this procedure may be made for areas with local bedroom intervals below an acceptable range. To help the largest most difficult to house families find units, higher ratios than the actual market ratios may be used for three-bedroom and larger-size units.
- (2) The FMR for single room occupancy housing is 75 percent of the FMR for a zero bedroom unit.
- (g) Manufactured home space rental. The FMR for a manufactured home space rental (for the voucher program under part 982 of this title) is:

- (1) 40 percent of the FMR for a two bedroom unit; or
- (2) When approved by HUD on the basis of survey data submitted in public comments, either the 40th or 50th percentile as applicable of the rental distribution of manufactured home spaces for the FMR area. HUD accepts public comments requesting revision of the proposed manufactured home spaces FMRs for areas where space rentals are thought to differ from 40 percent of the FMR for a two-bedroom unit. To be considered for approval, the comments must contain statistically valid survey data that show either the 40th or 50th percentile manufactured home space rent (including the cost of utilities for the manufactured home) for the FMR area. Once approved, the revised manufactured home space FMRs establish new base-year estimates that will be updated annually using the same data used to update the FMRs.

[60 FR 42226, Aug. 15, 1995, as amended at 64 FR 56911, Oct. 21, 1999; 65 FR 58873, Oct. 2, 20001

§888.115 Fair market rents for existing housing: Manner of publication.

FMRs will be published at least annually in the FEDERAL REGISTER. The Department will propose FMRs and provide a comment period of at least 30 days for the purpose of identifying areas where the FMRs are believed to be too high or too low. To be considered for FMR revisions, public comments must include statistically valid rental housing survey data that justify the requested changes. After the comments have been considered, the Department will publish a final notice announcing FMRs to be effective on October 1 each year.

[60 FR 42227, Aug. 15, 1995]

Subpart B—Contract Rent Annual Adjustment Factors

§888.201 Purpose.

Automatic Annual Adjustment Factors are used to adjust rents under the Section 8 Housing Assistance Payments Program.

 $[44~{\rm FR}~75383,\,{\rm Dec.}~20,\,1979]$

§888.202 Manner of publication.

Adjustment Factors will be published in the FEDERAL REGISTER at least annually by Notice. Interim revisions may be published as market conditions indicate. In the case of revised factors applicable only to specific areas, the HUD Field Office will publish a notice appropriate to the limited scope of the revised factors (see §888.204).

[42 FR 60508, Nov. 25, 1977, as amended at 44 FR 75383, Dec. 20, 1979; 47 FR 4252, Jan. 29, 1982]

§888.203 Use of contract rent automatic annual adjustment factors.

- (a) To compute an adjustment to a Contract Rent, find the schedule of Automatic Annual Adjustment Factors for the appropriate Census Region or Standard Metropolitan Statistical
- (1) If the Contract Rent includes all utilities, use the factor shown on the basic schedule for the rent bracket within which the particular Contract Rent falls and for the applicable size of unit (by number of bedrooms).
- (2) If the Contract Rent does not include all utilities but does include the highest cost utility, use the appropriate factor shown on the basic schedule.
- (3) If the Contract Rent does not include any utilities or includes some utilities but not the highest cost utility, use the Annual Adjustment Factor for Contract Rent (Excluding Utilities).
- (b) The adjusted monthly amount of the Contract Rent of a dwelling unit shall be determined by multiplying the Contract Rent in effect on the anniversary date of the contract by the applicable Automatic Annual Adjustment Factor (see paragraph (a) of this section) and rounding the result as follows:
- (1) If the result contains a fractional dollar amount ranging from \$0.01 to \$0.49, round to the next lower whole dollar amount;
- (2) If the result contains a fractional dollar amount ranging from \$0.50 to \$0.99, round to the next higher whole dollar amount.

 $[42\ {\rm FR}\ 60508,\ {\rm Nov.}\ 25,\ 1977,\ {\rm as}\ {\rm amended}\ {\rm at}\ 44\ {\rm FR}\ 21769,\ {\rm Apr.}\ 12,\ 1979;\ 47\ {\rm FR}\ 4252,\ {\rm Jan.}\ 29,\ 1982;\ 59\ {\rm FR}\ 38564,\ {\rm July}\ 29,\ 1994]$

§888.204

§ 888.204 Revision to the automatic annual adjustment factors.

If the application of the Annual Adjustment Factors results in rents that are substantially lower than rents charged for comparable units not receiving assistance under the U.S. Housing Act of 1937, in the area for which the factor was published or a portion thereof, and it is shown to HUD that the costs of operating comparable rental housing have increased at a substantially greater rate than the Adjustment Factors, the HUD Field Office will consider establishing separate or revised Automatic Annual Adjustment Factors for that particular area. Any request for revision of the factors must be accompanied by an identification of the area, its boundaries and evidence that the area constitutes the largest contiguous area in which substantially the same rent levels prevail. The HUD Field Office will publish appropriate notice of the establishment of any such revised Automatic Annual Adjustment Factors. These factors will remain in effect until superseded by the subsequent publication of Automatic Annual Adjustment Factors pursuant \$888.202.

[44 FR 21769, Apr. 12, 1979]

Subpart C—Retroactive Housing
Assistance Payments for New
Construction, Substantial Rehabilitation, State Finance
Agencies, Section 515 Farmers Home Administration, Section 202 Elderly or Handicapped, and Special Allocations Projects

Source: 56 FR 20084, May 1, 1991, unless otherwise noted.

§888.301 Purpose and scope.

- (a) Purpose. This subpart describes the basic policies and procedures for the retroactive payment of Housing Assistance Payments to eligible project owners for the period from October 1, 1979 to May 31, 1991 and for one-time Contract Rent determinations for such eligible project owners.
- (b) Applicability. This subpart applies to all project-based Section 8 Housing

Assistance Payments Contracts under New Construction (Part 880); Substantial Rehabilitation (Part 881); State Finance Agencies (Part 883); and Section 515 Farmers Home Administration (Part 884). It also applies to those projects under Section 202 Elderly or Handicapped (Part 885) and Special Allocations (Part 886, Subparts A and C) whose Contract Rents are adjusted by use of the Annual Adjustment Factors (AAFs), as described in subpart B of this part.

- (c) Eligible project owners. Project owners may be eligible for retroactive payments if, during the period from October 1, 1979 to May 31, 1991:
- (1) The use of a comparability study by HUD (or the Contract Administrator), which was conducted as an independent limitation on the amount of rent adjustment that would have resulted from use of the applicable AAF, resulted in the reduction of the maximum monthly Contract Rents for units covered by a Housing Assistance Payments (HAP) contract or resulted in less than the maximum increase for those units than would otherwise be permitted by the AAF; or
- (2) The HAP contract required a project owner to request annual rent adjustments, and the project owner certifies that a request was not made because of an anticipated reduction of the maximum monthly Contract Rents resulting from a comparability study.

§888.305 Amount of the retroactive Housing Assistance Payments.

- (a) Recalculating the total rent adjustment. To establish the amount of the retroactive HAP payment for which a project owner meeting the criteria in §888.301(c) is eligible, the total rent adjustment will be recalculated for the period from October 1, 1979 to May 31, 1991. For purposes of establishing the amount of the retroactive payment only, the total rent adjustment will be an amount equal to the Contract Rent, minus the amount of the Contract Rent attributable to debt service, multiplied by the applicable AAF, for each year.
- (b) Calculating the retroactive payment. HUD (or the Contract Administrator) will pay, as a retroactive Housing Assistance Payment, the amount, if any,

by which the total rent adjustment, calculated under paragraph (a) of this section, exceeds the rent adjustments actually approved for the same time period, except that in no event will any payment be an amount less than 30 percent of the aggregate of the full Contract Rent multiplied by the applicable AAF, minus the sum of the rent adjustments actually approved for the same time period, adjusted by the average occupancy rate.

- (c) Occupancy rates. (1) Retroactive payments will be made only for units that were occupied, based on average occupancy rate, including units qualifying for vacancy payments under 24 CFR 880.611, 881.611, 883.712, 884.106, 885.985, 886.109, or 886.309, during the time period from October 1, 1979 to May 31, 1991.
- (2) When requesting retroactive payment, a project owner must, if the information is available, submit documentation of occupancy rates, on either an annual or monthly basis, for the same time period. The average occupancy rate will be based on these records. If records are unavailable for the full time period, HUD (or the Contract Administrator) will establish an average occupancy rate, to be used for the entire period, from the occupancy rate for the three years immediately preceding May 31, 1991.
- (d) Revised AAFs. For any year during the period from October 1, 1979 to May 31, 1991, where a HUD field office published a revised Annual Adjustment Factor that replaced the applicable AAF for a specific locality under 24 CFR 888.204, the revised Annual Adjustment Factor, which applied to all projects in that area, will be used to recalculate the total rent adjustment under paragraph (a) of this section, and to establish the amount of the retroactive payments.
- (e) Special adjustments. When calculating the total rent adjustments and establishing the amount of the retroactive payments under paragraphs (a) and (b) of this section, any special adjustments granted under 24 CFR 880.609(b), 881,609(b), 883.710(b), 884.109(c), 886.112(c), or 886.312(c) during the time period from October 1, 1979 to May 31, 1991, to reflect substantial general increases in real property taxes,

- assessments, utility rates, utilities not covered by regulated rates, or for special adjustments for any other purpose authorized by a waiver of the regulations, will be deducted from the Contract Rent before applying the AAF.
- (f) AAFs less than 1.0. For any area where an AAF of less than 1.0 was published, a factor of 1.0 will be used to recalculate the total rent adjustments and to establish the amount of the retroactive payments under paragraphs (a) and (b) of this section.
- (g) *Debt service*. (1) For purposes of this section, debt service includes principal, interest, and the mortgage insurance premium, if any.
- (2) The monthly debt service set forth in the original mortgage documents for a project will be used to compute the debt service portion of the contract rent. The debt service will be compared to the spread of unit sizes included in the original HAP contract, and the amount used in the calculation will be based on the percentage of total rent potential of the various unit types.
- (3) If, in some cases, HUD or the Contract Administrator cannot determine the debt service for a project, the project owner will be asked to provide documentation of the debt service. The project owner will be notified by the HUD Field Office or the Contract Administrator of the need for documentation of the debt service, and allowed 30 days to respond, or for such longer period as approved by HUD or the Contract Administrator on a case-by-case basis. Where the debt service is not available to HUD or the Contract Administrator and the owner is unable to provide the necessary information, retroactive payments cannot be made.
- (h) Applicable AAF. The applicable AAF is the factor in effect on the anniversary date of the contract and appropriate for the area, for the size of the unit, and for the treatment of utilities; except where, for any year when AAFs were published after November 8 and made retroactive to November 8, a project owner was given the option to choose the factor in effect on the anniversary date or the retroactive factor,

§888.310

the applicable AAF is the factor chosen by the project owner in that year.

(Approved by the Office of Management and Budget under control number 2502-0042)

§888.310 Notice of eligibility requirements for retroactive payments.

- (a) Notice of eligibility requirements. HUD (or the Contract Administrator) will give written notice to all current owners of projects of the eligibility requirements for retroactive payments. Eligible project owners must make a request for payment and a request for a one-time contract determination within 60 days from the date of the notice.
- (b) Request for payment. (1) Owners eligible for retroactive payments under §888.301(c) must submit a request for a calculation of the total rent adjustments and the establishment of the amount of the retroactive payment, as described in §888.301 (a) and (b), and documentation of the occupancy rate for the period from October 1, 1979, to May 31, 1991, if available.
- (2) Owners whose HAP contract requires a request to be made for annual rent adjustments must certify that a request was not made because of an anticipated reduction in the Contract Rents as a result of a comparability study. The certification must contain the year or years upon which the request for payment is based and a statement of the basis for the belief that rents would have been reduced.
- (3) Retroactive payments will be made to owners over a three-year period as funds are appropriated for that purpose. When funds are available for payment, HUD will publish a FEDERAL REGISTER notice containing procedures for claiming payments.
- (c) Request for one-time contract rent determination. When making a request for payment, eligible owners may also request a one-time contract rent determination, as described in §888.320. Eligible owners may request a one-time contract rent determination even if they choose not to request retroactive payments, provided they are eligible for retroactive payments.
- (d) Transfer of ownership since October 1, 1979. Eligible owners who request retroactive payments must certify that they are entitled to the entire amount of the payment. Any owner who is un-

able to certify must present documentation of an agreement between the current and former owners of the proportionate share of the payment for which each is eligible.

(Approved by the Office of Management and Budget under control number 2502-0042)

§888.315 Restrictions on retroactive payments.

- (a) Restrictions on distribution of surplus cash. Retroactive payments for HUD-insured projects and other projects subject to limitations on the distribution of surplus cash will be deposited, in the manner of Housing Assistance Payments, into the appropriate project account. The payments will be subject to HUD rules and procedures (or rules and procedures of other agencies, as appropriate), described in the applicable regulations and the HAP contracts, for distribution of surplus cash to project owners.
- (b) Replacement reserve. Projects required by HUD regulations to maintain a reserve for replacement account and to adjust the annual payment to the account each year by the amount of the annual rent adjustment must deposit into the account the proportionate share of any retroactive payment received, in accordance with HUD regulations and the HAP contract.
- (c) Physical condition of HUD-insured or State-financed projects. If the most recent physical inspection report of a HUD-insured project, completed by the mortgagee, or by HUD or the Contract Administrator if a mortgagee inspection is not present, shows significant deficiencies that have not been addressed to the satisfaction of HUD by the date the retroactive payment is deposited into the project account, the payment will not be made available for surplus cash distribution until the deficiencies are resolved or a plan for their resolution has been approved by HUD.

§ 888.320 One-time Contract Rent determination.

(a) Determining the amount of the new Contract Rent. Project owners eligible for retroactive payments, as described in §888.301(c), may request a one-time Contract Rent determination, to be effective as described in paragraph (c) of this section. The request for a one-time

rent determination must be made when submitting a request for retroactive payments, as described in §888.315. If no claim for retroactive payments is made, an owner may submit only the request for a one-time rent determination, provided the owner is eligible for retroactive payments. The new Contract Rent under this provision will be the greater of:

- (1) The Contract Rent currently approved by HUD (or the Contract Administrator); or
- (2) An amount equal to the applicable AAF multipled by the Contract Rent minus debt service, calculated for each year from October 1, 1979, to May 31, 1991.
- (b) Currently approved rent. The Contract Rent currently approved by HUD (or the Contract Administrator) is the Contract Rent stated in the most recent amendment to the HAP Contract signed by both HUD (or the Contract Administrator) and the owner, or as shown on HUD Form 92458 (Rental Schedule) if the most recent amendment to the HAP Contract cannot be located.
- (c) Effective date of new Contract Rent. The new Contract Rent, determined under paragraph (a) of this section, will be effective on May 31, 1991.

(Approved by the Office of Management and Budget under control number 2505–0042)

Subpart D—Retroactive Housing Assistance Payments for Moderate Rehabilitation Projects

SOURCE: 56 FR 20085, May 1, 1991, unless otherwise noted.

§888.401 Purpose and scope.

- (a) Purpose. This subpart describes the basic policies and procedures for the retroactive payment of Housing Assistance Payments to eligible project owners for the period from October 1, 1979 to May 31, 1991 and a one-time Contract Rent determination for such eligible project owners.
- (b) Applicability. This subpart applies to all Moderate Rehabilitation projects under 24 CFR part 882, subparts D, E, and H.
- (c) Eligible project owners. Project owners may be eligible for retroactive

payments if, during the period from October 1, 1979 to May 31, 1991:

- (1) The use of a comparability study by the Public Housing Agency (PHA) as contract administrator, which was conducted as an independent limitation on the amount of rent adjustment that would have resulted from use of the applicable AAF, resulted in the reduction of the maximum monthly Contract Rents for units covered by a Housing Assistance Payments (HAP) contract or resulted in less than the maximum increase for those units than would otherwise be permitted by the AAF; or
- (2) The project owner certifies that a request for an annual rent adjustment was not made because of an anticipated reduction of the maximum monthly Contract Rents resulting from a comparability study.

§888.405 Amount of the retroactive Housing Assistance Payments.

- (a) Recalculating the total rent adjustment. To establish the amount of the retroactive HAP payment for which a project owner meeting the criteria in §888.401(c) is eligible, the total rent adjustment will be recalculated for the period from October 1, 1979 to May 31, 1991. Rents for that period will be recalculated, under the procedures set out in 24 CFR 882.410(a)(1), by applying the AAF for any affected year, and recalculating the rents for the remainder of the period as necessary. For each year thereafter, all rent adjustments made at the request of the owner at the time will be recalculated, under the procedures in 24 CFR 882.410(a)(1), to account for the new adjustments.
- (b) Calculating the retroactive payment. HUD will pay, through the PHA, as a retroactive Housing Assistance Payment the amount, if any, by which the total rent adjustment, calculated under paragraph (a) of this section exceeds the rent adjustments actually approved for the same time period.
- (c) Occupancy rate. (1) Retroactive payments will be made only for units that were occupied, based on average occupancy rate, including units qualifying for vacancy payments under 24 CFR 882.411, during the time period from October 1, 1979 to May 31, 1991.
- (2) When requesting a retroactive payment, a project owner must, if the

§888.410

information is available, submit documentation of occupancy rates, on either an annual or monthly basis, for the same time period. The average occupancy rate will be based on these records. If records are unavailable for the full time period, the PHA will establish an average occupancy rate, to be used for the entire period, from the occupancy rate for the three years immediately preceding May 31, 1991.

- (d) Revised AAFs. For any year during the period from October 1, 1979 to May 31, 1991, where a HUD field office published a revised Annual Adjustment Factor that replaced the applicable AAF for a specific locality under 24 CFR 888.204, the revised Annual Adjustment Factor, which applied to all projects in that area, will be used to recalculate the total rent adjustment under paragraph (a) of this section, and to establish the amount of the retroactive payments.
- (e) Special adjustments. When calculating the total rent adjustments and establishing the amount of the retroactive payments under paragraphs (a) and (b) of this section, any special adjustments granted under 24 CFR 882.410(a)(2) during the period from October 1, 1979 to May 31, 1991, to reflect substantial general increases in real property taxes, assessments, utility rates, utilities not covered by regulated rates, or for special adjustments for any other purpose authorized by a waiver of the regulations, will be deducted from the base rent before applying the AAF.
- (f) AAFs less than 1.0. For any area where an AAF of less than 1.0 was published, a factor of 1.0 will be used to recalculate the total rent adjustments and to establish the amount of the retroactive payments under paragraphs (a) and (b) of this section.

(Approved by the Office of Management and Budget under control number 2502–0042)

§888.410 Notice of eligibility requirements for retroactive payments.

(a) Notice of eligibility requirements. PHAs will give written notice to all current owners of projects, for which they are the Contract Administrators, of the eligibility requirements for retroactive payments. Eligible project owners must make a request for pay-

ment or a request for a one-time contract determination within 60 days from the date of the notice.

- (b) Request for payment. (1) Owners eligible for retroactive payments under §888.401(c) must submit a request for a calculation of the total rent adjustments and the establishment of the amount of the retroactive payment, as described in §888.401 (a) and (b), and documentation of the occupancy rate for the period from October 1, 1979 to May 31, 1991, if available.
- (2) Owners claiming eligibility under §888.401(c)(2) must certify that a request was not made because of an anticipated reduction in the Contract Rents as a result of a comparability study. The certification must contain the year or years upon which the request for payment is based and a statement of the basis for the belief that rents would have been reduced.
- (3) Retroactive payments will be made to owners over a three-year period as funds are appropriated for that purpose. When funds are available for payment, HUD will publish a FEDERAL REGISTER Notice containing procedures for claiming payments.
- (c) Request for one-time contract rent determination. When making a request for payment, eligible owners may also request a one-time contract rent determination, as described in §888.420. Eligible owners may request a one-time contract rent determination even if they choose to forgo receiving retroactive payments, provided they are eligible for retroactive payments.
- (d) Transfer of ownership since October 1, 1979. Eligible owners requesting retroactive payments must certify that they are entitled to the entire amount of the payment. Any owner who is unable to certify must present documentation of an agreement between the current and former owners of the proportionate share of the payment for which each is eligible.

(Approved by the Office of Management and Budget under control number 2502–0042)

§ 888.415 Restrictions on retroactive payments.

(a) Restrictions. Retroactive payments are subject to all regulations, procedures, or restrictions that apply to Housing Assistance Payments.

- (b) Review of initial rents. Before calculating the amount of any retroactive payment, the PHA, if directed by HUD, will review whether rents were excessive when initially set.
- (c) Physical condition of projects. If the most recent physical inspection report by the PHA shows significant deficiencies that have not been addressed to the satisfaction of the PHA by the date the retroactive payment is deposited into the project account, the payment will not be made available until the deficiencies are resolved or a plan for their resolution has been approved by the PHA.

§888.420 One-time Contract Rent determination.

- (a) Determining the amount of the new Contract Rent. Project owners eligible for retroactive payments, as described in §888.401(c), may request a one-time Contract Rent determination, to be effective as described in paragraph (c) of this section. The request for a one-time rent determination must be made when submitting a request for retroactive payments, as described in §888.415. If no claim for retroactive payments is made, an owner may submit only the request for a one-time rent determination, provided the owner is eligible for retroactive payments. The new Contract Rent under this provision will be the greater of:
- (1) The Contract Rent currently approved by the PHA; or
- (2) An amount equal to the Contract Rent as adjusted to May 31, 1991 under §888.405(a).
- (b) Currently approved rent. The Contract Rent currently approved by the PHA is the Contract Rent stated in the most recent amendment to the HAP Contract signed by both the PHA and the owner.
- (c) Effective date of new Contract Rent. The new Contract Rent, determined under paragraph (a) of this section, will be effective on May 31, 1991.

(Approved by the Office of Management and Budget under control number 2502–0042)

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

Subpart A—General Program Requirements

200.	
891.100	Purpose and policy.
891.105	Definitions.
891.110	Allocation of authority.
891.115	Notice of funding availability.
201 120	Project design and cost stands

Sec

891.120 Project design and cost standards. 891.125 Site and neighborhood standards.

891.125 Site and neighborhood standards 891.130 Prohibited relationships.

891.135 Amount and terms of capital ad-

vances. 891.140 Development cost limits.

891.145 Owner deposit (Minimum Capital Investment).

891.150 Operating cost standards. 891.155 Other Federal requirements.

891.160 Audit requirements.

891.165 Duration of capital advance.891.170 Repayment of capital advance.

891.175 Technical assistance.

891.180 Physical condition standards; physical inspection requirements.

891.185 Preemption of rent control laws.

Subpart B—Section 202 Supportive Housing for the Elderly

891.200 Applicability.

891.205 Definitions.

891.210 Special project standards.

891.215 Limits on number of units. 891.220 Prohibited facilities.

891.225 Provision of services.

891.230 Selection preferences.

Subpart C—Section 811 Supportive Housing for Persons With Disabilities

891.300 Applicability.

891.305 Definitions.891.310 Special project standards.

891.315 Prohibited facilities.

891.320 Site and neighborhood standards.

891.325 Lead-based paint requirements.

Subpart D—Project Management

891.400 Responsibilities of owner.

891.405 Replacement reserve.

891.410 Selection and admission of tenants.

891.415 Obligations of the household or family.

891.420 Overcrowded and underoccupied units.

891.425 Lease requirements.

891.430 Denial of admission, termination of tenancy, and modification of lease.

891.435 Security deposits.

891.440 Adjustment of utility allowances.

891.445 Conditions for receipt of vacancy payments for assisted units.

891.450 HUD review.

Subpart E-Loans for Housing for the **Elderly and Persons with Disabilities**

- 891.500 Purpose and policy.
- Definitions
- 891.510 Displacement, relocation, and real property acquisition.
- 891.515 Audit requirements.

SECTION 202 PROJECTS FOR THE ELDERLY OR HANDICAPPED—SECTION 8 ASSISTANCE

- 891.520 Definitions applicable 202/8 projects. 891.525 Amount and terms of financing.
- 891.530 Prepayment privileges.
- 891.535 Requirements for awarding construction contracts.
- 891.540 Loan disbursement procedures.
- 891.545 Completion of project, cost certification, and HUD approvals.
- 891.555 Smoke detectors. 891.560 HAP contract.
- Term of HAP contract. 891.565
- Maximum annual commitment and 891.570 project account.
- 891.575 Leasing to eligible families.
- 891.580 HAP contract administration.
- 891.585 Default by Borrower.
- 891.590 Notice upon HAP contract expiration.
- 891.595 HAP contract extension or renewal.
- 891.600 Responsibilities of Borrower.
- Replacement reserve.
- 891.610 Selection and admission of tenants.
- Obligations of the family.
- 891.620 Overcrowded and underoccupied
- 891.625 Lease requirements.
- 891.630 Denial of admission, termination of tenancy, and modification of lease.
- 891.635 Security deposits.
- 891.640 Adjustment of rents.
- Adjustment of utility allowances. 891.645
- 891.650 Conditions for receipt of vacancy payments for assisted units.

SECTION 202 PROJECTS FOR THE NONELDERLY HANDICAPPED FAMILIES AND INDIVIDUALS-SECTION 162 ASSISTANCE

- 891.655 Definitions applicable to 202/162 projects.
- 891.660 Project standards.
- 891.665 Project size limitations.
- Cost containment and modest design 891.670 standards.
- 891.675 Prohibited facilities.
- 891.680 Site and neighborhood standards.
- 891.685 Prohibited relationships.
- 891.690 Other Federal requirements.
- 891.695 Operating cost standards. 891.700 Prepayment of loans.
- 891.705 Project assistance contract.
- 891.710 Term of PAC. 891.715 Maximum annual commitment and project account.

24 CFR Ch. VIII (4-1-12 Edition)

- 891.720 Leasing to eligible families
- 891.725 PAC administration.
- 891.730 Default by Borrower.
- 891.735 Notice upon PAC expiration.
- 891.740 Responsibilities of Borrower.
- 891.745 Replacement reserve.
- 891.750 Selection and admission of tenants.
- 891.755Obligations of the family.
- 891.760 Overcrowded and underoccupied units.
- 891.765 Lease requirements
- 891.770 Denial of admission, termination of tenancy, and modification of lease.
- 891.775 Security deposits.
- 891.780 Adjustment of rents.
- 891.785 Adjustment of utility allowances.
- Conditions for receipt of vacancy payments for assisted units.

Subpart F—For-Profit Limited Partnerships and Mixed-Finance Development for Supportive Housing for the Elderly or Persons with Disabilities

- 891.800 Purpose.
- 891.802 Applicability of other provisions.
- 891.805 Definitions.
- 891.808 Capital advance funds.
- 891.809 Limitations on capital advance funds.
- 891.810 Project rental assistance.
- 891.813 Eligible uses for assistance provided under this subpart.
- 891.815 Mixed-finance developer's fee.
- 891.818 Firm commitment application.
- 891.820 Civil rights requirements.
- HUD review and approval. 891.823
- 891.825 Mixed-finance closing documents.
- 891.830 Drawdown.
- 891 832 Prohibited relationships.
- 891.833 Monitoring and review.
- 891.835 Eligible uses of project rental assistance.
- 891 840 Site and neighborhood standards
- 891.848 Project design and cost standards.
- 891.853 Development cost limits.
- 891.855 Replacement reserves.
- 891.860 Operating reserves.
- 891.863 Maintenance as supportive housing units for elderly persons and persons with disabilities.
- 891.865 Sanctions

AUTHORITY: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

Source: 61 FR 11956, Mar. 22, 1996, unless otherwise noted.

Subpart A—General Program Requirements

§891.100 Purpose and policy.

(a) Purpose. The Section 202 Program of Supportive Housing for the Elderly and the Section 811 Program of Supportive Housing for Persons with Disabilities provide Federal capital advances and project rental assistance under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) (section 202) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013) (section 811), respectively, for housing projects serving elderly households and persons with disabilities. Section 202 projects shall provide a range of services that are tailored to the needs of the residents. Owners of Section 811 projects shall ensure that the residents are provided with any necessary supportive services that address their individual needs.

(b) General policy—(1) Supportive Housing for the Elderly. A capital advance and contract for project rental assistance provided under this program shall be used for the purposes described in Section 202 (12 U.S.C. 1701q(b)).

(2) Supportive Housing for Persons with Disabilities. A capital advance and contract for project rental assistance provided under this program shall be used for the purposes described in Section 811 (42 U.S.C. 8013(b)).

(c) Use of capital advance funds. No part of the funds reserved may be transferred by the Sponsor, except to the Owner caused to be formed by the Sponsor. This action must be accomplished prior to issuance of a commitment for capital advance funding.

(d) Amendments. Subject to the availability of funds, HUD may amend the amount of an approved capital advance only after initial closing has occurred.

§891.105 Definitions.

The following definitions apply, as appropriate, throughout this part. Other terms with definitions unique to the particular program are defined in §§ 891.205, 891.305, and 891.505, as applicable.

Adjusted income as defined in part 5, subpart F of subtitle A of this title.

Affiliated entities means entities that the field office determines to be related to each other in such a manner that it is appropriate to treat them as a single entity. Such relationship shall include any identity of interest among such entities or their principals and the use by any otherwise unaffiliated entities of a

single Sponsor or of Sponsors (or of a single Borrower or of Borrowers, as applicable) that have any identity of interest themselves or their principals.

Annual income as defined in part 5, subpart F of subtitle A of this title. In the case of an individual residing in an intermediate care facility for the developmentally disabled that is assisted under title XIX of the Social Security Act and this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For purposes of determining the total tenant payment, the income of such individuals shall be imputed to be the amount that the household would receive if assisted under title XVI of the Social Security Act.

Family is defined in 24 CFR 5.403.

Household (eligible household) means an elderly or disabled household (as defined in §§891.205 or 891.305, respectively), as applicable, that meets the project occupancy requirements approved by HUD and, if the household occupies an assisted unit, meets the very low-income requirements described in §813.102 of this chapter, as modified by the definition of annual income in this section.

Housing and related facilities means rental housing structures constructed, rehabilitated, or acquired as permanent residences for use by elderly or disabled households, as applicable. The term includes necessary community space. Except for intermediate care facilities for individuals with developmental disabilities, this term does not include nursing homes, hospitals, intermediate care facilities, or transitional care facilities. For the Loans for the Elderly and Persons with Disabilities Program, see §891.505.

Low-income families shall have the same meaning provided in section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a).

National Sponsor means a Sponsor that has one or more Section 202 or one or more Section 811 project(s) under reservation, construction, or management in two or more different HUD geographical regions.

Operating costs means HUD-approved expenses related to the provision of housing and includes:

- (1) Administrative expenses, including salary and management expenses related to the provision of shelter and, in the case of the Section 202 Program, the coordination of services:
- (2) Maintenance expenses, including routine and minor repairs and groundskeeping;
 - (3) Security expenses;
- (4) Utilities expenses, including gas, oil, electricity, water, sewer, trash removal, and extermination services. The term "operating costs" excludes telephone services for households;
 - (5) Taxes and insurance:
 - (6) Allowances for reserves; and
- (7) Allowances for services (in the Section 202 Program only).

Project rental assistance contract (PRAC) means the contract entered into by the Owner and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PRAC.

payment Project rental assistance means the payment made by HUD to the Owner for assisted units as provided in the PRAC. The payment is the difference between the total tenant payment and the HUD-approved per unit operating expenses except for expenses related to items not eligible under design and cost provisions. An additional payment is made to a household occupying an assisted unit when the utility allowance is greater than the total tenant payment. A project rental assistance payment, known as a "vacancy payment," may be made to the Owner when an assisted unit is vacant, in accordance with the terms of the PRAC.

Rehabilitation means the improvement of the condition of a property from deteriorated or substandard to good condition. Rehabilitation may vary in degree from the gutting and extensive reconstruction to the cure of substantial accumulation of deferred maintenance. Cosmetic improvements alone do not qualify as rehabilitation under this definition. Rehabilitation may also include renovation, alteration, or remodeling for the conversion or adaptation of structurally sound property to the design and condition required for use under this part, or the repair or replacement of major building systems or components in danger of failure. Improvement of an existing structure must require 15 percent or more of the estimated development cost to rehabilitate the project to a useful life of 55 years.

Replacement reserve account means a project account into which funds are deposited, which may be used only with the approval of the Secretary for repairs, replacement, capital improvements to the section 202 or section 811 units, and retrofitting to reduce the number of units as provided by 24 CFR 891.405(d).

Section 202 means section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended, or the Supportive Housing for the Elderly Program authorized by that section.

Section 811 means section 811 of the National Affordable Housing Act (42 U.S.C. 8013), as amended, or the Supportive Housing for Persons with Disabilities Program authorized by that section.

Start-up expenses mean necessary costs (to plan a Section 202 or Section 811 project, as applicable) incurred by the Sponsor or Owner prior to initial closing.

Tenant payment to Owner equals total tenant payment less utility allowance, if any

Total tenant payment means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.

Utility allowance is defined in part 5, subpart F of this subtitle A of this title and is determined or approved by HUD.

Very low-income families shall have the same meaning provided in section 3(b)(2) of the United States Housing Act of 1937 (42 U.S.C. 1437a).

[61 FR 11956, Mar. 22, 1996, as amended at 66 FR 6225, Jan. 19, 2001; 66 FR 8175, Jan. 30, 2001; 68 FR 67320, Dec. 1, 2003; 70 FR 54209, Sept. 13, 2005; 77 FR 5675, Feb. 3, 2012]

§891.110 Allocation of authority.

In accordance with 24 CFR part 791, the Assistant Secretary will separately allocate the amounts available for capital advances for the development of housing for elderly households and for disabled households, less amounts set aside by Congress for specific types of projects, and for amendments of fund reservations made in prior years, for

technical assistance, and for other contracted services.

§891.115 Notice of funding availability.

Following an allocation of authority under §891.110, HUD shall publish a separate Notice of Funding Availability (NOFA) for the Section 202 Program of Supportive Housing for the Elderly and for the Section 811 Program of Supportive Housing for Persons with Disabilities in the FEDERAL REGISTER. The NOFAs will contain specific information on how and when to apply for the available capital advance authority, the contents of the application, and the selection process.

§891.120 Project design and cost standards.

In addition to the special project standards described in §§ 891.210 and 891.310, as applicable, the following standards apply:

- (a) Property standards. Projects under this part must comply with HUD Minimum Property Standards, unless otherwise indicated in this part.
- (b) Accessibility requirements. Projects under this part must comply with the Uniform Federal Accessibility Standards (See 24 CFR 40.7 for availability), section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations (24 CFR part 8), and for new construction multifamily housing projects, the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100. For the Section 811 Program of Supportive Housing for Persons with Disabilities, see additional accessibility requirements in §891.310(b).
- (c) Restrictions on amenities. Projects must be modest in design. In individual units in supportive housing for the elderly and in independent living facilities for persons with disabilities, amenities not eligible for HUD funding include individual unit balconies and decks, atriums, bowling alleys, swimming pools, saunas, Jacuzzis, trash compactors, washers and dryers. However, HUD funding is eligible to pay for washers and dryers in group homes for persons with disabilities. Sponsors may include certain excess amenities, but

must pay for them from sources other than the section 202 or 811 capital advance. They must also pay for the continuing operating costs associated with any excess amenities from sources other than the section 202 or 811 project rental assistance contract.

- (d) Smoke detectors. After October 30, 1992, each dwelling unit must include at least one battery-operated or hardwired smoke detector, in proper working condition, on each level of the unit.
- (e) Projects under this part may have on their sites commercial facilities for the benefit of residents of the project and of the community in which the project is located, so long as the commercial facilities are not subsidized with funding under the supportive housing programs for the elderly or persons with disabilities. Such commercial facilities are considered public accommodations under Title III of the Americans with Disabilities Act and must be accessible under the requirements of that Act.

 $[61\ \mathrm{FR}\ 11956,\ \mathrm{Mar}.\ 22,\ 1996,\ \mathrm{as}\ \mathrm{amended}\ \mathrm{at}\ 68\ \mathrm{FR}\ 67320,\ \mathrm{Dec}.\ 1,\ 2003;\ 73\ \mathrm{FR}\ 29985,\ \mathrm{May}\ 23,\ 2008]$

§891.125 Site and neighborhood standards.

All sites must meet the following site and neighborhood requirements:

- (a) The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed, and adequate utilities (water, sewer, gas, and electricity) and streets must be available to service the site.
- (b) The site and neighborhood must be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, the Fair Housing Act, Executive Order 11063 (27 FR 11527, 3 CFR, 1958–1963 Comp., p. 652); as amended by Executive Order 12259, (46 FR 1253, 3 CFR, 1980 Comp., p. 307)); section 504 of the Rehabilitation Act of 1973, and implementing HUD regulations.
- (c) New construction sites must meet the following site and neighborhood requirements:
- (1) The site must not be located in an area of minority concentration (or minority elderly concentration under the

Section 202 Program) except as permitted under paragraph (c)(2) of this section, and must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to nonminority residents (or minority elderly to nonminority elderly residents, under the Section 202 Program) in the area.

- (2) A project may be located in an area of minority concentration (or minority elderly concentration, under the Section 202 Program) only if:
- (i) Sufficient, comparable opportunities exist for housing for minority elderly households or minority disabled households, as applicable (or minority families, for projects funded under §§ 891.655 through 891.790), in the income range to be served by the proposed project, outside areas of minority concentration (see paragraph (c)(3) of this section for further guidance on this criterion); or
- (ii) The project is necessary to meet overriding housing needs that cannot be met in that housing market area (see paragraph (c)(4) of this section for further guidance on this criterion).
- (3)(i) Sufficient does not require that in every locality there be an equal number of assisted units within and outside of areas of minority concentration. Rather, application of this standard should produce a reasonable distribution of assisted units each year which over a period of several years will approach an appropriate balance of housing opportunities within and outside areas of minority concentration. An appropriate balance in any jurisdiction must be determined in light of local conditions affecting the range of housing choices available for very lowincome minority elderly or disabled households, as applicable (or low-income minority families, for projects funded under §§ 891.655 through 891.790), and in relation to the racial mix of the locality's population.
- (ii) Units may be considered to be comparable opportunities if they have the same household type (elderly or disabled, as applicable) and tenure type (owner/renter); require approximately the same total tenant payment; serve the same income group; are located in the same housing market; and are in standard condition.

- (iii) Application of this sufficient, comparable opportunities standard involves assessing the overall impact of HUD-assisted housing on the availability of housing choices for very lowincome minority elderly or disabled households, as applicable (or low-income minority families, for projects funded under §§ 891.655 through 891.790), in and outside areas of minority concentration, and must take into account the extent to which the following factors are present, along with any other factor relevant to housing choice:
- (A) A significant number of assisted housing units are available outside areas of minority concentration.
- (B) There is significant integration of assisted housing projects constructed or rehabilitated in the past ten years, relative to the racial mix of the eligible population.
- (C) There are racially integrated neighborhoods in the locality.
- (D) Programs are operated by the locality to assist minority elderly or disabled households, as applicable (or minority families, for projects funded under §§891.655 through 891.790), that wish to find housing outside areas of minority concentration.
- (E) Minority elderly or disabled households, as applicable (or minority families, for projects funded under §§ 891.655 through 891.790), have benefitted from local activities (e.g., acquisition and write-down of sites, tax relief programs for homeowners, acquisitions of units for use as assisted housing units) undertaken to expand choice for minority households (or families) outside of areas of minority concentration.
- (F) A significant proportion of minority elderly or disabled households, as applicable (or minority households, for projects funded under §§ 891.655 through 891.790), have been successful in finding units in nonminority areas under the Section 8 Certificate and Housing Voucher programs.
- (G) Comparable housing opportunities have been made available outside areas of minority concentration through other programs.
- (4) Application of the overriding housing needs criterion, for example, permits approval of sites that are an integral part of an overall local strategy

for the preservation or restoration of the immediate neighborhood and of sites in a neighborhood experiencing significant private investment that is demonstrably changing the economic character of the area (a "revitalizing area"). An overriding housing need, however, may not serve as the basis for determining that a site is acceptable if the only reason the need cannot otherwise be feasibly met is that discrimination on the basis of race, color, creed, sex, or national origin renders sites outside areas of minority concentration unavailable, or if the use of this standard in recent years has had the effect of circumventing the obligation to provide housing choice.

- (d) The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate, unless there is actively in progress a concerted program to remedy the undesirable conditions.
- (e) The housing must be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.
- (f) For the Section 811 Program of Supportive Housing for Persons with Disabilities, the additional site and neighborhood requirements in §891.320 apply.

§891.130 Prohibited relationships.

This section shall apply to capital advances under the Section 202 Program and the Section 811 Program, as well as to loans financed under §§ 891.655 through 891.790.

- (a) Conflicts of interest. (1) Officers and Board members of either the Sponsor or the Owner (or Borrower, as applicable) may not have any financial interest in any contract with the Owner or in any firm which has a contract with the Owner. This restriction applies so long as the individual is serving on the Board and for a period of three years following resignation or final closing, whichever occurs later.
- (2) The following contracts between the Owner (or Borrower, as applicable) and the Sponsor or the Sponsor's non-

profit affiliate will not constitute a conflict of interest if no more than two persons salaried by the Sponsor or management affiliate serve as nonvoting directors on the Owner's board of directors:

- (i) Management contracts (including associated management fees);
- (ii) Supportive services contracts (including service fees) under the Supportive Housing for the Elderly Program; and
- (iii) Developer (consultant) contracts.
- (b) *Identity of interest*. An identity of interest between the Sponsor or Owner (or Borrower, as applicable) and any development team member or between development team members is prohibited until two years after final closing.
- (c) Mixed-finance projects. Section 891.832 of this part applies to mixed-finance projects for the elderly and for persons with disabilities.

[61 FR 11956, Mar. 22, 1996, as amended at 70 FR 54209, Sept. 13, 2005]

§891.135 Amount and terms of capital advances.

- (a) Amount of capital advances. The amount of capital advances approved shall be the amount stated in the notification of fund reservation, including any adjustment required by HUD before the final closing. The amount of the capital advance may not exceed the appropriate development cost limit.
- (b) Estimated development cost. The amount of the capital advance may not exceed the total estimated development cost of the project (as determined by HUD), less the incremental development cost associated with excess amenities and design features to be paid for by the Sponsor under \$891.120.

§891.140 Development cost limits.

(a) HUD shall use the development cost limits, established by Notice in the FEDERAL REGISTER and adjusted by locality, to calculate the fund reservation amount of the capital advance to be made available to individual Owners. Owners that incur actual development costs that are less than the amount of the initial fund reservation shall be entitled to retain 50 percent of the savings in a Replacement Reserve

Account. Such percentage shall be increased to 75 percent for Owners that add energy efficiency features.

(b) The Replacement Reserve Account established under paragraph (a) of this section may only be used for repairs, replacements, and capital improvements to the project.

§891.145 Owner deposit (Minimum Capital Investment).

As a Minimum Capital Investment, the Owner must deposit in a special escrow account one-half of one percent (0.5%) of the HUD-approved capital advance, not to exceed \$10,000, to assure the Owner's commitment to the housing. Under the Section 202 Program, if an Owner has a National Sponsor or a National Co-Sponsor, the Minimum Capital Investment shall be one-half of one percent (0.5%) of the HUD-approved capital advance, not to exceed \$25,000.

§891.150 Operating cost standards.

HUD shall establish operating cost standards based on the average annual operating cost of comparable housing for the elderly or for persons with disabilities in each field office, and shall adjust the standard annually based on appropriate indices of increases in housing costs such as the Consumer Price Index. The operating cost standards shall be developed based on the number of units. However, under the Section 811 Program and for projects funded under §§ 891.655 through 891.790. the operating cost standard for group homes shall be based on the number of residents. HUD may adjust the operating cost standard applicable to an approved project to reflect such factors as differences in costs based on location within the field office jurisdiction. The operating cost standard will be used to determine the amount of the project assistance initially reserved for a project.

§891.155 Other Federal requirements.

In addition to the requirements set forth in 24 CFR part 5, the following requirements in this §891.155 apply to the Section 202 and Section 811 Programs, as well as projects funded under §§891.655 through 891.790. Other requirements unique to a particular program

are described in subparts B and C of this part, as applicable.

- (a) Affirmative fair housing marketing.
 (1) The affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108; and
- (2) The fair housing advertising and poster guidelines at 24 CFR parts 109 and 110
- (b) Environmental. The National Environmental Policy Act of 1969, HUD's implementing regulations at 24 CFR part 50, including the related authorities described in 24 CFR 50.4. For the purposes of Executive Order No. 11988, Floodplain Management (42 FR 26951, 3 CFR, 1977 Comp., p. 117); as amended by Executive Order 12148 (44 FR 43239, 3 CFR, 1979 Comp., p. 412)), and implementing regulations in 24 CFR part 55, all applications for intermediate care facilities for persons with developmental disabilities shall be treated as critical actions requiring consideration of the 500-year floodplain.
- (c) Flood insurance. The Flood Disaster Protection Act of 1973 (42 U.S.C. 4001).
- (d) Labor standards. (1) All laborers and mechanics (other than volunteers under the conditions set out in 24 CFR part 70) employed by contractors and subcontractors in the construction (including rehabilitation) of housing with 12 or more units assisted under this part shall be paid wages at rates not less than those prevailing in the locality, as determined by the Secretary of Labor in accordance with the Davis-Bacon Act (40 U.S.C. 276a–276a–5). A group home for persons with disabilities is not covered by the labor standards.
- (2) Contracts involving employment of laborers and mechanics shall be subject to the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333).
- (3) Sponsors, Owners, contractors, and subcontractors must comply with all related rules, regulations, and requirements.
- (e) Displacement, relocation, and real property acquisition—(1) Minimizing displacement. Consistent with the other goals and objectives of this part, Sponsors and Owners (or Borrowers, if applicable) shall assure that they have

taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

- (2) Relocation assistance for displaced persons. A displaced person must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655), as implemented by 49 CFR part 24.
- (3) Real property acquisition requirements. The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.
- (f) Intergovernmental review. The requirements for intergovernmental review in Executive Order No. 12372 (47 FR 30959, 3 CFR, 1982 Comp., p. 197; as amended by Executive Order No. 12416 (48 FR 15587, 3 CFR, 1983 Comp., p. 186)) and the implementing regulations at 24 CFR part 52 are applicable to this program.
- (g) Lead-based paint. The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, J, and R of this title apply to these programs.

[61 FR 11956, Mar. 22, 1996, as amended at 64 FR 50227, Sept. 15, 1999; 69 FR 34275, June 21, 2004]

§891.160 Audit requirements.

Nonprofits receiving assistance under this part are subject to the audit requirements in 24 CFR part 45.

$\S 891.165$ Duration of capital advance.

The duration of the fund reservation for the capital advance is 18 months from the date of issuance with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

§891.170 Repayment of capital advance.

(a) Interest prohibition and repayment. A capital advance provided under this part shall bear no interest and its repayment shall not be required so long

as the housing project remains available for very low-income elderly families or persons with disabilities, as applicable, in accordance with this part. The capital advance may not be repaid to extinguish the requirements of this part. To ensure its interest in the capital advance, HUD shall require a note and mortgage, use agreement, capital advance agreement and regulatory agreement from the Owner in a form to be prescribed by HUD.

(b) The transfer of physical and financial assets of any project under this part is prohibited, unless HUD gives prior written approval. Approval for transfer will not be granted unless HUD determines that the transfer to a private nonprofit corporation, consumer cooperative (under the Section 202 Program), a nonprofit organization (under the Section 811 Program), or an organization meeting the definition of "mixed-finance owner" in §891.805 of this part, is part of a transaction that will ensure the continued operation of the project for not less than 40 years (from the date of original closing) in a manner that will provide rental housing for very low-income elderly persons or persons with disabilities, as applicable, on terms at least as advantageous to existing and future tenants as the terms required by the original capital advance.

[61 FR 11956, Mar. 22, 1996, as amended at 70 FR 54209, Sept. 13, 2005]

§891.175 Technical assistance.

For purposes of the Section 202 Program and the Section 811 Program, the Secretary shall make available appropriate technical assistance to assure that applicants having limited resources, particularly minority applicants, are able to participate more fully in the programs.

§891.180 Physical condition standards; physical inspection requirements.

Housing assisted under this part must be maintained and inspected in accordance with the requirements in 24 CFR part 5, subpart G.

[63 FR 46580, Sept. 1, 1998]

§891.185 Preemption of rent control laws.

The Department finds that it is necessary and desirable to assist project owners to preserve the continued viability of each project assisted under this part (except subpart E) as a housing resource for very low-income elderly persons or persons with disabilities. The Department also finds that it is necessary to protect the substantial economic interest of the Federal Government in those projects. Therefore, the Department concludes that it is in the national interest to preempt, and it does hereby preempt, the entire field of rent regulation by local rent control boards or other authority acting pursuant to state or local law as it affects those projects. Part 246 of this title applies to projects covered by subpart E of this part.

[63 FR 64803, Nov. 23, 1998]

Subpart B—Section 202 Supportive Housing for the Elderly

§891.200 Applicability.

The requirements set forth in this subpart B apply to the Section 202 Program of Supportive Housing for the Elderly only, and to applicants, Sponsors, and Owners under that program.

§891.205 Definitions.

As used in this part in reference to the Section 202 Program, and in addition to the applicable definitions in \$891.105:

Acquisition means the purchase of (or otherwise obtaining title to) existing housing and related facilities to be used as supportive housing for the elderly.

Activities of daily living (ADL) means eating, dressing, bathing, grooming, and household management activities, as further described below:

- (1) *Eating*—May need assistance with cooking, preparing, or serving food, but must be able to feed self;
- (2) Bathing—May need assistance in getting in and out of the shower or tub, but must be able to wash self;
- (3) *Grooming*—May need assistance in washing hair, but must be able to take care of personal appearance;

- (4) *Dressing*—Must be able to dress self, but may need occasional assistance; and
- (5) Home management activities—May need assistance in doing housework, grocery shopping, laundry, or getting to and from activities such as going to the doctor and shopping, but must be mobile. The mobility requirement does not exclude persons in wheelchairs or those requiring mobility devices.

Congregate space (hereinafter referred to as community space) shall have the meaning provided in section 202 (12 U.S.C. 1701q(h)(1)). The term "community spaces" excludes offices, halls, mechanical rooms, laundry rooms, parking areas, dwelling units, and lobbies. Community space does not include commercial areas.

Elderly person means a household composed of one or more persons at least one of whom is 62 years of age or more at the time of initial occupancy.

Frail elderly means an elderly person who is unable to perform at least three activities of daily living as defined in this section. Owners may establish additional eligibility requirements acceptable to HUD based on the standards in local supportive services programs.

Owner means a single-purpose private nonprofit organization that may be established by the Sponsor that will receive a capital advance and project rental assistance payments to develop and operate supportive housing for the elderly as its legal owner. Owner does not mean a public body or the instrumentality of any public body. The purposes of the Owner must include the promotion of the welfare of the elderly. The Owner may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom.

Private nonprofit organization means any incorporated private institution or foundation:

- (1) That has tax-exempt status under section 501(c)(3) or (c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 1 *et sea.*):
- (2) No part of the net earnings of which inures to the benefit of any member, founder, contributor, or individual:
 - (3) That has a governing board:

- (i) The membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located; and
- (ii) That is responsible for the operation of the housing assisted under this part; and
- (4) That is approved by HUD as to administrative and financial responsibility.

Services expenses means those costs needed to provide the necessary services for the elderly tenants, which may include, but are not limited to: health related activities, continuing education, welfare, informational, recreational, homemaking, meal and nutritional services, counseling, and referral services as well as transportation as necessary to facilitate access to these services.

Sponsor means any private nonprofit entity, including a consumer cooperative:

- (1) No part of the net earnings of which inures to the benefit of any private shareholder, member, founder, contributor, or individual;
- (2) That is not controlled by, or under the direction of, persons or firms seeking to derive profit or gain therefrom: and
- (3) That is approved by the Secretary as to administrative and financial capacity and responsibility. The term *Sponsor* does not mean a public body or the instrumentality of a public body.

[61 FR 11956, Mar. 22, 1996, as amended at 68 FR 67321, Dec. 1, 2003; 70 FR 54209, Sept. 13, 2005]

§891.210 Special project standards.

In addition to the applicable project standards in §891.120, resident units in Section 202 projects are limited to efficiencies or one-bedroom units. If a resident manager is proposed for a project, up to two bedrooms could be provided for the resident manager unit.

§891.215 Limits on number of units.

(a) HUD may establish, through publication of a notice in the FEDERAL

- REGISTER, limits on the number of units that can be applied for by a Sponsor or Co-sponsor in a single geographical region and/or nationwide.
- (b) Affiliated entities that submit separate applications shall be deemed to be a single entity for purposes of these limits.
- (c) HUD may also establish, through publication of a notice in the FEDERAL REGISTER, the minimum size of a single project.

§891.220 Prohibited facilities.

Projects may not include facilities for infirmaries, nursing stations, or spaces for overnight care.

§891.225 Provision of services.

- (a) In carrying out the provisions of this part, HUD shall ensure that housing assisted under this part provides services as described in section 202 (12 U.S.C. 1701q(g)(1)).
- (b)(1) HUD shall ensure that Owners have the managerial capacity to perform the coordination of services described in 12 U.S.C. 1701q(g)(2).
- (2) Any cost associated with this paragraph shall be an eligible cost under the contract for project rental assistance. Any cost associated with the employment of a service coordinator shall also be an eligible cost, except if the project is receiving congregate housing services assistance under section 802 of the National Affordable Housing Act. The HUD-approved service costs will be an eligible expense to be paid from project rental assistance, not to exceed \$15 per unit per month. The balance of service costs shall be provided from other sources, which may include co-payment by the tenant receiving the service. Such copayment shall not be included in the Total Tenant Payment.

§891.230 Selection preferences.

For purposes of the Section 202 Program, the selection preferences in 24 CFR part 5, subpart D apply.

Subpart C—Section 811 Supportive Housing for Persons With Disabilities

§891.300 Applicability.

The requirements set forth in this subpart C apply to the Section 811 Program of Supportive Housing for Persons with Disabilities only, and to applicants, Sponsors, and Owners under that program.

§891.305 Definitions.

As used in this part in reference to the Section 811 Program, and in addition to the applicable definitions in §891.105:

Acquisition means the purchase of (or otherwise obtaining title to) existing housing and related facilities to be used as supportive housing for persons with disabilities.

Congregate space (hereinafter referred to as community space) means space for multipurpose rooms, common areas, and other space necessary for the provision of supportive services. Community space does not include commercial areas.

Disabled household means a household composed of:

- (1) One or more persons at least one of whom is an adult (18 years or older) who has a disability;
- (2) Two or more persons with disabilities living together, or one or more such persons living with another person who is determined by HUD, based upon a certification from an appropriate professional (e.g., a rehabilitation counselor, social worker, or licensed physician) to be important to their care or well being; or
- (3) The surviving member or members of any household described in paragraph (1) of this definition who were living in a unit assisted under this part, with the deceased member of the household at the time of his or her death.

Nonprofit organization means any institution or foundation:

- (1) That has tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 1 et seq.);
- (2) No part of the net earnings of which inures to the benefit of any Board member, founder, contributor, or individual;

- (3) That has a governing board;
- (i) The membership of which is selected in a manner to assure that there is significant representation of the views of the community in which such housing is located (including persons with disabilities); and
- (ii) That is responsible for the operation of the housing assisted under this part; and
- (4) That is approved by HUD as to financial responsibility.
- Owner means a single-purpose nonprofit organization established by the Sponsor that will receive a capital advance and project rental assistance payments to develop and operate, as its legal owner, supportive housing for persons with disabilities under this part. The purposes of the Owner must include the promotion of the welfare of persons with disabilities. The Owner may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom.

Person with disabilities shall have the meaning provided in Section 811 (42 U.S.C. 8013(k)(2)). The term "person with disabilities" shall also include the following:

- (1) A person who has a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5)), i.e., if he or she has a severe chronic disability which:
- (i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (ii) Is manifested before the person attains age twenty-two;
- (iii) Is likely to continue indefinitely:
- (iv) Results in substantial functional limitation in three or more of the following areas of major life activity:
 - (A) Self-care;
- (B) Receptive and expressive language;
 - (C) Learning;
 - (D) Mobility;
 - (E) Self-direction;
 - (F) Capacity for independent living;
 - (G) Economic self-sufficiency; and
- (v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are

of lifelong or extended duration and are individually planned and coordinated.

- (2) A person with a chronic mental illness, i.e., a severe and persistent mental or emotional impairment that seriously limits his or her ability to independently, and which impairment could be improved by more suitable housing conditions.
- (3) A person infected with the human acquired immunodeficiency virus (HIV) and a person who suffers from alcoholism or drug addiction, provided they meet the definition of "person with disabilities" in Section 811 (42 U.S.C. 8013(k)(2)). A person whose sole impairment is a diagnosis of HIV positive or alcoholism or drug addiction (i.e., does not meet the qualifying criteria in section 811 (42 U.S.C. 8013(k)(2)) will not be eligible for occupancy in a section 811 project.

Sponsor means any nonprofit entity:

- (1) That has tax-exempt status under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 1 *et seq.*);
- (2) No part of the net earnings of which inures to the benefit of any private shareholder, member, founder, contributor or individual;
- (3) That is not controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom;
- (4) That has a governing board the membership of which is selected in a manner to assure that there is significant representation of the views of persons with disabilities; and
- (5) That is approved by HUD as to administrative and financial capacity and responsibility.

[61 FR 11956, Mar. 22, 1996, as amended at 68 FR 67321, Dec. 1, 2003; 70 FR 54210, Sept. 13, 2005]

§891.310 Special project standards.

In addition to the applicable project standards in §891.120, the following special standards apply to the Section 811 Program and to projects funded under §§891.655 through 891.790:

(a) Minimum group home standards. Each group home must provide a minimum of 290 square feet of prorated space for each resident, including a minimum area of 80 square feet for each resident in a shared bedroom (with no more than two residents occupying a shared bedroom) and a min-

- imum area of 100 square feet for a single occupant bedroom; at least one full bathroom for every four residents; space for recreation at indoor and outdoor locations on the project site; and sufficient storage for each resident in the bedroom and other storage space necessary for the operation of the home. If the project involves acquisition (with or without rehabilitation), the structure must at least be in compliance with applicable State requirements. In the absence of such requirements, the above standards shall apply.
- (b) Additional accessibility requirements. In addition to the accessibility requirements in §891.120(b), the following requirements apply to the Section 811 Program and to projects funded under §§891.655 through 891.790:
- (1) All entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.
- (2) In projects for chronically mentally ill individuals, a minimum of 10 percent of all dwelling units in an independent living facility (or 10 percent of all bedrooms and bathrooms in a group home, but at least one of each such space), must be designed to be accessible or adaptable for persons with disabilities.
- (3) In projects for developmentally disabled or physically disabled persons, all dwelling units in an independent living facility (or all bedrooms and bathrooms in a group home) must be designed to be accessible or adaptable for persons with physical disabilities. A project involving acquisition and/or rehabilitation may provide a lesser number if:
- (i) The cost of providing full accessibility makes the project financially infeasible:
- (ii) Fewer than one-half of the intended occupants have mobility impairments; and
- (iii) The project complies with the requirements of 24 CFR 8.23.
- (4) For the purposes of paragraph (b) of this section, the following definitions apply:
- (i) Accessible describes a site, building, facility, or portion thereof that complies with the Uniform Federal Accessibility Standards and that can be

approached, entered, and used by physically disabled people;

(ii) Adaptability means the ability of certain building spaces and elements, such as kitchen counters, sinks, and grab bars, to be added or altered so as to accommodate the needs of either disabled or nondisabled persons, or to accommodate the needs of either disabled or nondisabled persons, or to accommodate the needs of persons with different types or degrees of disability.

§891.315 Prohibited facilities.

This section shall apply to capital advances under the Section 811 Program, as well as loans financed under subpart E of this part. Project facilities may not include infirmaries, nursing stations, spaces dedicated to the delivery of medical treatment or physical therapy, padded rooms, or space for respite care or sheltered workshops, even if paid for from sources other than the HUD capital advance or loan. Except for office space used by the Owner (or Borrower, if applicable) exclusively for the administration of the project, project facilities may not include office space.

§891.320 Site and neighborhood standards.

In addition to the requirements in §891.125 and §891.680, if applicable, the following site and neighborhood requirements apply to the Section 811 Program:

- (a) Travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for very low-income workers (or low-income workers, as applicable), must not be excessive.
- (b) Projects should be located in neighborhoods where other family housing is located. Projects should not be located adjacent to the following facilities, or in areas where such facilities are concentrated: schools or daycare centers for persons with disabilities, workshops, medical facilities, or other housing primarily serving persons with disabilities. Not more than one group home may be located on any one site and no such home may be lo-

cated on a site contiguous to another site containing such a home.

§891.325 Lead-based paint requirements.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, J, and R of this title apply to the section 811 program and to projects funded under §§891.655 through 891.790.

[69 FR 34276, June 21, 2004]

Subpart D—Project Management

§891.400 Responsibilities of owner.

- (a) Marketing. (1) The Owner must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability of the first unit or occupancy of the group home. Market activities shall include the provision of notices of the availability of housing under the program to operators of temporary housing for the homeless in the same housing market.
- (2) Marketing must be done in accordance with a HUD-approved affirmative fair housing marketing plan and all Federal, State or local fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible households of similar income levels in the same housing market area have a like range of housing choices available to them regardless of discriminatory considerations such as their race, color, creed, religion, familial status, disability, sex or national origin.
- (3) At the time of PRAC execution, the Owner must submit to HUD a list of leased and unleased assisted units (or in the case of a group home, leased and unleased residential spaces) with a justification for the unleased units or residential spaces, in order to qualify for vacancy payments for the unleased units or residential spaces.

- (b) Management and maintenance. The Owner is responsible for all management functions. These functions include selection and admission of tenants, required reexaminations of incomes for households occupying assisted units or residential spaces, collection of tenant payments, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All functions must be performed in compliance with equal opportunity requirements.
- (c) Contracting for services. (1) With HUD approval, the Owner may contract with a private or public entity for performance of the services or duties required in paragraphs (a) and (b) of this section. However, such an arrangement does not relieve the Owner of responsibility for these services and duties. All such contracts are subject to the restrictions governing prohibited contractual relationships described in §891.130. (These prohibitions do not extend to management contracts entered into by the Owner with the Sponsor or its nonprofit affiliate.)
- (2) Consistent with the objectives of Executive Order No. 11625 (36 FR 19967, 3 CFR, 1971–1975 Comp., p. 616; as amended by Executive Order No. 12007 (42 FR 42839, 3 CFR, 1977 Comp., p. 139)); Executive Order No. 12432 (48 FR 32551, 3 CFR, 1983 Comp., p. 198); and Executive Order No. 12138 (44 FR 29637, 3 CFR, 1979 Comp., p. 393; as amended by Executive Order No. 12608 (52 FR 34617, 3 CFR, 1987 Comp., p. 245)), the Owner will promote awareness and participation of minority and women's business enterprises in contracting and procurement activities.
- (d) Submission of financial and operating statements. The Owner must submit to HUD:
- (1) Within 60 days after the end of each fiscal year of project operations, financial statements for the project audited by an independent public accountant and in the form required by HUD; and
- (2) Other statements regarding project operation, financial conditions and occupancy as HUD may require to administer the PRAC and to monitor project operations.

- (e) Use of project funds. The Owner shall maintain a separate interest bearing project fund account in a depository or depositories which are members of the Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund and shall deposit all tenant payments, charges, income and revenues arising from project operation or ownership to this account. All project funds are to be deposited in Federally insured accounts. All balances shall be fully insured at all times, to the maximum extent possible. Project funds must be used for the operation of the project (including required insurance coverage), and to make required deposits to the replacement reserve under §891.405, in accordance with HUD-approved budget. Any remaining project funds in the project funds account (including earned interest) following the expiration of the fiscal year shall be deposited in a Federally-insured residual receipts account within 60 days following the end of the fiscal year. Withdrawals from this account may be made only for project purposes and with the approval of HUD. If there are funds remaining in the residual receipts account when the mortgage is satisfied, such funds shall be returned to HUD.
- (f) Reports. The Owner shall submit such reports as HUD may prescribe to demonstrate compliance with applicable civil rights and equal opportunity requirements. See §891.410(a).

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§891.405 Replacement reserve.

- (a) Establishment of reserve. The Owner shall establish and maintain a replacement reserve to aid in funding extraordinary maintenance and repair and replacement of capital items.
- (b) Deposits to reserve. The Owner shall make monthly deposits to the replacement reserve in an amount determined by HUD.
- (c) Level of reserve. The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve reach that level, the amount of the deposit to the reserve may be reduced with the approval of HUD.

(d) Administration of reserve. Replacement reserve funds must be deposited with HUD or in a Federally-insured depository in an interest-bearing account(s) whose balances(s) are fully insured at all times. All earnings including interest on the reserve must be added to the reserve. Funds may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD. With HUD approval, reserves may be used to reduce the number of dwelling units, provided that the purpose for the reduction is the retrofitting of obsolete or unmarketable units.

[61 FR 11956, Mar. 22, 1996, as amended at 68 FR 67321, Dec. 1, 2003]

§891.410 Selection and admission of tenants.

(a) Written procedures. The Owner shall adopt written tenant selection procedures that ensure nondiscrimination in the selection of tenants and that are consistent with the purpose of improving housing opportunities for very low-income elderly persons and persons with disabilities (as applicable); and reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. Owners shall promptly inform in writing any rejected applicant of the grounds for any rejection. Additionally, Owners shall maintain a written, chronological waiting list showing the name, race, gender, ethnicity, and date of each person applying for the pro-

(b) Application for admission. The Owner must accept applications for admission to the project in the form prescribed by HUD, and (under the Section 202 Program only) is obligated to confirm all information provided by applicant families on the application. Applicant households applying for assisted units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission. Applicant households must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B. Applicant families must sign and submit consent forms for the obtaining of wage and claim information

from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B. Both the Owner and the applicant household must complete and sign the application for admission On request, the Owner must furnish copies of all applications for admission to HUD.

(c) Determination of eligibility and selection of tenants. (1) The Owner is responsible for determining whether applicants are eligible for admission and for the selection of households. To be eligible for admission, an applicant must be an elderly person or a person with disabilities, as applicable (as defined in §§ 891.205 and 891.305, respectively); must meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B; must sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B; and must be a very low-income family, as defined in §891.105.

(2) Under the Section 811 Program:

(i) In order to be eligible for admission, the applicant must also meet any project occupancy requirements approved by HUD.

(ii) Owners shall make selections in a nondiscriminatory manner without regard to considerations such as race, religion, color, sex, national origin, familial status, or disability. An Owner may, with the approval of the Secretary, limit occupancy within housing developed under this part 891 to persons with disabilities who have similar disabilities and require a similar set of supportive services in a supportive housing environment. However, the Owner must permit occupancy by any qualified person with a disability who could benefit from the housing and/or services provided regardless of the person's disability.

(d) Unit assignment. If the Owner determines that the household is eligible and is otherwise acceptable and units (or residential spaces in a group home) are available, the Owner will assign the household a unit or residential space in a group home. If the household will occupy an assisted unit, the Owner will assign the household a unit of the appropriate size in accordance with

HUD's general occupancy guidelines. If no suitable unit (or residential space in a group home) is available, the Owner will place the household on a waiting list for the project and notify the household when a suitable unit or residential space 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 for admission are being considered for that reason.

- (e) Ineligibility determination. If the Owner determines that an applicant is ineligible for admission or the Owner is not selecting the applicant for other reasons, the Owner will promptly notify the applicant in writing of the determination, the reasons for the determination, and the applicant's right to request a meeting to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by a member of the Owner's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights (e.g., rights granted under Federal, State or local civil rights laws) if the applicant believes he or she is being discriminated against on a prohibited
- (f) Records. Records on applicants and approved eligible households, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be retained for three years. See §891.410(a).
- (g) Reexamination of household family income and composition—(1) Regular reexaminations. The Owner must reexamine the income and composition of the household at least every 12 months. Upon verification of the information, the Owner must make appropriate adjustments in the total tenant payment in accordance with part 813 of this chapter, as modified by §891.105, and must determine whether the household's unit size is still appropriate. The Owner must adjust tenant payment and the project rental assistance payment, and must carry out any unit transfer in accordance with HUD standards. At the time of reexamination under paragraph (g)(1) of this section, the Owner must require the household to meet the dis-

closure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B. For requirements regarding the signing and submitting of consent forms by families for obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5, subpart B.

- (2) Interim reexaminations. The household must comply with the provisions in its lease regarding interim reporting of changes in income. If the Owner receives information concerning a change in the household's income or other circumstances between regularly scheduled reexaminations, the Owner must consult with the household and make any adjustments determined to be appropriate. See 24 CFR part 5, subpart B for the requirements for the disclosure and verification of Social Security Number at interim reexaminations involving new household members. For requirements regarding the signing and submitting of consent forms by families for the obtaining of wage and claim information from State Wage Information Collection Agencies, see 24 CFR part 5, subpart B. Any change in the household's income or other circumstances that result in an adjustment in the total tenant payment, tenant payment, and project rental assistance payment must be verified.
- (3) Continuation of project rental assistance payment. (i) A household shall remain eligible for project rental assistance payment until the total tenant payment equals or exceeds the gross rent (or a pro rata share of the gross rent in a group home). The termination of subsidy eligibility will not affect the household's other rights under its lease. Project rental assistance payment may be resumed if, as a result of changes in income, rent or other relevant circumstances during the term of the PRAC, the household meets the income eligibility requirements of 24 CFR part 813 (as modified in §891.105) and project rental assistance is available for the unit or residential space under the terms of the PRAC. The household will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (c) of this section.

(ii) A household's eligibility for project rental assistance payment may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including information related to disclosure and verification of Social Security Numbers, as provided by 24 CFR part 5, subpart B or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies (as provided by 24 CFR part 5, subpart B).

[61 FR 11956, Mar. 22, 1996, as amended at 65 FR 16724, Mar. 29, 2000]

§891.415 Obligations of the household or family.

This section shall apply to capital advances under the Section 202 Program and the Section 811 Program, as well as loans financed under subpart E of this part.

- (a) Requirements. The household (or family, as applicable) shall:
- (1) Pay amounts due under the lease directly to the Owner (or Borrower, as applicable):
- (2) Supply such certification, release of information, consent, completed forms or documentation as the Owner (or Borrower, as applicable) or HUD determines necessary, including information and documentation relating to the disclosure and verification of Social Security Numbers, as provided by 24 CFR part 5, subpart B, and the signing and submission of consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B;
- (3) Allow the Owner (or Borrower, as applicable) to inspect the dwelling unit or residential space at reasonable times and after reasonable notice;
- (4) Notify the Owner (or Borrower, as applicable) before vacating the dwelling unit or residential space; and
- (5) Use the dwelling unit or residential space solely for residence by the household (or family, as applicable) and as the household's (or family's) principal place of residence.
- (b) *Prohibitions*. The household (or family, as applicable) shall not:
- (1) Assign the lease or transfer the unit or residential space; or

(2) Occupy, or receive assistance for the occupancy of, a unit or residential space governed under this part 891 while occupying, or receiving assistance for the occupancy of, another unit assisted under any Federal housing assistance program, including any section 8 program.

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§891.420 Overcrowded and underoccupied units.

If the Owner determines that because of change in household size, an assisted unit is smaller than appropriate for the eligible household to which it is leased, or that the assisted unit is larger than appropriate, project rental assistance payment with respect to the unit will not be reduced or terminated until the eligible household has been relocated to an appropriate alternate unit. If possible, the Owner will, as promptly as possible, offer the household an appropriate alternate unit. The Owner may receive vacancy payments for the vacated unit if the Owner complies with the requirements of §891.445.

§891.425 Lease requirements.

This section shall apply to capital advances under the Section 202 Program and the Section 811 Program, as well as loans financed under subpart E of this part.

- (a) Term of lease. The term of the lease may not be less than one year. Unless the lease has been terminated by appropriate action, upon expiration of the lease term, the household and Owner (or family and Borrower, as applicable) may execute a new lease for a term not less than one year, or may take no action. If no action is taken, the lease will automatically be renewed for successive terms of one month.
- (b) Termination by the household (or family, as applicable). All leases may contain a provision that permits the household (or family) to terminate the lease upon 30 days advance notice. A lease for a term that exceeds one year must contain such provision.
- (c) Form. The Owner (or Borrower, as applicable) shall use the lease form prescribed by HUD. In addition to required provisions of the lease form, the

Owner (or Borrower) may include a provision in the lease permitting the Owner (or Borrower) to enter the leased premises at any time without advance notice when there is reasonable cause to believe that an emergency exists or that health or safety of a family member is endangered.

§ 891.430 Denial of admission, termination of tenancy, and modification of lease.

- (a) The provisions of part 5, subpart I, of this title apply to Section 202 and Section 811 capital advance projects.
- (b) The provisions of part 247 of this title apply to all decisions by an owner to terminate the tenancy or modify the lease of a household residing in a unit (or residential space in a group home).

[66 FR 28798, May 24, 2001]

§891.435 Security deposits.

This section shall apply to capital advances under the Section 202 Program and the Section 811 Program, as well as loans financed under subpart E of this part. For loans financed under subpart E of this part, the requirements in §891.635 also apply.

(a) Collection of security deposits. At the time of the initial execution of the lease, the Owner (or Borrower, as applicable) will require each household (or family, as applicable) occupying an assisted unit or residential space in a group home to pay a security deposit in an amount equal to one month's tenant payment or \$50, whichever is greater. The household (or family) is expected to pay the security deposit from its own resources and other available public or private resources. The Owner (or Borrower) may collect the security deposit on an installment basis.

(b) Security deposit provisions applicable to units—(1) Administration of security deposit. The Owner (or Borrower, as applicable) must place the security deposits in a segregated interest-bearing account. The amount of the segregated, interest-bearing account maintained by the Owner (or Borrower) must at all times equal the total amount collected from the households (or families, as applicable) then in occupancy plus any accrued interest and less allowable administrative cost adjustments. The Owner (or Borrower) must comply with

any applicable State and local laws concerning interest payments on security deposits.

- (2) Household (or family, as applicable) notification requirement. In order to be considered for the refund of the security deposit, a household (or family) must provide the Owner (or Borrower, as applicable) with a forwarding address or arrange to pick up the refund.
- (3) Use of security deposit. The Owner (or Borrower, as applicable), subject to State and local law and the requirements of paragraphs (b)(1) and (b)(3) of this section, may use the household's (or family's, as applicable) security deposit balance as reimbursement for any unpaid amounts that the household (or family) owes under the lease. Within 30 days (or shorter time if required by State or local law) after receiving notification under paragraph (b)(2) of this section, the Owner (or Borrower) must:
- (i) Refund to a household (or family) that does not owe any amount under the lease the full amount of the household's (or family's) security deposit balance;
- (ii) Provide to a household (or family) owing amounts under the lease a list itemizing each amount, along with a statement of the household's (or family's) rights under State and local law. If the amount that the Owner (or Borrower) claims is owed by the household (or family) is less than the amount of the household's (or family's) security deposit balance, the Owner (or Borrower) must refund the excess balance to the household (or family). If the Owner (or Borrower) fails to provide the list, the household (or family) will be entitled to the refund of the full amount of the household's (or family's) security deposit balance.
- (4) Disagreements. If a disagreement arises concerning reimbursement of the security deposit, the household (or family, if applicable) will have the right to present objections to the Owner (or Borrower, if applicable) in an informal meeting. The Owner (or Borrower) must keep a record of any disagreements and meetings in a tenant file for inspection by HUD. The procedures of this paragraph do not preclude the household (or family) from exercising its rights under State or local law.

- (5) Decedent's interest in security deposit. Upon the death of a member of a household (or family, as applicable), the decedent's interest, if any, in the security deposit will be governed by State or local law.
- (c) Reimbursement by HUD for assisted units. If the household's (or family's, if applicable) security deposit balance is insufficient to reimburse the Owner (or Borrower, if applicable) for any amount that the household (or family) owes under the lease for an assisted unit or residential space, and the Owner (or Borrower) has provided the household (or family) with the list required by paragraph (b)(3)(ii) of this section, the Owner (or Borrower) may claim reimbursement from HUD for an amount not to exceed the lesser of:
- (1) The amount owed the Owner (or Borrower); or
- (2) One month's per unit operating cost (or contract rent, if applicable), minus the amount of the household's (or family's) security deposit balance. Any reimbursement under this section will be applied first toward any unpaid tenant payment (or rent, if applicable) due under the lease. No reimbursement may be claimed for any unpaid tenant payment (or rent) for the period after termination of the tenancy. The Owner (or Borrower) may be eligible for vacancy payments following a vacancy in accordance with the requirements of \$891.445 (or \$\$891.650 or 891.790, as applicable)

§ 891.440 Adjustment of utility allow-

This section shall apply to projects funded under the Section 202 Program, to independent living complexes funded under Section 811 Program, and to projects financed with loans under subpart E of this part. The Owner (or Borrower, as applicable) must submit an analysis of any utility allowances applicable. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the utility allowances for assisted units. In addition, when utility rate changes would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances, the Owner (or Borrower) must advise HUD and request approval of new utility allowances. Whenever a utility allowance for an assisted unit is adjusted, the Owner (or Borrower) will promptly notify affected households (or families, as applicable) and make a corresponding adjustment of the tenant payment (or rent, as applicable) and the amount of the project rental assistance payment (or housing or project assistance payment, as applicable).

(Approved by the Office of Management and Budget under control number 2502–0470)

§891.445 Conditions for receipt of vacancy payments for assisted units.

- (a) General. Vacancy payments under the PRAC will not be made unless the conditions for receipt of these project rental assistance payments set forth in this section are fulfilled.
- (b) Vacancies during rent-up. For each unit (or residential space in a group home) that is not leased as of the effective date of the PRAC, the Owner is entitled to vacancy payments in the amount of 50 percent of the per unit operating cost (or pro rata share of the group home operating cost) for the first 60 days of vacancy, if the Owner:
- (1) Conducted marketing in accordance with §891.400(a) and otherwise complied with §891.400;
- (2) Has taken and continues to take all feasible actions to fill the vacancy;
- (3) Has not rejected any eligible applicant except for good cause acceptable to HUD.
- (c) Vacancies after rent-up. If an eligible household vacates an assisted unit (or residential space in a group home) the Owner is entitled to vacancy payments in the amount of 50 percent of the approved per unit operating cost (or pro rata share of the group home operating cost) for the first 60 days of vacancy if the Owner:
- (1) Certifies that it did not cause the vacancy by violating the lease, the PRAC, or any applicable law;
- (2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy upon learning of the vacancy or prospective vacancy;
- (3) Has fulfilled and continues to fulfill the requirements specified in

\$891.400(a) (2) and (3) and \$891.445(b) (2) and (3); and

- (4) For any vacancy resulting from the Owner's eviction of an eligible household, certifies that it has complied with §891.430.
- (d) Prohibition of double compensation for vacancies. If the Owner collects payments for vacancies from other sources (tenant payment, security deposits, payments under §891.435(c), or governmental payments under other programs), the Owner shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed the approved per unit operating cost.

§891.450 HUD review.

HUD shall conduct periodic on-site management reviews of the Owner's compliance with the requirements of this part.

Subpart E—Loans for Housing for the Elderly and Persons with Disabilities

§891.500 Purpose and policy.

- (a) Purpose. The program under subpart E of this part provides direct Federal loans under section 202 of the Housing Act of 1959 (42 U.S.C. 1701g) for housing projects serving elderly or handicapped families and individuals. The housing projects shall provide the necessary services for the occupants which may include, but are not limited to: Health, continuing education, welinformational, recreational, homemaking, meal and nutritional services, counseling, and referral services, as well as transportation where necessary to facilitate access to these services.
- (b) General policy. A loan made under subpart E of this part shall be used to finance the construction or the substantial rehabilitation of projects for elderly or handicapped families, or for the acquisition with or without moderate rehabilitation of existing housing and related facilities for group homes for nonelderly handicapped individuals.
- (c) Applicability. Subpart E of this part applies to all fund reservations made before October 1, 1990, except for loans not initially closed that were

converted to capital advances. Specifically, §891.520 through 891.650 of subpart E apply to projects for elderly or handicapped families that received reservations under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and housing assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437 et seq). Sections 891.655 through 891.790 of subpart E apply to projects for nonelderly handicapped families receiving reservations under section 202 and project assistance payments under section 202(h) of the Housing Act of 1959.

§891.505 Definitions.

For the purposes of this subpart E:

Act means section 202 of the Housing Act of 1959, as amended (12 U.S.C. 1701q).

Borrower means a private nonprofit corporation or a nonprofit consumer cooperative that may be established by the Sponsor, which will obtain a Section 202 loan and execute a mortgage in connection therewith as the legal owner of the project. "Borrower" does not mean a public body or the instrumentality of any public body. The purposes of the Borrower must include the promotion of the welfare of elderly and/or handicapped families. No part of the net earnings of the Borrower may inure to the benefit of any private shareholder, contributor, or individual, and the Borrower may not be controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. Because of the nonprofit nature of the Section 202 program, no officer or director, or trustee, member, stockholder or authorized representative of the Borrower is permitted to have any financial interest in any contract in connection with the rendition of services, the provision of goods or supplies, project management, procurement of furnishings and equipment, construction of the project, procurement of the site or other matters whatsoever.

Elderly family means:

- (1) Families of two or more persons the head of which (or his or her spouse) is 62 years of age or older;
- (2) The surviving member or members of any family described in paragraph (1) of this definition living in a

unit assisted under subpart E of this part with the deceased member of the family at the time of his or her death;

- (3) A single person who is 62 years of age or older: or
- (4) Two or more elderly persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well being.

Handicapped family means:

- (1) Families of two or more persons the head of which (or his or her spouse) is handicapped;
- (2) The surviving member or members of any family described in paragraph (1) of this definition living in a unit assisted under subpart E of this part with the deceased member of the family at the time of his or her death:
- (3) A single handicapped person over the age of 18; or
- (4) Two or more handicapped persons living together, or one or more such persons living with another person who is determined by HUD, based upon a licensed physician's certificate provided by the family, to be essential to their care or well being.

Handicapped person or individual means:

- (1) Any adult having a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration, substantially impedes his or her ability to live independently, and is of a nature that such ability could be improved by more suitable housing conditions.
- (2) A person with a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5), i.e., a person with a severe chronic disability that:
- (i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (ii) Is manifested before the person attains age twenty-two;
- (iii) Is likely to continue indefinitely;
- (iv) Results in substantial functional limitation in three or more of the following areas of major life activity:
 - (A) Self-care;

- (B) Receptive and expressive language:
 - (C) Learning:
 - (D) Mobility;
 - (E) Self-direction;
 - (F) Capacity for independent living;
 - (G) Economic self-sufficiency; and
- (v) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.
- (3) A person with a chronic mental illness, i.e., if he or she has a severe and persistent mental or emotional impairment that seriously limits his or her ability to live independently, and whose impairment could be improved by more suitable housing conditions.
- (4) Persons infected with the human acquired immunodeficiency virus (HIV) who are disabled as a result of infection with the HIV are eligible for occupancy in section 202 projects designed for the physically disabled, developmentally disabled, or chronically mentally ill depending upon the nature of the person's disability. A person whose sole impairment is alcoholism or drug addition (i.e., who does not have a developmental disability, chronic mental illness, or physical disability that is the disabling condition required for eligibility in a particular project) will not be considered to be disabled for the purposes of the section 202 program.

Housing and related facilities means rental or cooperative housing structures constructed or substantially rehabilitated as permanent residences for use by elderly or handicapped families, or acquired with or without moderate rehabilitation for use by nonelderly handicapped families as group homes. The term includes structures suitable for use by families residing in the project or in the area, such as cafeterias or dining halls, community rooms, or buildings, or other essential service facilities. In the case of acquisition with or without moderate rehabilitation, at least three years must have elapsed from the later of the date of completion of the project or the beginning of occupancy to the date of the application for a Section 202 fund reservation. Except for intermediate care facilities for the mentally retarded and

individuals with related conditions, this term does not include nursing homes, hospitals, intermediate care facilities, or transitional care facilities.

Nonelderly handicapped family means a handicapped family in which the head of the family (and spouse, if any) is less than 62 years of age at the time of the family's initial occupancy of a project.

Section 8 Program means the housing assistance payments program that implements section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f note).

§891.510 Displacement, relocation, and real property acquisition.

- (a) Minimizing displacement. Consistent with the other goals and objectives of subpart E of this part, Sponsors and Borrowers shall assure that they have taken all reasonable steps to minimize the displacement of persons (families, individuals, businesses, nonprofit organizations, and farms) as a result of a project assisted under subpart E of this part.
- (b) Relocation assistance for displaced persons. A displaced person (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201-4655), as implemented by 49 CFR part 24. A displaced person shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601-3619). If the comparable replacement dwellings are located in areas of minority concentration, minority persons also must be given, if possible, referrals to suitable, decent, safe, and sanitary replacement dwellings not located in such areas.
- (c) Real property acquisition requirements. The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.
- (d) Appeals. A person who disagrees with the Sponsor's/Borrower's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the Sponsor/Borrower. A

- low-income person who is dissatisfied with the Sponsor's/Borrower's determination on his or her appeal may submit a written request for review of that determination to the HUD field office.
- (e) Responsibility of Sponsor/Borrower. The Sponsor/Borrower shall certify that it will comply (i.e., provide assurance of compliance, as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to comply with these provisions. The Sponsor/Borrower shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The Sponsor/ Borrower shall maintain data on the race, ethnic, gender, and handicap status of displaced persons.
- (f) Definition of a displaced person. (1) For purposes of this section, the term displaced person means a person (family, individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. This includes any permanent, involuntary move for an assisted project including any permanent move from the real property that is made:
- (i) After notice by the Sponsor/Borrower to move permanently from the property if the move occurs on or after:
- (A) The date of the submission of an application to HUD that is later approved, if the Sponsor has control of an appropriate site; or
- (B) The date that the Sponsor obtains control of an approvable site, if such control is obtained after the submission of an application to HUD:
- (ii) Before the date described in paragraph (f)(1)(i) of this section, if the Sponsor, Borrower or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project;
- (iii) By a tenant-occupant of a dwelling unit, if any one of the following three situations occurs:
- (A) The tenant moves after execution of the Agreement between the Sponsor/

Borrower and HUD, and the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex upon completion of the project under reasonable terms and conditions. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

- (1) The tenant's monthly rent and estimated average monthly utility costs before the Agreement; or
- (2) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or
- (B) The tenant is required to relocate temporarily, does not return to the building/complex, and either:
- (1) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or
- (2) Other conditions of the temporary relocation are not reasonable; or
- (C) The tenant is required to move to another dwelling in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable.
- (2) Notwithstanding the provisions of paragraph (f)(1) of this section, however, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance at URA levels), if:
- (i) The person has been evicted for cause based upon a serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance.
- (ii) The person moved into the property after the submission of the application and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., displacement, temporary relocation or a

rent increase) and the fact that he or she will not qualify as a displaced person as a result of the project;

- (iii) The person is ineligible under 49 CFR 24.2(g)(2); or
- (iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;
- (3) The Sponsor/Borrower may request, at any time, a HUD determination of whether a displacement is or would be covered by this section.

§891.515 Audit requirements.

Nonprofits receiving assistance under this part are subject to the audit requirements in 24 CFR part 45.

SECTION 202 PROJECTS FOR THE ELDERLY OR HANDICAPPED—SECTION 8 ASSISTANCE

§ 891.520 Definitions applicable to 202/8 projects.

The following definitions apply to projects for eligible families receiving assistance under section 8 of the United States Housing Act of 1937 in addition to reservations under section 202 of the Housing Act of 1959 (202/8 projects):

Adjusted income as defined in part 5, subpart F of subtitle A of this title.

Assisted unit means a dwelling unit eligible for assistance under a HAP contract.

Contract rent means the total amount of rent specified in the HAP contract as payable by HUD and the tenant to the Borrower for an assisted unit.

Family (eligible family) means an elderly or handicapped family that meets the project occupancy requirements approved by HUD and, if the family occupies an assisted unit, meets the requirements described in part 813 of this chapter.

Gross rent is defined in part 5, subpart F of subtitle A of this title.

HAP contract (housing assistance payments contract) means the contract entered into by the Borrower and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the HAP contract.

Housing assistance payment means the payment made by HUD to the Borrower

for assisted units as provided in the HAP contract. The payment is the difference between the contract rent and the tenant rent. An additional payment is made to a family occupying an assisted unit when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a "vacancy payment," may be made to the Borrower when an assisted unit is vacant, in accordance with the terms of the HAP contract.

Project account means a specifically identified and segregated account for each project that is established in accordance with §891.570(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the HAP contract each year.

Project occupancy requirements means that eligible populations to be served under the Section 202 program are qualified individuals or families whose head of household or spouse is elderly, handicapped, physically mentally disabled, or chronically mentally ill. Projects are designed to meet the special needs of the particular tenant population that the Borrower was selected to serve. Individuals from one eligible group may not be accepted for occupancy in a project designed for a different tenant group. However, a Sponsor can propose to house eligible tenant groups other than the one it was selected to serve, but must apply to the HUD field office for permission to do so, based on a plan that demonstrates that it can adequately serve the proposed tenant group. Upon review and recommendation by the field office, HUD Headquarters will approve or disapprove the request.

Rent, in the case of a unit in a cooperative project, means the carrying charges payable to the cooperative with respect to occupancy of the unit.

Tenant rent means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.

Total tenant payment means the monthly amount defined in, and determined in accordance with part 5, subpart F of subtitle A of this title.

Utility allowance is defined in part 5, subpart F of subtitle A of this title and is determined or approved by HUD.

Utility reimbursement is defined in part 5, subpart F of subtitle A of this title.

Vacancy payment means the housing assistance payment made to the Borrower by HUD for a vacant assisted unit if certain conditions are fulfilled, as provided in the HAP contract. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

[61 FR 11956, Mar. 22, 1996, as amended at 66 FR 6225, Jan. 19, 2001; 66 FR 8174, Jan. 30, 2001]

§891.525 Amount and terms of financing.

- (a) The amount of financing approved shall be the amount stated in the Notice of Section 202 Fund Reservation, including any increase approved by the field office prior to the final closing of a loan; provided, however, that the amount of financing provided shall not exceed the lesser of:
- (1) The dollar amounts stated in paragraphs (b) through (f) of this section: or
- (2) The total development cost of the project as determined by the field office.
- (b) For such part of the property or project attributable to dwelling use (excluding exterior land improvements, as defined by the Assistant Secretary) the maximum loan amount, depending on the number of bedrooms, may not exceed:
- (1) \$28,032 per family unit without a bedroom.
- (2) \$32,321 per family unit with one bedroom.
- (3) \$38,979 per family unit with two bedrooms.
- (c) In order to compensate for the higher costs incident to construction of elevator type structures of sound standards of construction and design, the field office may increase the dollar limitations per family unit, as provided in paragraph (b) of this section, to not to exceed:
- (1) \$29,500 per family unit without a bedroom.
- (2) \$33,816 per family unit with one bedroom.
- (3) \$41,120 per family unit with two bedrooms.

- (d) Reduced loan amount—leaseholds. In the event the loan is secured by a leasehold estate rather than a fee simple estate, the allowable cost of the property upon which the loan amount is based shall be reduced by the value of the leased fee.
- (e) Adjusted loan amount—rehabilitation projects. A loan amount that involves a project to be rehabilitated shall be subject to the following additional limitations:
- (1) Property held in fee. If the Borrower is the fee simple owner of the project not encumbered by a mortgage, the maximum loan amount shall not exceed 100 percent of the cost of the proposed rehabilitation.
- (2) Property subject to existing mortgage. If the Borrower owns the project subject to an outstanding indebtedness, which is to be refinanced with part of the Section 202 loan, the maximum loan amount shall not exceed the cost of rehabilitation plus such portion of the outstanding indebtedness as does not exceed the fair market value of such land and improvements prior to the rehabilitation, as determined by the field office.
- (3) Property to be acquired. If the project is to be acquired by the Borrower and the purchase price is to be financed with a part of the Section 202 loan, the maximum loan amount shall not exceed the cost of the rehabilitation plus such portion of the purchase price as does not exceed the fair market value of such land and improvements prior to the rehabilitation, as determined by the field office.
- (f) Increased Mortgage Limits—High Cost Areas. (1)(i) The Assistant Secretary may increase the dollar amount limitations in paragraphs (b) and (c) of this section:
- (A) By not to exceed 110 percent in any geographical area in which the Assistant Secretary finds that cost levels so require; and
- (B) By not to exceed 140 percent where the Assistant Secretary determines it necessary on a project-by-project basis.
- (ii) In no case, however, may any such increase exceed 90 percent, where the Assistant Secretary determines that there is involved a mortgage purchased or to be purchased by the Gov-

- ernment National Mortgage Association (GNMA) in implementing its Special Assistance Functions under section 305 of the National Housing Act (as section 305 existed immediately before its repeal on November 30, 1983).
- (2) If the Assistant Secretary finds that because of high costs in Alaska, Guam, or Hawaii it is not feasible to construct dwellings without the sacrifice of sound standards of construction, design, and livability within the limitations of maximum loan amounts provided in this section, the principal amount of mortgages may be increased by such amounts as may be necessary to compensate for such costs, but not to exceed in any event the maximum, including high cost area increases, if any, otherwise applicable by more than one-half thereof.
- (g) Loan interest rate. Loans shall bear interest at a rate determined by HUD in accordance with this section.
- (1) Annual interest rate. Except as provided under paragraph (g)(2), loans shall bear interest at the rate in effect at the time the loan is made. The loan interest rate shall not exceed:
- (i) The average yield on the most recently issued 30-year marketable obligations of the United States during the 3-month period immediately preceding the fiscal year in which the loan is made (adjusted to the nearest one-eighth of one percent), plus an allowance to cover administrative costs and probable losses under the program; and
- (ii) Any applicable statutory ceiling on the loan interest rate including the allowance to cover administrative costs and probable losses.
- (2) Optional interest rate. The Borrower may elect an optional loan interest rate. To elect the optional rate, the Borrower must request that HUD determine the loan interest rate at the time of the Borrower's request for conditional or firm commitment for direct loan financing.
- (i) If the Borrower elects the optional loan interest rate, the loan interest rate shall not exceed:
- (A) The average yield on the most recently issued 30-year marketable obligations of the United States during the 3-month period immediately preceding the fiscal year in which the request for commitment is submitted (adjusted to

the nearest one-eighth of one percent), plus an allowance to cover administrative costs and probable losses under the program:

- (B) The average yield on the most recently issued 30-year marketable obligations of the United States during the 1-month period immediately preceding the month in which the request for commitment is submitted (adjusted to the nearest one-eighth of one percent), plus an allowance to cover the administrative costs and probable losses under the program; and (C) Any applicable statutory ceiling on the loan interest rate including an allowance to cover administrative costs and probable losses under the program.
- (ii) The date of submission of a request for conditional or firm commitment is the date that the Borrower submits the complete and acceptable request to HUD. The date of the submission of a request for commitment will not be affected by any subsequent resubmission of the request by the Borrower or by any reprocessing of the request by HUD.
- (iii) The Borrower may withdraw its election of the optional interest rate at any time before initial loan closing. If the Borrower elected the optional interest rate with its request for conditional commitment and withdraws its election, the loan will bear interest at the rate determined under paragraph (g)(1) of this section, unless the Borrower elects an optional interest rate with its request for firm commitment. If the Borrower withdraws its election after the date of submission of its request for firm commitment, the loan will bear interest at the rate determined under paragraph (g)(1) of this section.
- (iv) If initial loan closing has not occurred within 18 months after the Notice of Section 202 Fund Reservation is issued, the Borrower's election of the optional rate will be cancelled and the loan will bear interest at the rate determined under paragraph (g)(1) of this section.
- (3) Allowance for administrative costs and probable losses. For the purpose of computing the loan interest rate under paragraphs (g) (1) and (2) of this section, the allowance to cover administrative costs and probable losses under

- the program is one-fourth of one percent (.25%) per annum for both the construction and permanent loan periods.
- (h) Announcement of interest rates. (1) HUD will annually announce the loan interest rate determination under paragraph (g)(1) of this section by publishing notice of the rate in the FEDERAL REGISTER. The FEDERAL REGISTER notice will include a statement explaining the basis for the interest rate determination.
- (2) Upon the Borrower's request, HUD will provide available current information concerning the determination of the interest rate under paragraph (g)(2) of this section.
- (i) The loan shall be secured by a first mortgage on real estate in fee simple or long term leasehold. The mortgage shall be repayable during a term not to exceed 40 years and shall be subject to such terms and conditions as shall be determined by the Assistant Secretary.
- (j) In order to assure HUD of the Borrower's continued commitment to the development, management, and operation of the project, a minimum capital investment is required of Section 202 Borrowers of one-half of one percent (0.5%) of the mortgage amount committed to be disbursed, not to exceed the amount of \$10,000. Section 106(b) loans made pursuant to section 106 of the Housing Act of 1968 may not be utilized to meet the minimum capital investment requirement. Such minimum capital investment shall be placed in escrow at the initial closing of the Section 202 loan and shall be held by HUD or other escrow agent acceptable to the field office for not less than a 3-year period from the date of initial occupancy and may be used for operating expenses or deficits as may be directed by the field office. Any unexpended balance remaining in the minimum capital investment account at the end of the escrow period shall be returned to the Borrower.

§891.530 Prepayment privileges.

(a) The prepayment (whether in whole or in part) or the assignment or transfer of physical and financial assets of any Section 202 project is prohibited, unless the Secretary gives prior written approval.

(b) The Secretary may not grant approval unless he or she has determined that the prepayment or transfer of the loan is part of a transaction that will ensure the continued operation of the project, until the original maturity date of the loan, in a manner that will provide rental housing for the elderly and handicapped on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 loan agreement and any other loan agreements entered into under other provisions of law.

§891.535 Requirements for awarding construction contracts.

- (a) Awards shall be made only to responsible contractors that possess the potential ability to perform successfully under the terms and conditions of a proposed construction contract. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.
- (b) Each Borrower is permitted to use either competitive bidding (formal advertising) in selecting a construction contractor or the negotiated noncompetitive method of contract award under paragraph (c) of this section. In competitive bidding, sealed bids are publicly solicited and a firm, fixedprice contract is awarded (in accordance with the requirements of this paragraph (b)) to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest in price. Regardless of which method a Borrower uses, there should be an opportunity for minority owned and women owned businesses to be awarded a contract.
- (1) Bids shall be solicited from an adequate number of known contractors a reasonable time prior to the date set forth for opening of bids. In addition, the invitation shall be publicly advertised
- (2) The invitation for bids shall specify:
 - (i) The name of the Borrower;
- (ii) A brief description of the proposed project and the proposed construction contract;
 - (iii) A preliminary estimate of cost;

- (iv) That bids will be received at a specified place until a specified time at which time and place all bids will be publicly opened:
- (v) The location where the proposed forms of contract and bid documents, including plans and specifications, are on file and may be obtained on payment of a specified returnable deposit;
- (vi) That a certified check or bank draft or satisfactory bid bond in the amount of 5 percent of the bid shall be submitted with the bid;
- (vii) That the successful bidder will be required to provide assurance of completion in the form of a performance and payment bond or cash escrow; and
- (viii) That the Borrower reserves the right to reject any or all bids and to waive any informality.
- (3) The bid form, which must be submitted by all bidders, must specify:
 - (i) The name of the project;
- (ii) The name and address of the bidder:
- (iii) That the bidder proposes to furnish all labor, materials, equipment and services required to construct and complete the project, as described in the invitation for bids (including the contents of all documents on file), for a specified lump-sum price;
- (iv) That the security specified in paragraph (b)(2)(vi) of this section accompanies the bid;
- (v) The period after the bid opening during which the bid shall not be withdrawn without the consent of the Borrower;
- (vi) That the bidder will, if notified of acceptance of such bid within a specified period after the opening, execute and deliver a contract in the prescribed form and furnish the required bond within ten days thereafter;
- (vii) That the bidder acknowledges any amendments to the invitation for bids; and
- (viii) That the bidder certifies that the bid is in strict accordance with all terms of the invitation for bids (including the contents of all documents on file) and that the bid is signed by a person authorized to bind the bidder.

- (4) Bidding shall be open to all general contractors who furnish the security guaranteeing their bid, as described in paragraph (b)(2)(vi) of this section.
- (5) All bids shall be opened publicly at the time and place stated in the invitation for bids, in the presence of the HUD Regional Administrator or his designee.
- (6) A firm, fixed-price contract award shall be made by written notice to the responsible bidder whose bid, conforming to the invitation for bids, is lowest. The contract may provide for an incentive payment to the contractor for an early completion.
- (c) A Sponsor or Borrower may award a negotiated, noncompetitive construction contract.

§891.540 Loan disbursement procedures.

- (a) Disbursements of loan proceeds shall be made directly by HUD to or for the account of the Borrower and may be made through an approved lender, mortgage servicer, title insurance company, or other agent satisfactory to the Borrower and HUD.
- (b) All disbursements to the Borrower shall be made on a periodic basis in an amount not to exceed the HUD-approved cost of portions of construction or rehabilitation work completed and in place (except as modified in paragraph (d) of this section), minus the appropriate holdback, as determined by the field office.
- (c) Requisitions for loan disbursements shall be submitted by the Borrower on forms to be prescribed by the Assistant Secretary and shall be accompanied by such additional information as the field office may require in order to approve loan disbursements under subpart E of this part, including but not limited to evidence of compliance with the Davis-Bacon Act, Department of Labor regulations, all applicable zoning, building, and other governmental requirements, and such evidence of continued priority of the mortgage of the Borrower as the Assistant Secretary may prescribe.
- (d) In loan disbursements for building components stored off-site, the term building component shall mean any manufactured or preassembled part of

- a structure as defined by HUD and that the Assistant Secretary has designated for off-site storage because it is of such size or weight that storage of the components required for timely construction progress at the construction site is impractical, or weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly. Each building component must be specifically identified for incorporation into the property as provided under paragraph (d)(1)(ii) of this section.
- (1) Storage. (i) A loan disbursement may be made for up to 90 percent of the invoice value (to exclude costs of transportation and storage) of the building components stored off-site if the components are stored at a location approved by HUD.
- (ii) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the offsite location. It shall be kept together with all other building components of the same manufacturer intended for use in the same project for which loan disbursements have been made and separate and apart from similar units not for use in the project.
- (iii) Storage costs, if any, shall be borne the general contractor.
- (2) Responsibility for transportation, storage and insurance of off-site building components. The general contractor of the project shall have the responsibility for:
- (i) Insuring the components in the name of the Borrower while in transit and storage; and
- (ii) Delivering or contracting for the delivery of the components to the storage area and to the construction site, including payment of freight.
- (3) Loan disbursements. (i) Before a loan disbursement for a building component stored off-site is made, the Borrower shall:
- (A) Obtain a bill of sale for the component;
- (B) Provide HUD with a security agreement pledged by a first lien on the building components with the exception of such other liens or encumbrances as may be approved by HUD; and

- (C) File a financing statement in accordance with the Uniform Commercial Code.
- (ii) Before each loan disbursement for building components stored off-site is made the manufacturer and the general contractor shall certify to HUD that the components, in their intended use, comply with HUD-approved contract plan and specifications.
- (iii) Loan disbursements may be made only for components stored offsite in a quantity required to permit uninterrupted installation at the site.
- (iv) At no time shall the invoice value of building components being stored off-site, for which advances have been insured, represent more than 25 percent of the total estimated construction costs for the insured mortgaged project as specified in the construction contract. Notwithstanding the preceding sentence and other regulatory requirements that set bonding requirements, the percentage of total estimated construction costs insured by advances under this section may exceed 25 percent but not 50 percent if the mortgagor furnishes assurance of completion in the form of a corporate surety bond for the payment and performance each in the amount of 100 percent of the amount of the construction contract. In no event will insurance of components stored off-site be made in the absence of a payment and performance bond.
- (v) No single loan disbursement which is to be made shall be in an amount less than ten thousand (\$10,000) dollars.

§891.545 Completion of project, cost certification, and HUD approvals.

- (a) The Borrower must satisfy the requirements for completion of construction and substantial rehabilitation and approvals by HUD before submission of a final requisition for disbursement of loan proceeds.
- (b) The Borrower shall submit to the field office all documentation required for final disbursement of the loan, including:
- (1) A Borrower's/Mortgagor's Certificate of Actual Cost, showing the actual cost to the mortgagor of the construction contract, architectural, legal, organizational, offsite costs, and all

- other items of eligible expense. The certificate shall not include as actual cost any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor or to any of its officers, directors, or members.
- (2) A verification of the Certificate of Actual Cost by an independent Certified Public Accountant or independent public accountant acceptable to the field office.
- (3) In the case of projects not subject to competitive bidding, a certification of the general contractor (and of such subcontractors, material suppliers, and equipment lessors as the Assistant Secretary or field office may require), on a form prescribed by the Assistant Secretary, as to all actual costs paid for labor, materials, and subcontract work under the general contract exclusive of the builder's fee and kickbacks, rebates, trade discounts, or other similar payments to the general contractor, the mortgagor, or any of its officers, directors, stockholders, partners, or members.
- (c) In lieu of the requirements set forth in paragraphs (c)(1) and (3) of this section, a simplified form of cost certification prescribed by the Secretary may be completed and submitted by the Borrower for projects with mortgages of \$500,000 or less. The simplified cost certification shall be verified by an independent Certified Public Accountant or an independent public accountant in a manner acceptable to the Secretary.
- (d) If the Borrower's certified costs provided in accordance with paragraph (c) or (d) of this section and as approved by HUD are less than the loan amount, the contract rents will be reduced accordingly.
- (e) If the contract rents are reduced pursuant to paragraph (e) of this section, the maximum annual HAP Contract commitment will be reduced. If contract rents are reduced based on cost certification after HAP Contract execution, any overpayment after the effective date of the Contract will be recovered from the Borrower by HUD.

(Approved by the Office of Management and Budget under control number 2502–0044)

§891.555 Smoke detectors.

(a) Performance requirement. After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system designed for hearing-impaired persons in each bedroom occupied by a hearing-impaired person.

(b) Acceptability criteria. The smoke detector must be located, to the extent practicable, in a hallway adjacent to a bedroom, unless the unit is occupied by a hearing-impaired person, in which case each bedroom occupied by a hearing-impaired person must have an alarm system connected to the smoke detector installed in the hallway.

§891.560 HAP contract.

- (a) *HAP contract*. The housing assistance payments contract sets forth rights and duties of the Borrower and HUD with respect to the project and the housing assistance payments.
- (b) HAP contract execution. (1) Upon satisfactory completion of the project, the Borrower and HUD shall execute the HAP contract on the form prescribed by HUD.
- (2) The effective date of the HAP contract may be earlier than the date of execution, but no earlier than the date of HUD's issuance of the permission to occupy.
- (3) If the project is completed in stages, the procedures of paragraph (b) of this section shall apply to each stage.
- (c) Housing assistance payments to owners under the HAP contract. The housing assistance payments made under the HAP contract are:
- (1) Payments to the Borrower to assist eligible families leasing assisted units. The amount of the housing assistance payment made to the Borrower for an assisted unit leased to an eligible family is equal to the difference between the contract rent for the unit and the tenant rent payable by the family.
- (2) Payments to the Borrower for vacant assisted units (vacancy payments). The amount of and conditions for vacancy payments are described in §891.650. The housing assistance payments are made

monthly by HUD upon proper requisition by the Borrower, except payments for vacancies of more than 60 days, which are made semiannually by HUD upon requisition by the Borrower.

(d) Payment of utility reimbursement. As applicable, a utility reimbursement will be paid to a family occupying an assisted unit as an additional housing assistance payment. The HAP contract will provide that the Borrower will make this payment on behalf of HUD. Funds will be paid to the Borrower in trust solely for the purpose of making the additional payment. The Borrower may pay the utility reimbursement jointly to the family and the utility company, or, if the family and utility company consent, directly to the utility company.

§891.565 Term of HAP contract.

The term of the HAP contract for assisted units shall be 20 years. If the project is completed in stages, the term of the HAP contract for assisted units in each stage shall be 20 years. The term of the HAP contract for all assisted units in all stages of a project shall not exceed 22 years.

§891.570 Maximum annual commitment and project account.

- (a) Maximum annual commitment. The maximum annual amount that may be committed under the HAP contract is the total of the contract rents and utility allowances for all assisted units in the project.
- (b) Project account. (1) HUD will establish and maintain a specifically identified and segregated project account for each project. The project account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the HAP contract each year. HUD will make payments from this account for housing assistance payments as needed to cover increases in contract rents or decreases in tenant income and other payments for costs specifically approved by the Secretary.
- (2) If the HUD-approved estimate of required annual payments under the HAP contract for a fiscal year exceeds the maximum annual commitment for

that fiscal year plus the current balance in the project account, HUD will, within a reasonable time, take such steps authorized by section 8(c)(6) of the United States Housing Act of 1937 (42 U.S.C. 1437f note), as may be necessary, to assure that payments under the HAP contract will be adequate to cover increases in contract rents and decreases in tenant income.

§891.575 Leasing to eligible families.

- (a) Availability of assisted units for occupancy by eligible families. (1) During the term of the HAP contract, a Borrower shall make available for occupancy by eligible families the total number of units for which assistance is committed under the HAP contract. For purposes of this section, making units available for occupancy by eligible families means that the Borrower:
- (i) Is conducting marketing in accordance with §891.600(a);
- (ii) Has leased or is making good faith efforts to lease the units to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families.
- (iii) Has not rejected any such applicant family except for reasons acceptable to HUD.
- (2) If the Borrower is temporarily unable to lease all units for which assistance is committed under the HAP contract to eligible families, one or more units may, with the prior approval of HUD, be leased to otherwise eligible families that do not meet the income eligibility requirements of part 813 of this chapter. Failure on the part of the Borrower to comply with these requirements is a violation of the HAP contract and grounds for all available legal remedies, including an action for specific performance of the HAP contract, suspension or debarment from HUD programs, and reduction of the number of units under the HAP contract as set forth in paragraph (b) of this section.
- (b) Reduction of number of units covered by the HAP contract. HUD may reduce the number of units covered by the HAP contract to the number of units available for occupancy by eligible families if:

- (1) The Borrower fails to comply with the requirements of paragraph (a) of this section: or
- (2) Notwithstanding any prior approval by HUD, HUD determines that the inability to lease units to eligible families is not a temporary problem.
- (c) Restoration. HUD will agree to an amendment of the HAP contract to provide for subsequent restoration of any reduction made under paragraph (b) of this section if:
- (1) HUD determines that the restoration is justified by demand;
- (2) The Borrower otherwise has a record of compliance with the Borrower's obligations under the HAP contract; and
- (3) Contract and budget authority is available.
- (d) Applicability. In accordance with section 555 of the Cranston-Gonzalez National Affordable Housing Act of 1990, paragraphs (a) and (b) of this section apply to all contracts. An owner who had leased an assisted unit to an ineligible family consistent with the regulations in effect at the time will continue to lease the unit to that family. However, the owner must make the unit available for occupancy by an eligible family when the ineligible family vacates the unit.
- (e) Occupancy by families that are not elderly or handicapped. HUD may permit units in the project to be leased to other than elderly or handicapped families if:
- (1) The Borrower has made reasonable efforts to lease assisted and unassisted units to eligible families;
- (2) The Borrower has been granted HUD approval under paragraph (a) of this section; and
- (3) The Borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure under the Section 202 loan documents. HUD approval under paragraph (e)(3) of this section will be of limited duration. HUD may impose terms and conditions to this approval that are consistent with program objectives and necessary to protect its interest in the Section 202 loan.
- (f) Subpart L of 24 CFR part 5 applies to selection of tenants and occupancy requirements in cases where there is

involved or claimed to be involved incidents of, or criminal activity related to, domestic violence, dating violence, or stalking.

[61 FR 11956, Mar. 22, 1996, as amended at 73 FR 72343, Nov. 28, 2008; 75 FR 66262, Oct. 27, 2010]

§891.580 HAP contract administration.

HUD is responsible for the administration of the HAP contract.

§891.585 Default by Borrower.

- (a) *HAP contract provisions*. The HAP contract will provide:
- (1) That if HUD determines that the Borrower is in default under the HAP contract, HUD will notify the Borrower of the actions required to be taken to cure the default and of the remedies to be applied by HUD including an action for specific performance under the HAP contract, reduction or suspension of housing assistance payments and recovery of overpayments, where appropriate; and
- (2) That if the Borrower fails to cure the default, HUD has the right to terminate the HAP contract or to take other corrective action.
- (b) Loan provisions. Additional provisions governing default under the section 202 loan are included in the regulatory agreement and other loan documents.

§891.590 Notice upon HAP contract expiration.

- (a) Notice required. The HAP contract will provide that the Borrower will, at least one year before the end of the HAP contract term, notify each family leasing an assisted unit of any increase in the amount the family will be required to pay as rent as a result of the expiration.
- (b) Service requirements. The notice under paragraph (a) of this section shall be accomplished by sending a letter by first class mail, properly stamped and addressed, to the family at its address at the project, with a proper return address; and serving a copy of the notice on any adult person answering the door at the leased dwelling unit, or if no adult responds, by placing the notice under or through the door, if possible, or else by affixing the notice to the door. Service shall not be

considered to be effective until both required notices have been accomplished. The date on which the notice shall be considered to be received by the family shall be the date on which the Borrower mails the first class letter provided for in paragraph (b) of this section, or the date on which the notice provided for in paragraph (b) of this section is properly given, whichever is later.

- (c) Contents of notice. The notice shall advise each affected family that, after the expiration date of the HAP contract, the family will be required to bear the entire cost of the rent and that the Borrower may, subject to requirements and restrictions contained in the regulatory agreement, the lease, and State or local law, change the rent. The notice also shall state:
- (1) The actual (if known) or the estimated rent that will be charged following the expiration of the HAP contract:
- (2) The difference between the new rent and the total tenant payment toward rent under the HAP contract; and
- (3) The date the HAP contract will expire.
- (d) Certification to HUD. The Borrower shall give HUD a certification that families have been notified in accordance with this section and shall attach to the certification an example of the text of the notice.
- (e) Applicability. This section applies to all HAP contracts entered into under an agreement to enter into a housing assistance payments contract executed on or after October 1, 1981, or entered into under such an agreement executed before October 1, 1981 but renewed or amended after February 9, 1995.

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§891.595 HAP contract extension or renewal.

Upon expiration of the term of the HAP contract, HUD and the Borrower may agree (subject to available funds) to extend the term of the HAP contract or to renew the HAP contract. The number of assisted units under the extended or renewed HAP contract shall equal the number of assisted units

under the original HAP contract, except that:

(a) HUD and the Borrower may agree to reduce the number of assisted units by the number of assisted units that are not occupied by eligible families at the time of the extension or renewal; and

(b) HUD and the Borrower may agree to permit reductions in the number of assisted units during the term of the extended or renewed HAP contract as assisted units are vacated by eligible families. Nothing in this section shall prohibit HUD from reducing the number of units covered under the extended or renewed HAP contract in accordance with §891.575(b).

§891.600 Responsibilities of Borrower.

- (a) Marketing. (1) The Borrower must commence and continue diligent marketing activities not later than 90 days before the anticipated date of availability for occupancy of the first unit of the project. Market activities shall include the provision of notices of availability of housing under the program to operators of temporary housing for the homeless in the same housing market.
- (2) Marketing must be done in accordance with the HUD-approved affirmative fair housing marketing plan and all Federal, State, or local fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of discriminatory considerations, such as their race, color, creed, religion, familial status, disability, sex or national origin. Marketing must also be done in accordance with the communication and notice requirements of Section 504 at 24 CFR 8.6 and 24 CFR 8.54.
- (3) At the time of HAP contract execution, the Borrower must submit to HUD a list of leased and unleased assisted units, with a justification for the unleased units, in order to qualify for vacancy payments for the unleased units.
- (b) Management and maintenance. The Borrower is responsible for all management functions. These functions in-

clude selection and admission of tenants, required reexaminations of incomes for families occupying assisted units (or residential spaces, as applicable), collection of rents, termination of tenancy and eviction, and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All functions must be performed in compliance with equal opportunity requirements.

- (c) Contracting for services. (1) With HUD approval, the Borrower may contract with a private or public entity for performance of the services or duties required in paragraphs (a) and (b) of this section. However, such an arrangement does not relieve the Borrower of responsibility for these services and duties. All such contracts are subject to the restrictions governing prohibited contractual relationships described in §§ 891.130 and 891.505, if applicable. (These prohibitions do not extend to management contracts entered into by the Borrower with the Sponsor or its nonprofit affiliate).
- (2) Consistent with the objectives of Executive Order No. 11625 (36 FR 19967, 3 CFR, 1971–1975 Comp., p. 616; as amended by Executive Order No. 12007 (42 FR 42839, 3 CFR, 1977 Comp., p. 139; unless otherwise noted); Executive Order No. 12432 (48 FR 32551, 3 CFR, 1983 Comp., p. 198; unless otherwise noted); and Executive Order No. 12138 (44 FR 29637, 3 CFR, 1979 Comp., p. 393; unless otherwise noted), the Borrower will promote awareness and participation of minority and women's business enterprises in contracting and procurement activities
- (d) Submission of financial and operating statements. The Borrower must submit to HUD:
- (1) Within 60 days after the end of each fiscal year of project operations, financial statements for the project audited by an independent public accountant and in the form required by HUD; and
- (2) Other statements regarding project operation, financial conditions and occupancy as HUD may require to administer the housing assistance payments contract (HAP contract) or the project assistance contract (PAC), as

applicable, and to monitor project operations.

(e) Use of project funds. The Borrower shall maintain a separate project fund account in a depository or depositories that are members of the Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund and shall deposit all rents, charges, income and revenues arising from project operation or ownership to this account. All project funds are to be deposited in Federally-insured accounts. All balances shall be fully insured at all times, to the maximum extent possible. Project funds must be used for the operation of the project (including required insurance coverage), to make required principal and interest payments on the Section 202 loan, and to make required deposits to the replacement reserve under §§ 891.605 and 891.745 (as applicable), in accordance with a HUD-approved budget. Any project funds in the project funds account (including earned interest) following the expiration of the fiscal year shall be deposited in a Federally-insured residual receipts account within 60 days following the end of the fiscal year. Withdrawals from this account may be made only for project purposes and with the approval of HUD. If there are funds remaining in the residual receipts account when the mortgage is satisfied, such funds shall be returned to HUD.

(f) Reports. The Borrower shall submit such reports as HUD may prescribe to demonstrate compliance with applicable civil rights and equal opportunity requirements.

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§891.605 Replacement reserve.

- (a) Establishment of reserve. The Borrower shall establish and maintain a replacement reserve to aid in funding extraordinary maintenance, and repair and replacement of capital items.
- (b) Deposits to reserve. The Borrower shall make monthly deposits to the replacement reserve in an amount determined by HUD. Further requirements regarding the amount of the deposits for projects funded under §§891.655 through 891.790 are provided in §891.745.

- (c) Level of reserve. The reserve must be built up to and maintained at a level determined by HUD to be sufficient to meet projected requirements. Should the reserve reach that level, the amount of the deposit to the reserve may be reduced with the approval of HUD.
- (d) Administration of reserve. Replacement reserve funds must be deposited with HUD or in a Federally-insured depository in an interest-bearing account(s) whose balances are fully insured at all times. All earnings including interest on the reserve must be added to the reserve. Funds may be drawn from the reserve and used only in accordance with HUD guidelines and with the approval of, or as directed by, HUD.

§891.610 Selection and admission of tenants.

- (a) Written procedures. The Owner shall adopt written tenant selection procedures that ensure nondiscrimination in the selection of tenants and that are consistent with the purpose of improving housing opportunities for very low-income elderly or handicapped persons; and reasonably related to program eligibility and an applicant's ability to perform the obligations of the lease. Owners shall promptly notify in writing any rejected applicant of the grounds for any rejection. Additionally, owners shall maintain a written, chronological waiting list showing the name, race, gender, ethnicity and date of each person applying for the program.
- (b) Application for admission. The Borrower must accept applications for admission to the project in the form prescribed by HUD and is obligated to confirm all information provided by the applicant families on the application. Applicant families must be requested to complete a release of information consent for verification of information. Applicants applying for assisted units must complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security Numbers, and sign and submit consent forms for the obtaining of wage and claim information from State Wage Information

Collection Agencies, as provided by 24 CFR part 5, subpart B. Both the Borrower and the applicant must complete and sign the application for admission. On request, the Borrower must furnish copies of all applications for admission to HUD.

(c) Determination of eligibility and selection of tenants. The Borrower is responsible for determining whether applicants are eligible for admission and for selection of families. To be eligible for admission, an applicant must be an elderly or handicapped family as defined in §891.505; meet any project occupancy requirements approved by HUD; meet the disclosure and verification requirement for Social Security Numbers and sign and submit consent forms for obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B; and, if applying for an assisted unit, be eligible for admission under subpart F of 24 CFR part 5, which governs selection of tenants and occupancy requirements. For cases involving, or allegedly involving, domestic violence, dating violence, stalking, or criminal activity directly relating to such violence, the provisions of 24 CFR part 5, subpart L, apply.

(d) Unit assignment. If the Borrower determines that the family is eligible and is otherwise acceptable and units are available, the Borrower will assign the family a unit. The Borrower will assign the family a unit of the appropriate size in accordance with HUD's general occupancy guidelines. If no suitable unit is available, the Borrower 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 within the next 12 months, the Borrower may advise the applicant that no additional applications for admission are being considered for that reason, except that the Borrower 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 24 CFR part 5, subpart D.

(e) Ineligibility determination. If the Borrower determines that an applicant is ineligible for admission or the Borrower is not selecting the applicant for other reasons, the Borrower will promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting with the Borrower or managing agent to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by a member of the Borrower's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights (e.g., rights granted under Federal, State, or local civil rights laws) if the applicant believes he or she is being discriminated against on a prohibited basis. The informal review provisions for the denial of a Federal preference are provided in §5.410(g) of this title.

(f) Records. Records on applicants and approved eligible families, which provide racial, ethnic, gender, handicap status, and place of previous residency data required by HUD, must be retained for three years.

(g) Reexamination of family income and composition—(1) Regular reexaminations. The Borrower must reexamine the income and composition of the family at least every 12 months. Upon verification of the information, the Borrower shall make appropriate adjustments in the total tenant payment in accordance with part 813 of this chapter and determine whether the family's unit size is still appropriate. The Borrower must adjust tenant rent and the housing assistance payment and must carry out any unit transfer in accordance with the administrative instructions issued by HUD. At the time of reexamination under paragraph (g)(1) of this section, the Borrower must require the family to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B.

(2) Interim reexaminations. The family must comply with the provisions in its lease regarding interim reporting of changes in income. If the Borrower receives information concerning a change in the family's income or other circumstances between regularly

scheduled reexaminations, the Borrower must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other circumstances that results in an adjustment in the total tenant payment, tenant rent and housing assistance payment must be verified.

(3) Continuation of housing assistance payments. (i) A family shall remain eligible for housing assistance payments until the total tenant payment equals or exceeds the gross rent. The termination of subsidy eligibility will not affect the family's other rights under its lease. Housing assistance payments may be resumed if, as a result of changes in income, rent or other relevant circumstances during the term of the HAP contract, the family meets the income eligibility requirements of part 813 of this chapter and housing assistance is available for the unit under the terms of the HAP contract. The family will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (c) of this section.

(ii) A family's eligibility for housing assistance payments may be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including information related to disclosure and verification of Social Security Numbers, or failure to sign and submit consent forms for the obtaining of wage and claim information from State wage information collection agencies, as provided by 24 CFR part 5, subpart B.

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[61 FR 11956, Mar. 22, 1996, as amended at 70 FR 77744, Dec. 30, 2005; 73 FR 72343, Nov. 28, 2008; 75 FR 66262, Oct. 27, 2010]

\$891.615 Obligations of the family.

The obligations of the family are provided in §891.415.

§891.620 Overcrowded and underoccupied units.

If the Borrower determines that because of change in family size, an assisted unit is smaller than appropriate for the eligible family to which it is leased, or that the assisted unit is larg-

er than appropriate, housing assistance payments or project assistance payments (as applicable) with respect to the unit will not be reduced or terminated until the eligible family has been relocated to an appropriate alternate unit. If possible, the Borrower will, as promptly as possible, offer the family an appropriate alternate unit. The Borrower may receive vacancy payments for the vacated unit if the Borrower complies with the requirements of \$891.650.

§891.625 Lease requirements.

The lease requirements are provided in §891.425.

§891.630 Denial of admission, termination of tenancy, and modification of lease.

(a) The provisions of part 5, subpart I, of this title apply to Section 202 direct loan projects.

(b) The provisions of part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit.

(c) In actions or potential actions to terminate tenancy, the Owner shall follow 24 CFR part 5, subpart L, in all cases where domestic violence, dating violence, stalking, or criminal activity directly related to domestic violence, dating violence, or stalking is involved or claimed to be involved.

[66 FR 28798, May 24, 2001, as amended at 73 FR 72343, Nov. 28, 2008; 75 FR 66262, Oct. 27, 2010]

§891.635 Security deposits.

The general requirements for security deposits on assisted units are provided in §891.435. For purposes of subpart E of this part, the additional requirements apply:

(a) The Borrower may require each family occupying an unassisted unit (or residential space in a group home) to pay a security deposit equal to one month's rent payable by the family.

(b) The Borrower shall maintain a record of the amount in the segregated interest-bearing account that is attributable to each family in residence in the project. Annually for all families, and when computing the amount available for disbursement under

§891.435(b)(3), the Borrower shall allocate to the family's balance the interest accrued on the balance during the year. Unless prohibited by State or local law, the Borrower may deduct for the family, from the accrued interest for the year, the administrative cost of computing the allocation to the family's balance. The amount of the administrative cost adjustment shall not exceed the accrued interest allocated to the family's balance for the year.

§891.640 Adjustment of rents.

- (a) Contract rents—(1) Adjustment based on approved budget. If the HAP contract provides, or has been amended to provide, that contract rents will be adjusted based upon a HUD-approved budget, HUD will calculate contract rent adjustments based on the sum of the project's operating costs and debt service (as calculated by HUD), with adjustments for vacancies. project's nonrental income, and other factors that HUD deems appropriate. The calculation will be made on the basis of information provided by the Borrower on a form acceptable to the Secretary. The automatic adjustment factor described in part 888 of this chapter is not used to adjust contract rents under paragraph (a)(1) of this section, except to the extent that the amount of the replacement reserve deposit is adjusted under §880.602 of this chapter.
- (2) Annual and special adjustments. If the HAP contract provides that contract rents will be adjusted based on the application of an automatic adjustment factor and by special additional adjustments:
- (i) Consistent with the HAP contract, contract rents may be adjusted in accordance with part 888 of this chapter;
- (ii) Special additional adjustments will be granted, to the extent determined necessary by HUD, to reflect increases in the actual and necessary expenses of owning and maintaining the assisted units that have resulted from substantial general increases in real property taxes, assessments, utility rates or similar costs (i.e., assessments and utilities not covered by regulated rates), and that are not adequately compensated for by an annual adjustment. The Borrower must submit to

HUD required supporting data, financial statements, and certifications for the special additional adjustment.

(b) Rent for unassisted units. The rent payable by families occupying units that are not assisted under the HAP contract shall be equal to the contract rent computed under paragraph (a) of this section.

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§891.645 Adjustment of utility allowances.

In connection with adjustments of contract rents as provided in §891.640(a), the requirements for the adjustment of utility allowances provided in §891.440 apply.

§891.650 Conditions for receipt of vacancy payments for assisted units.

- (a) General. Vacancy payments under the HAP contract will not be made unless the conditions for receipt of these housing assistance payments set forth in this section are fulfilled.
- (b) Vacancies during rent-up. For each unit that is not leased as of the effective date of the HAP contract, the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy, if the Borrower:
 - (1) Complied with §891.600;
- (2) Has taken and continues to take all feasible actions to fill the vacancy; and
- (3) Has not rejected any eligible applicant except for good cause acceptable to HUD.
- (c) Vacancies after rent-up. If an eligible family vacates a unit, the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the Borrower:
- (1) Certifies that it did not cause the vacancy by violating the lease, the HAP contract, or any applicable law;
- (2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;
- (3) Has fulfilled and continues to fulfill the requirements specified in §891.600(a)(2) and (3), and in paragraphs (b)(2) and (3) of this section; and

- (4) For any vacancy resulting from the Borrower's eviction of an eligible family, certifies that it has complied with §891.630.
- (d) Vacancies for longer than 60 days. If a unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the Borrower may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up to 12 additional months for the unit if:
- (1) The unit was in decent, safe, and sanitary condition during the vacancy period for which payment is claimed;
- (2) The Borrower has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and
- (3) The Borrower has demonstrated to the satisfaction of HUD that:
- (i) For the period of vacancy, the project is not providing the Borrower with revenues at least equal to project expenses (exclusive of depreciation) and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit; and
- (ii) The project can achieve financial soundness within a reasonable time.
- (e) Prohibition of double compensation for vacancies. If the Borrower collects payments for vacancies from other sources (tenant rent, security deposits, payments under §891.435(c), or governmental payments under other programs), the Borrower shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed contract rent.

(Approved by the Office of Management and Budget under control number 2502–0371)

SECTION 202 PROJECTS FOR THE NON-ELDERLY HANDICAPPED FAMILIES AND INDIVIDUALS—SECTION 162 ASSIST-ANCE

§891.655 Definitions applicable to 202/ 162 projects.

The following definitions apply to projects for eligible families receiving project assistance payments under section 202(h) of the Housing Act of 1959 in

addition to reservations under section 202 (202/162 projects):

Annual income is defined in part 813 of this chapter. In the case of an individual residing in an intermediate care facility for the mentally retarded that is assisted under Title XIX of the Social Security Act and subpart E of this part, the annual income of the individual shall exclude protected personal income as provided under that Act. For the purposes of determining the total tenant payment, the income of such individuals shall be imputed to be the amount that the family would receive if assisted under Title XVI of the Social Security Act.

Assisted unit means a dwelling unit that is eligible for assistance under a project assistance contract (PAC).

Contract rent means the total amount of rent specified in the PAC as payable by HUD and the family to the Borrower for an assisted unit or residential space.

Family (eligible family) means a handicapped family (as defined in §891.505) that meets the project occupancy requirements approved by HUD and, if the family occupies an assisted unit, meets the low-income requirements described in §813.102 of this chapter, as modified by the definition of "annual income" in this section.

Gross rent is defined in part 813 of this chapter.

Group home means a single family residential structure designed or adapted for occupancy by nonelderly handicapped individuals.

Housing for handicapped families means housing and related facilities occupied by handicapped families that are primarily nonelderly handicapped families.

Independent living complex means a project designed for occupancy by nonelderly handicapped families in separate dwelling units where each dwelling unit includes a kitchen and a bath.

Operating costs means expenses related to the provision of housing and excludes expenses related to administering, or managing the provision of, supportive services. Operating costs include:

(1) Administrative expenses, including salary and management expenses related to the provision of shelter;

- (2) Maintenance expenses, including routine and minor repairs and groundskeeping;
 - (3) Security expenses;
- (4) Utilities expenses, including gas, oil, electricity, water, sewer, trash removal, and extermination services. Operating costs exclude telephone services for families;
 - (5) Taxes and insurance; and
 - (6) Allowances for reserves.
- PAC (project assistance contract) means the contract entered into by the Borrower and HUD setting forth the rights and duties of the parties with respect to the project and the payments under the PAC.

Project account means a specifically identified and segregated account for each project which is established in accordance with §891.715(b) out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PAC each year.

Project assistance payment means the payment made by HUD to the Borrower for assisted units as provided in the PAC. The payment is the difference between the contract rent and the tenant rent. An additional payment is made to a family occupying an assisted unit in an independent living complex when the utility allowance is greater than the total tenant payment. A project assistance payment, known as a "vacancy payment," may be made to the Borrower when an assisted unit (or residential space in a group home) is vacant, in accordance with the terms of the PAC.

Rent is defined in §891.505.

Tenant rent means the monthly amount defined in, and determined in accordance with part 813 of this chapter.

Total tenant payment means the monthly amount defined in, and determined in accordance with part 813 of this chapter.

Utility allowance is defined in part 813 of this chapter and is determined or approved by HUD.

Utility reimbursement is defined in part 813 of this chapter.

Vacancy payment means the project assistance payment made to the Borrower by HUD for a vacant assisted unit (or residential space in a group

home) if certain conditions are fulfilled, as provided in the PAC. The amount of the vacancy payment varies with the length of the vacancy period and is less after the first 60 days of any vacancy.

§891.660 Project standards.

- (a) *Property standards*. The property standards for 202/162 projects are provided in §891.120(a).
- (b) Minimum group home standards. The minimum group home standards for 202/162 projects are provided in §891.310(a).
- (c) Accessibility requirements. The accessibility requirements for 202/162 projects are provided in §§ 891.120(b) and 891.310(b).
- (d) *Smoke detectors*. The requirements for smoke detectors for 202/162 projects are provided in §891.120(d).

§891.665 Project size limitations.

- (a) Maximum project size. Projects funded under §§891.655 through 891.790 are subject to the following project size limitations:
- (1) Group homes may not be designed to serve more than 15 persons on one site:
- (2) Independent living complexes for chronically mentally ill individuals may not be designed to serve more than 20 persons on one site; and
- (3) Independent living complexes for handicapped families in the developmental disability or physically handicapped occupancy categories may not have more than 24 units nor more than 24 households on one site. For the purposes of this section, household has the same meaning as handicapped family, except that unrelated handicapped individuals sharing a unit (other than a handicapped person living with another person who is essential to the handicapped person's well-being) are counted as separate households. For independent living complexes for handicapped families in the developmental disability or physically handicapped occupancy categories, units with three or more bedrooms may only be developed to serve handicapped families of one or two parents with children.
- (b) Additional limitations. Based on the amount of loan authority appropriated

for a fiscal year, HUD may have imposed additional limitations on the number of units or residents that may be proposed under an application for Section 202 loan fund reservation, as published in the annual notice of funding availability or the invitation for Section 202 fund reservation.

- (c) Exemptions. On a case-by-case basis, HUD may approve independent living complexes that do not comply with the project size limitations prescribed in paragraphs (a)(2), (a)(3), or (b) of this section. HUD may approve such projects if the Sponsor demonstrates:
- (1) The increased number of units is necessary for the economic feasibility of the project;
- (2) A project of the size proposed is compatible with other residential development and the population density of the area in which the project is to be located:
- (3) A project of the size proposed can be successfully integrated into the community; and
- (4) A project of the size proposed is marketable in the community.

§891.670 Cost containment and modest design standards.

- (a) Restrictions on amenities. Projects must be modest in design. Except as provided in paragraph (d) of this section, amenities must be limited to those amenities, as determined by HUD, that are generally provided in unassisted decent, safe, and sanitary housing for low-income families in the market area. Amenities not eligible for HUD funding include balconies. atriums, decks, bowling alleys, swimming pools, saunas, and jacuzzis. Dishwashers, trash compactors, and washers and dryers in individual units will not be funded in independent living complexes. The use of durable materials to control or reduce maintenance, repair, and replacement costs is not an excess amenity.
- (b) *Unit sizes*. For independent living complexes, HUD will establish limitations on the size of units and number of bathrooms, based on the number of bedrooms that are in the unit.
- (c) Special spaces and accommodations. (1) The costs of construction of special spaces and accommodations may not

- exceed 10 percent of the total cost of construction, except as provided in paragraph (d) of this section. Special spaces and accommodations include multipurpose rooms, game rooms, libraries, lounges, and, in independent living complexes, central kitchens and dining rooms.
- (2) Special spaces and accommodations exclude offices, halls, mechanical rooms, laundry rooms, and parking areas; dwelling units and lobbies in independent living complexes; and bedrooms, living rooms, dining and kitchen areas, shared bathrooms, and resident staff dwelling units in group homes.
- (d) Exceptions. HUD may approve a project that does not comply with the cost containment and modest design standards of paragraphs (a) through (c) of this section if:
- (1) The Sponsor demonstrates a willingness and ability to contribute the incremental development cost and continuing operating costs associated with the additional amenities or design features; or
- (2) The proposed project involves substantial rehabilitation or acquisition with or without moderate rehabilitation, the additional amenities or design features were incorporated into the existing structure before the submission of the application, and the total development cost of the project with the additional amenities or design features does not exceed the cost limits.

§891.675 Prohibited facilities.

The requirements for prohibited facilities for 202/162 projects are provided in §891.315, except that Section 202/162 projects may not include commercial spaces.

§ 891.680 Site and neighborhood standards.

The general requirements for site and neighborhood standards for 202/162 projects are provided in §§891.125 and 891.320. In addition to the requirements in §§891.125 and 891.320, the following requirements apply to 202/162 projects:

(a) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(b) Projects must be located in neighborhoods where other family housing is located. Except as provided below, projects may not be located adjacent to the following facilities, or in areas where such facilities are concentrated: schools or day care centers for handicapped persons, workshops, medical facilities, or other housing primarily serving handicapped persons. Projects may be located adjacent to other housing primarily serving handicapped persons if the projects together do not exceed the project size limitations under \$891.665(a).

§891.685 Prohibited relationships.

The requirements for prohibited relationships for 202/162 projects are provided in §891.130.

§891.690 Other Federal requirements.

In addition to the Federal requirements set forth in 24 CFR part 5, other Federal requirements for the 202/162 projects are provided in §§891.155 and 891.325.

§891.695 Operating cost standards.

The requirements for the operating cost standards are provided in §891.150.

§891.700 Prepayment of loans.

- (a) Prepayment prohibition. The prepayment (whether in whole or in part) or the assignment or transfer of physical and financial assets of any Section 202 project is prohibited, unless the Assistant Secretary gives prior written approval.
- (b) HUD-approved prepayment. Approval for prepayment or transfer will not be granted unless HUD determines that the prepayment or transfer of the loan is a part of a transaction that will ensure the continued operation of the project until the original maturity date of the loan in a manner that will provide rental housing for the handicapped families on terms at least as advantageous to existing and future tenants as the terms required by the original Section 202 loan agreement and any other loan agreements entered into under other provisions of law.

§891.705 Project assistance contract.

(a) Project assistance contract (PAC). The PAC sets forth rights and duties of

the Borrower and HUD with respect to the project and the project assistance payments.

- (b) PAC execution. (1) Upon satisfactory completion of the project, the Borrower and HUD shall execute the PAC on the form prescribed by HUD.
- (2) The effective date of the PAC may be earlier than the date of execution, but no earlier than the date of HUD's issuance of the permission to occupy.
- (3) If the project is completed in stages, the procedures of paragraph (b) of this section shall apply to each stage.
- (c) Project assistance payments to owners under the PAC. The project assistance payments made under the PAC are:
- (1) Payments to the Borrower to assist eligible families leasing assisted units. The amount of the project assistance payment made to the Borrower for an assisted unit (or residential space in a group home) that is leased to an eligible family is equal to the difference between the contract rent for the unit (or pro rata share of the contract rent in a group home) and the tenant rent payable by the family.
- (2) Payments to the Borrower for vacant assisted units ("vacancy payments"). The amount of and conditions for vacancy payments are described in §891.790. HUD makes the project assistance payments monthly upon proper requisition by the Borrower, except payments for vacancies of more than 60 days, which HUD makes semiannually upon requisition by the Borrower.
- (d) Payment of utility reimbursement. If applicable, a utility reimbursement will be paid to a family occupying an assisted unit in an independent living complex as an additional project assistance payment. The PAC will provide that the Borrower will make this payment on behalf of HUD. Funds will be paid to the Borrower in trust solely for the purpose of making the additional payment. The Borrower may pay the utility reimbursement jointly to the family and the utility company, or, if the family and utility company consent, directly to the utility company.

§ 891.710 Term of PAC.

The term of the PAC shall be 20 years. If the project is completed in

stages, the term of the PAC for each stage shall be 20 years. The term of the PAC for stages of a project shall not exceed 22 years.

§891.715 Maximum annual commitment and project account.

- (a) Maximum annual commitment. The maximum annual amount that may be committed under the PAC is the total of the initial contract rents and utility allowances for all assisted units in the project.
- (b) Project account. (1) HUD will establish and maintain a specifically identified and segregated project account for each project. The project account will be established out of the amounts by which the maximum annual commitment exceeds the amount actually paid out under the PAC each year. HUD will make payments from this account for project assistance payments as needed to cover increases in contract rents or decreases in tenant income and other payments for costs specifically approved by the Secretary.
- (2) If the HUD-approved estimate of required annual payments under the PAC for a fiscal year exceeds the maximum annual commitment for that fiscal year plus the current balance in the project account, HUD will, within a reasonable time, take such steps authorized by section 202(h)(4)(A) of the Housing Act of 1959, as may be necessary, to assure that payments under the PAC will be adequate to cover increases in contract rents and decreases in tenant income.

§891.720 Leasing to eligible families.

- (a) Availability of assisted units for occupancy by eligible families. During the term of the PAC, a Borrower shall make all units (or residential spaces in a group home) available for eligible families. For purposes of this section, making units or residential spaces available for occupancy by eligible families means that the Borrower:
- (1) Is conducting marketing in accordance with §891.740(a);
- (2) Has leased or is making good faith efforts to lease the units or residential spaces to eligible and otherwise acceptable families, including taking all feasible actions to fill vacancies by renting to such families; and (3) Has not re-

- jected any such applicant family except for reasons acceptable to HUD. If the Borrower is temporarily unable to lease all units or residential spaces to eligible families, one or more units or residential spaces may, with the prior approval of HUD, be leased to otherwise eligible families that do not meet the income requirements of part 813 of this chapter, as modified by §891.505. Failure on the part of the Borrower to comply with these requirements is a violation of the PAC and grounds for all available legal remedies, including an action for specific performance of the PAC, suspension or debarment from HUD programs, and reduction of the number of units (or in the case of group homes, reduction of the number of residential spaces) under the PAC as set forth in paragraph (b) of this section.
- (b) Reduction of number of units covered by the PAC. HUD may reduce the number of units (or in the case of group homes, the number of residential spaces) covered by the PAC to the number of units or residential spaces available for occupancy by eligible families if:
- (1) The Borrower fails to comply with the requirements of paragraph (a) of this section; or
- (2) Notwithstanding any prior approval by HUD, HUD determines that the inability to lease units or residential spaces to eligible families is not a temporary problem.
- (c) Restoration. HUD will agree to an amendment of the PAC to provide for subsequent restoration of any reduction made under paragraph (b) of this section if:
- (1) HUD determines that the restoration is justified by demand;
- (2) The Borrower otherwise has a record of compliance with the Borrower's obligations under the PAC; and
- (3) Contract and budget authority is available.
- (d) Occupancy by families that are not handicapped. HUD may relieve the Borrower of the requirement that all units in the project (or residential spaces in a group home) must be leased to handicapped families if:
- (1) The Borrower has made reasonable efforts to lease to eligible families:

- (2) The Borrower has been granted HUD approval under paragraph (a) of this section; and
- (3) The Borrower is temporarily unable to achieve or maintain a level of occupancy sufficient to prevent financial default and foreclosure under the Section 202 loan documents. HUD approval under this paragraph will be of limited duration. HUD may impose terms and conditions to this approval that are consistent with program objectives and necessary to protect its interest in the Section 202 loan.

§891.725 PAC administration.

HUD is responsible for the administration of the PAC.

§891.730 Default by Borrower.

- (a) PAC provisions. The PAC will provide:
- (1) That if HUD determines that the Borrower is in default under the PAC, HUD will notify the Borrower of the actions required to be taken to cure the default and of the remedies to be applied by HUD, including an action for specific performance under the PAC, reduction or suspension of project assistance payment and recovery of overpayments, as appropriate; and
- (2) That if the Borrower fails to cure the default, HUD has the right to terminate the PAC or to take other corrective action.
- (b) Loan provisions. Additional provisions governing default under the Section 202 loan are included in the regulatory agreement and other loan documents

§891.735 Notice upon PAC expiration.

The PAC will provide that the Borrower will, at least 90 days before the end of the PAC contract term, notify each family occupying an assisted unit (or residential space in a group home) of any increase in the amount the family will be required to pay as rent as a result of the expiration. The notice of expiration will contain such information and will be served in such manner as HUD may prescribe.

§891.740 Responsibilities of Borrower.

(a) Marketing. (1) The Borrower must commence and continue diligent marketing activities not later than 90 days

- before the anticipated date of availability for occupancy of the group home or the anticipated date of availability of the first unit in an independent living complex. Market activities shall include the provision of notices of the availability of housing under the program to operators of temporary housing for the homeless in the same housing market.
- (2) Marketing must be done in accordance with the HUD-approved affirmative fair housing marketing plan and all fair housing and equal opportunity requirements. The purpose of the plan and requirements is to achieve a condition in which eligible families of similar income levels in the same housing market have a like range of housing choices available to them regardless of their race, color, creed, religion, sex, or national origin.
- (3) At the time of PAC execution, the Borrower must submit to HUD a list of leased and unleased assisted units (or in the case of a group home, leased and unleased residential spaces) with a justification for the unleased units or residential spaces, in order to qualify for vacancy payments for the unleased units or residential spaces.
- (b) Management and maintenance. The responsibilities of the Borrower with regard to management and maintenance are provided in §891.600(b).
- (c) Contracting for services. The responsibilities of the Borrower with regard to contracting for services are provided in §891.600(c).
- (d) Submission of financial and operating statements. The responsibilities of the Borrower with regard to the submission of financial and operating statements are provided in §891.600(d).
- (e) Use of project funds. The responsibilities of the Borrower with regard to the use of project funds are provided in §891.600(e).
- (f) Reports. The responsibilities of the Borrower with regard to reports are provided in §891.600(f).

§891.745 Replacement reserve.

The general requirements for the replacement reserve are provided in §891.605. For projects funded under §§891.655 through 891.790, the amount of the deposits for the initial year of operation shall be an amount equal to 0.6

percent of the cost of the total structures (for new construction projects), 0.4 percent of the cost of the initial mortgage amount (for all other projects), or such higher rate as required by HUD. For the purposes of this section, total structures include main buildings, accessory buildings, garages, and other buildings. The amount of the deposits will be adjusted each year by the amount of the annual adjustment factor as described in part 888 of this chapter.

§891.750 Selection and admission of tenants.

(a) Application for admission. The Borrower must accept applications for admission to the project in the form prescribed by HUD. Applicant families applying for assisted units (or residential spaces in a group home) must complete a certification of eligibility as part of the application for admission. Applicant families must meet the disclosure and verification requirements for Social Security Numbers, and sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B. Both the Borrower and the applicant family must complete and sign the application for admission. On request, the Borrower must furnish copies of all applications for admission to HUD.

(b) Determination of eligibility and selection of tenants. The Borrower is responsible for determining whether applicants are eligible for admission and for the selection of families. To be eligible for admission, an applicant family must be a handicapped family (as defined in §891.505); meet any project occupancy requirements approved by HUD; meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B; and be a low-income family, as defined in §813.102 of this chapter (as modified by §891.505). Under certain circumstances, HUD may permit the leasing of units (or residential space in a group home) to ineligible families under §891.720.

(1) Local residency requirements are prohibited. Local residency preferences may be applied in selecting tenants

only to the extent that they are not inconsistent with affirmative fair housing marketing objectives and the Borrower's HUD-approved affirmative fair housing marketing plan. Preferences may not be based on the length of time the applicant has resided in the jurisdiction. 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.

(2) If the Borrower determines that the family is eligible and is otherwise acceptable and units (or residential spaces in a group home) are available, the Borrower will assign the family a unit or residential space in a group home. If the family will occupy an assisted unit the Borrower will assign the family a unit of the appropriate size in accordance with HUD standards. If no suitable unit (or residential space in a group home) is available, the Borrower will place the family on a waiting list for the project and notify the family when a suitable unit or residential space may become available. If the waiting list is so long that the applicant would not be likely to be admitted within the next 12 months, the Borrower may advise the applicant that no additional applications for admission are being considered for that reason.

(3) If the Borrower determines that an applicant is ineligible for admission or the Borrower is not selecting the applicant for other reasons, the Borrower will promptly notify the applicant in writing of the determination, the reasons for the determination, and that the applicant has a right to request a meeting to review the rejection, in accordance with HUD requirements. The review, if requested, may not be conducted by the member of the Borrower's staff who made the initial decision to reject the applicant. The applicant may also exercise other rights if the applicant believes the applicant is being discriminated against on the basis of race, color, creed, religion, sex, handicap, or national origin.

(4) Records on applicants and approved eligible families, which provide racial, ethnic, gender and place of previous residency data required by HUD, must be maintained and retained for three years.

(c) Reexamination of family income and composition—(1) Regular reexaminations. If the family occupies an assisted unit (or residential space in a group home), the Borrower must reexamine the income and composition of the family at every 12 months. Upon least verification of the information, the Borrower shall make appropriate adjustments in the total tenant payment in accordance with part 813 of this chapter, as modified by §891.505, and determine whether the family's unit size is still appropriate. The Borrower must adjust tenant rent and the project assistance payment and must carry out any unit transfer in accordance with HUD standards. At the time of the annual reexamination of family income and composition, the Borrower must require the family to meet the disclosure and verification requirements for Social Security Numbers, as provided by 24 CFR part 5, subpart B.

(2) Interim reexamination. If the family occupies an assisted unit (or residential space in a group home) the family must comply with provisions in the lease regarding interim reporting of changes in income. If the Borrower receives information concerning a change in the family's income or other circumstances between regularly scheduled reexaminations, the Borrower must consult with the family and make any adjustments determined to be appropriate. Any change in the family's income or other cumstances that results in an adjustment in the total tenant payment, tenant rent, and project assistance payment must be verified.

 $(3) \ \ Continuation \ \ of \ \ project \ \ assistance$ payment. (i) A family occupying an assisted unit (or residential space in a group home) shall remain eligible for project assistance payment until the total tenant payment equals or exceeds the gross rent (or a pro rata share of the gross rent in a group home). The termination of subsidy eligibility will not affect the family's other rights under its lease. Project assistance payment may be resumed if, as a result of changes in income, rent, or other relevant circumstances during the term of the PAC, the family meets the income eligibility requirements of part 813 of

this chapter (as modified in §891.505) and project assistance is available for the unit or residential space under the terms of the PAC. The family will not be required to establish its eligibility for admission to the project under the remaining requirements of paragraph (b) of this section.

(ii) A family's eligibility for project assistance payment may also be terminated in accordance with HUD requirements for such reasons as failure to submit requested verification information, including failure to meet the disclosure and verification requirements for Social Security Numbers, or failure to sign and submit consent forms for the obtaining of wage and claim information from State Wage Information Collection Agencies, as provided by 24 CFR part 5, subpart B.

(Approved by the Office of Management and Budget under control number 2502-0204 and 2505-0267)

§891.755 Obligations of the family.

The obligations of the family are provided in §891.415.

§891.760 Overcrowded and underoccupied units.

The requirements for overcrowded and underoccupied units are provided in §891.620.

§891.765 Lease requirements.

The lease requirements are provided in §891.425.

§ 891.770 Denial of admission, termination of tenancy, and modification of lease.

- (a) The provisions of part 5, subpart I, of this title apply to Section 202 direct loan projects with Section 162 assistance for disabled families.
- (b) The provisions of part 247 of this title apply to all decisions by a Borrower to terminate the tenancy or modify the lease of a family residing in a unit (or residential space in a group home).

[66 FR 28798, May 24, 2001]

§891.775 Security deposits.

The general requirements for security deposits on assisted units are provided in §891.435. For purposes of subpart E of this part, the additional requirements in §891.635 apply.

§891.780 Adjustment of rents.

- (a) Contract rents. HUD will calculate contract rent adjustments based on the sum of the project's operating costs and debt service (as calculated by HUD), with adjustments for vacancies, the project's nonrental income, and other factors that HUD deems appropriate. The calculation will be made on the basis of information provided by HUD.
- (b) Rent for unassisted units. The rent payable by families occupying units or residential spaces that are not assisted under the PAC shall be equal to the contract rent computed under paragraph (a) of this section.

§891.785 Adjustment of utility allowances.

In connection with adjustments of contract rents as provided in §891.780(a), the requirements for the adjustment of utility allowances provided in §891.440 apply.

§891.790 Conditions for receipt of vacancy payments for assisted units.

- (a) General. Vacancy payments under the PAC will not be made unless the conditions for receipt of these project assistance payments set forth in this section are fulfilled.
- (b) Vacancies during rent-up. For each unit (or residential space in a group home) that is not leased as of the effective date of the PAC, the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent (or pro rata share of the contract rent for a group home) for the first 60 days of vacancy, if the Borrower:
 - (1) Complied with §891.740;
- (2) Has taken and continues to take all feasible actions to fill the vacancy; and
- (3) Has not rejected any eligible applicant except for good cause acceptable to HUD.
- (c) Vacancies after rent-up. If an eligible family vacates an assisted unit (or

- residential space in a group home) the Borrower is entitled to vacancy payments in the amount of 80 percent of the contract rent (or pro rata share of the contract rent in a group home) for the first 60 days of vacancy if the Borrower:
- (1) Certifies that it did not cause the vacancy by violating the lease, the PAC, or any applicable law;
- (2) Notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;
- (3) Has fulfilled and continues to fulfill the requirements specified in §891.740(a)(2) and (3), and in paragraphs (b)(2) and (3) of this section; and
- (4) For any vacancy resulting from the Borrower's eviction of an eligible family, certifies that it has complied with §891.770.
- (d) Vacancies for longer than 60 days. If an assisted unit (or residential space in a group home) continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, HUD may approve additional vacancy payments for 60-day periods up to a total of 12 months in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit (or, in the case of group homes, the residential space). Such payments may be approved if:
- (1) The unit was in decent, safe, and sanitary condition during the vacancy period for which payment is claimed;
- (2) The Borrower has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and
- (3) The Borrower has demonstrated to the satisfaction of HUD that:
- (i) For the period of vacancy, the project is not providing the Borrower with revenues at least equal to project expenses (exclusive of depreciation) and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit (or residential space in a group home); and
- (ii) The project can achieve financial soundness within a reasonable time.
- (e) Prohibition of double compensation for vacancies. If the Borrower collects

payments for vacancies from other sources (tenant rent, security deposits, payments under §891.435(c), or governmental payments under other programs), the Borrower shall not be entitled to collect vacancy payments to the extent these collections from other sources plus the vacancy payment exceed contract rent.

Subpart F—For-Profit Limited Partnerships and Mixed-Finance Development for Supportive Housing for the Elderly or Persons with Disabilities

SOURCE: 70 FR 54210, Sept. 13, 2005, unless otherwise noted.

§891.800 Purpose.

The purpose of this subpart is to establish rules allowing for, and regulating the participation of, for-profit limited partnerships, of which the sole general partner is a Nonprofit Organization meeting the requirements of 12 U.S.C. 1701q(k)(4) or 42 U.S.C. 8032(k)(6), in the development of housing for the elderly and persons with disabilities mixed-finance development using methods. These rules are intended to develop more supportive housing for the elderly and persons with disabilities by allowing the use of federal assistance, private capital and expertise, and low-income housing tax credits.

§ 891.802 Applicability of other provisions.

The provisions of 24 CFR part 891, subparts A through D, apply to this subpart F unless otherwise stated.

§891.805 Definitions.

In addition to the definitions at §891.105, the following definitions apply to this subpart:

Mixed-finance owner, for the purpose of the mixed-finance development of housing under this subpart, means a single-purpose, for-profit limited partnership of which a Private Nonprofit Organization with a 501(c)(3) or 501(c)(4) tax exemption (in the case of supportive housing for the elderly), or a Nonprofit Organization with a 501(c)(3) tax exemption (in the case of supportive housing for the disabled) is the

sole general partner. The purpose of the mixed-finance owner must include the promotion of the welfare of the elderly or persons with disabilities, as appropriate.

Private Nonprofit Organization (in the case of supportive housing for the elderly) or Nonprofit Organization (in the case of supportive housing for persons with disabilities) (for the purposes of this subpart, both types of organizations are referred to as "Nonprofit Organization"), for the purpose of this subpart, means any institution or foundation (and includes a corporation wholly owned and controlled by an organization meeting the requirements of this section):

- (1) In the case of supportive housing for the elderly, that meets the requirements of the definition of "private nonprofit organization" found in §891.205 of this title; or
- (2) In the case of supportive housing for persons with disabilities, that meets the requirements of the definition of "nonprofit organization" in §891.305 of this title; and that
- (3) Is the general partner of a forprofit limited partnership, if the Nonprofit Organization meets the requirements of this definition and owns at least one-hundredth of one percent of the partnership assets. If the project will include units financed with the use of federal Low-Income Housing Tax Credits and the organization is a limited partnership, the limited partnership must meet the requirements of section 42 of the IRS code, including the requirements of section 42(h)(5). The general partner may also be the sponsor so long as it meets the requirements of this rule for sponsors and general partners.

§891.808 Capital advance funds.

(a) HUD is authorized to provide capital advance funds to expand the supply of supportive housing for the elderly and persons with disabilities in accordance with the rules and regulations of the Section 202 and Section 811 supportive housing programs. For mixed-finance projects, HUD provides a capital advance funds reservation to the sponsor, which transfers the fund reservation to the mixed-finance owner

meeting the requirements of this subpart. The sponsor may transfer the fund reservation directly to the owner or to the general partner of the owner, or the sponsor may be the general partner of the mixed-finance owner if the sponsor meets the applicable statutory and regulatory requirements.

(b) Developments built with mixed-finance funds may combine Section 202 or Section 811 units with other units, which may or may not benefit from federal assistance. The number of Section 202 or Section 811 supportive housing units must not be less than the number specified in the agreement letter for a capital advance. In the case of a Section 811 mixed-finance project, the additional units cannot cause the project to exceed the applicable Section 811 project size limit if they will also house persons with disabilities.

§891.809 Limitations on capital advance funds.

Capital advances are not available in connection with:

- (a) Acquisition of facilities currently owned and operated by the sponsor as housing for the elderly, except with rehabilitation as defined in 24 CFR 891.105:
- (b) The financing or refinancing of federally assisted or insured projects;
- (c) Facilities currently owned and operated by the sponsor as housing for persons with disabilities, except with rehabilitation as defined in 24 CFR 891.105; or
- (d) Units in Section 202 direct loan projects previously refinanced under the provisions of section 811 of the American Homeownership and Economic Opportunity Act of 2000, 12 U.S.C. 1701q note.

§891.810 Project rental assistance.

Project Rental Assistance is defined in §891.105. Project Rental Assistance is provided for operating costs, not covered by tenant contributions, attributable to the number of units funded by capital advances under the Section 202 and Section 811 supportive housing programs, subject to the provisions of 24 CFR 891.445. The sponsor of a mixedfinance development must obtain the necessary funds from a source other than project rental assistance funds for operating costs related to non-202 or -811 units.

§891.813 Eligible uses for assistance provided under this subpart.

- (a) Assistance under this subpart may be used to finance the construction, reconstruction, or rehabilitation of a structure or a portion of a structure; or the acquisition of a structure to be used as supportive housing for the elderly; or the acquisition of housing to be used as supportive housing for persons with disabilities. Such assistance may also cover the cost of real property acquisition, site improvement, conversion, demolition, relocation, and other expenses that the Secretary determines are necessary to expand the supply of supportive housing for the elderly and persons with disabilities.
- (b) Assistance under this subpart may not be used for excess amenities, as stated in 24 CFR 891.120(c). Such amenities may be included in a mixed-finance development only if:
- (1) The amenities are not financed with funds provided under the Section 202 or Section 811 program;
- (2) The amenities are not maintained and operated with Section 202 or 811 funds:
- (3) The amenities are designed with appropriate safeguards for the residents' health and safety; and
- (4) The assisted residents are not required to use, participate in, or pay a fee for the use or maintenance of the amenities, although they are permitted to do so voluntarily. Any fee charged for the use, maintenance, or access to amenities by residents must be reasonable and affordable for all residents of the development.
- (c) Notwithstanding any other provision of this section, §§ 891.220 and 891.315 on "prohibited facilities" apply to mixed-finance projects containing units assisted under section 202 or 811.

§ 891.815 Mixed-finance developer's fee.

(a) Mixed-finance developer's fee. A mixed-finance developer may include, on an up-front or deferral basis, or a combination of both, a fee to cover reasonable profit and overhead costs.

- (b) Mixed-finance developer's fee cap. No mixed-finance developer's fee may be a greater percentage of the total project replacement costs than the percentage allowed by the state housing finance agency or other tax credit allocating agency in the state in which the mixed-finance development is sited. In no event may the mixed-finance developer's fee exceed 15 percent of the total project replacement cost.
- (c) Sources of mixed-finance developer's fee. The mixed-finance developer's fee may be paid from project income or project sources of funding other than Section 202 or 811 capital advances, project rental assistance, or tenant rents

§ 891.818 Firm commitment application.

The sponsor will submit the firm commitment application including the mixed-finance proposal in a form described by HUD.

§891.820 Civil rights requirements.

The mixed-finance development must comply with the following: all fair housing and accessibility requirements, including the design and construction requirements of the Fair Housing Act; the requirements of section 504 of the Rehabilitation Act of accessibility requirements. 1973: project standards, and site and neighborhood standards under 24 CFR 891.120, 891.125, 891.210, 891.310, and 891.320, as applicable; and 24 CFR 8.4(b)(5), which prohibits the selection of a site or location which has the purpose or effect of excluding persons with disabilities from federally assisted programs or activities.

§891.823 HUD review and approval.

HUD will review and may approve or disapprove the firm commitment application and mixed finance proposal.

§891.825 Mixed-finance closing documents.

The mixed-finance owner must submit the mixed-finance closing documents in the form prescribed by HUD. The materials shall be submitted after the firm commitment has been issued and prior to capital advance closing.

§891.830 Drawdown.

- (a) Upon its approval of the executed mixed-finance closing documents and other documents submitted and upon determining that such documents are satisfactory, and after the capital advance closing, HUD may approve the drawdown of capital advance funds in accordance with the HUD-approved drawdown schedule.
- (b) The capital advance funds may be drawn down only in an approved ratio to other funds, in accordance with a drawdown schedule approved by HUD. The mixed-finance owner shall certify. in a form prescribed by HUD, prior to the initial drawdown of capital advance funds, that they will not draw down more capital advance funds than necessary to meet the pro rata share of the development costs for the 202 or 811 supportive housing units. The mixed-finance owner shall draw down capital advance funds only when payment is due and after inspection and acceptance of work covered by the drawdown.
- (c) Each drawdown of funds constitutes a certification by the mixed-finance owner that:
- (1) All the representations and warranties submitted in accordance with this subpart continue to be valid, true, and in full force and effect:
- (2) All parties are in compliance with their obligations pursuant to this subpart, which, by their terms, are applicable at the time of the drawdown of funds:
- (3) All conditions precedent to the drawdown of the funds by the mixed-finance owner have been satisfied;
- (4) The capital advance funds drawn down will be used only for eligible costs actually incurred in accordance with the provisions of this subpart and the approved mixed-finance project, which include the types of costs stated in 12 U.S.C. 1701q(h), and 42 U.S.C. 8013(h), and do not include paying off bridge or construction financing, or repaying or collateralizing bonds; and
- (5) The amount of the drawdown is consistent with the ratio of 202 or 811 supportive housing units to other

§891.832 Prohibited relationships.

Section 891.130 applies, except that in the mixed-finance program only, in

FHA-insured or risk-sharing projects under this rule, the conflict-of-interest and identity-of-interest rules applicable to the FHA program apply. In the case of FHA insured or risk-sharing projects, the nonprofit general partner must continue to adhere to the provisions of \$891.130.

§891.833 Monitoring and review.

HUD shall monitor and review the development during the construction and operational phases in accordance with the requirements that HUD prescribes. In order for units assisted under the 202 and 811 programs to continue to receive project rental assistance, they must be operated in accordance with all contractual agreements among the parties and other HUD regulations and requirements. It is the responsibility of the mixed-finance owner and Nonprofit Organization to ensure compliance with the preceding sentence.

§ 891.835 Eligible uses of project rental

- (a) Section 202 or 811 project rental assistance may be used to pay the necessary and reasonable operating costs, as defined in 24 CFR 891.105 and approved by HUD, not met from project income and attributed to Section 202 or 811 supportive housing units. Operating cost standards under 24 CFR 891.150 apply to developments under this part.
- (b) Section 202 or 811 project rental assistance may not be used to pay for:
- (1) Debt service on construction or permanent financing, or any refinancing thereof, for any units in the development, including the 202 or 811 supportive housing units;
- (2) Cash flow distributions to owners; or
- (3) Creation of reserves for non-202 or -811 units.
- (c) HUD-approved operating costs attributable to common areas or to the development as a whole, such as groundskeeping costs and general administrative costs, may be paid from project rental assistance on a pro-rata basis according to the percentage of 202 or 811 supportive housing units as compared to the total number of units.

§ 891.840 Site and neighborhood standards.

For section 202 or 811 mixed-finance developments, the site and neighborhood standards described at §891.125 and §891.320 apply to the entire mixed-finance development.

§891.848 Project design and cost standards.

The project design and cost standards at §891.120 apply to mixed-finance developments under this subpart. Sections 891.220 and 891.315 on prohibited facilities shall apply to mixed-finance developments under this subpart.

§891.853 Development cost limits.

The Development Cost Limits for development activities, as established at §891.140, apply to Section 202 or 811 supportive housing units in mixed-finance developments under this subpart.

§891.855 Replacement reserves.

- (a) The mixed-finance owner shall establish and maintain a replacement reserve account for Section 202 or 811 supportive housing units. This account must meet all the requirements of 24 CFR 891.405.
- (b) The mixed-finance owner may obtain a disbursement from the reserve only if the funds will be used to pay for capital replacement costs for the Section 202 or 811 supportive housing units in the mixed-finance development and in accordance with the terms of the regulatory and operating agreement. In the case of repairs to common elements, the Section 202/811 replacement reserve can be used on a pro rata basis based on the percentage of Section 202 or 811 units in the building whose common elements are being repaired. In the event of a disposition of the mixedfinance development, or the dissolution of the owner, any Section 202 or 811 funds remaining in the replacement reserve account must remain dedicated to the Section 202 or 811 supportive housing units to ensure their long-term viability, or as otherwise agreed by HUD.
- (c) Subject to HUD's approval, reserves may be used to reduce the number of Section 202 or 811 dwelling units in the development for the purpose of

retrofitting units that are obsolete or unmarketable.

§891.860 Operating reserves.

- (a) The mixed-finance owner shall maintain an operating reserve account in an amount sufficient to cover the operating expenses of the development for at least a three-month period.
- (b) Project income, project rental assistance, tenant rents, and tax credit equity may be used to fund the operating reserve account.
- (c) Amounts derived from Section 202 or 811 (e.g., project income, project rental assistance, and tenant rents) in operating reserve accounts may only be used for the operating expenses of the 202 or 811 units.

§ 891.863 Maintenance as supportive housing units for elderly persons and persons with disabilities.

- (a) The mixed-finance owner must develop and continue to operate the same number of supportive housing units for elderly persons or persons with disabilities, as stated in the use agreement or other document establishing the number of assisted units, for a 40-year period.
- (b) If a mixed-finance development proposal provides that the Section 202 or 811 supportive housing units will be floating units, the mixed-finance owner must operate the HUD-approved percentage of Section 202 or 811 supportive housing units, and maintain the percentage distribution of bedroom sizes

of Section 202 or 811 supportive housing units for the entire term of the very low-income use restrictions on the development. Any foreclosure, sale, or other transfer of the development must be subject to a covenant running with the land requiring the continued adherence to the very low-income use restrictions for the Section 202 or 811 supportive housing units.

(c) The owner must ensure that Section 202 or 811 supportive housing units in the development are and continue to be comparable to unassisted units in terms of location, size, appearance, and amenities. If due to a change in the partnership structure it becomes necessary to establish a new owner partnership or to transfer the supportive housing project, the new or revised owner must be a single-purpose entity and the use restrictions must remain in effect as provided above.

§ 891.865 Sanctions.

In the event that Section 202 or 811 supportive housing units are not developed and operated in accordance with all applicable federal requirements, HUD may impose sanctions on the participating parties and seek legal or equitable relief in enforcing all requirements under Section 202, the Housing Act of 1959, or Section 811 of the National Affordable Housing Act, all implementing regulations and requirements and contractual obligations under the mixed-finance documents.