

§ 884.224

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 65855, Dec. 21, 1994, as amended at 61 FR 9047, Mar. 6, 1996; 65 FR 16723, Mar. 29, 2000]

§ 884.224 Management and occupancy reviews.

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the FEDERAL REGISTER, following notice and the opportunity to comment. Where a change in ownership or management occurs, a management and occupancy review must be conducted within six months.

(b) HUD or the Contract Administrator may inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

[87 FR 37997, June 27, 2022]

§ 884.225 PHA reporting requirements. [Reserved]

§ 884.226 Emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking.

(a) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, covered housing providers have discretion to adopt new, and modify any existing, admission preferences or transfer waitlist priorities.

(c) In addition to following requirements in 24 CFR 5.2005(e), when a safe

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unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, or stalking who qualifies for an emergency transfer, covered housing providers must:

(1) Review the covered housing provider's existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, covered housing providers must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), including data on the outcomes of such requests.

[81 FR 80813, Nov. 16, 2016]

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

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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

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§ 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.

Covered housing provider. For the Section 8 Housing Assistance Payments Programs—Special Allocations, subpart A of this part, “covered housing provider,” as such term is used in HUD’s regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) refers to the owner.

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 dif-

ference 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; 81 FR 80813, Nov. 16, 2016]

§ 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 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 FR 5603, Jan. 28, 1977, as amended at 53 FR 3368, 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

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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 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 Section 8 assistance may be provided for any unit occupied by an 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 exceed-

ing 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 previously 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

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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 (c).

[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

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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 REGISTER 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 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

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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

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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 FR 5603, Jan. 28, 1977, as amended at 49 FR 19948, 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, including 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 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 non-compliance 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]

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§ 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 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 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.

(d) *Streamlined income determination.* An owner may elect to follow the provisions of 24 CFR 5.657(d).

[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; 81 FR 12371, Mar. 8, 2016]

§ 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

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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 ter-

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mination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of 24 CFR parts 247 and 5 shall apply. The provisions of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), apply to this section. 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.

[81 FR 80813, Nov. 16, 2016]

§ 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 Management and occupancy reviews.

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the

FEDERAL REGISTER, following notice and the opportunity to comment. Where a change in ownership or management occurs, a management and occupancy review must be conducted within six months.

(b) HUD or the Contract Administrator may inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

[87 FR 37997, June 27, 2022]

§ 886.131 Audit.

Where a non-Federal entity (as defined in 2 CFR 200.69) 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 2 CFR part 200, subpart F, shall apply.

[80 FR 75941, Dec. 7, 2015]

§ 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 (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) applies to this section.

[81 FR 80814, Nov. 16, 2016]

§ 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 assur-

ance 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]

§ 886.139 Emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking.

(a) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, covered housing providers have discretion to adopt new, and modify any existing, admission preferences or transfer waitlist priorities.

(c) In addition to following requirements in 24 CFR 5.2005(e), when a safe unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, or stalking who qualifies for an emergency transfer, covered housing providers must: (1) Review the covered housing provider's existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, covered housing providers must submit to HUD data on all

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emergency transfers requested under 24 CFR 5.2005(e), including data on the outcomes of such requests.

[81 FR 80814, Nov. 16, 2016]

§ 886.140 Broadband infrastructure.

Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 CFR 5.100, of a building with more than 4 rental units and that is subject to a Housing Assistance Payments contract executed or renewed after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

- (a) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;
- (b) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or
- (c) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

[81 FR 92638, Dec. 20, 2016]

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.

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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.

Covered housing provider. For the Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects, under subpart C of this part, “covered housing provider,” as such term is used in HUD’s regulations at 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), refers to the owner.

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 HUD-held 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; 81 FR 80814, Nov. 16, 2016]

§ 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

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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.

(j)–(l) [Reserved]

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(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 adver-

tising 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 §886.328 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; 87 FR 37997, June 27, 2022]

§ 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 finan-

cial 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

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 family 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; re-

determinations, 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, Sept. 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 rescission 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

§ 886.322

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-

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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 unit 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 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 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

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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.

(d) *Streamlined income determination.* An owner may elect to follow the provisions of 24 CFR 5.657(d).

[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; 81 FR 12371, Mar. 8, 2016]

§ 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

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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. The provisions of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to this section. 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.

[81 FR 80814, Nov. 16, 2016]

§ 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

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(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.* 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) The regulations of 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence,

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Sexual Assault, or Stalking) apply to this section.

[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; 81 FR 80814, Nov. 16, 2016]

§ 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

(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 FR 70365, Dec. 6, 1979, as amended at 58 FR 43722, 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]

§ 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 satisfactorily.

(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.

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(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 Management and occupancy reviews.

(a) The contract administrator will conduct management and occupancy reviews to determine whether the owner is in compliance with the Contract. Such reviews will be conducted in accordance with a schedule set out by the Secretary and published in the FEDERAL REGISTER, following notice and the opportunity to comment.

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Where a change in ownership or management occurs, a management and occupancy review must be conducted within six months.

(b) HUD or the Contract Administrator may inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

[87 FR 37997, June 27, 2022]

§ 886.336 Audit.

Where a non-Federal entity (as defined in 2 CFR 200.69) is the eligible owner of a project receiving financial assistance under this part, the audit requirements in 2 CFR part 200, subpart F, shall apply.

[80 FR 75941, Dec. 7, 2015]

§ 886.337 Selection preferences.

Sections 5.410 through 5.430 govern the use of preferences in the selection of tenants under this subpart.

[59 FR 36647, July 18, 1994, as amended at 61 FR 9047, 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 obliga-

tion 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 handicapped 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:

(I) The tenant’s monthly rent before execution of the Housing Assistance Payments Contract and estimated average monthly utility costs; or

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(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; 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-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 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]

§ 886.339 Emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking.

(a) Covered housing providers must develop and implement an emergency transfer plan that meets the requirements in 24 CFR 5.2005(e).

(b) In order to facilitate emergency transfers for victims of domestic violence, dating violence, sexual assault, and stalking, covered housing providers have discretion to adopt new, and modify any existing, admission preferences or transfer waitlist priorities.

(c) In addition to following requirements in 24 CFR 5.2005(e), when a safe unit is not immediately available for a victim of domestic violence, dating violence, sexual assault, or stalking who qualifies for an emergency transfer, covered housing providers must:

(1) Review the covered housing provider’s existing inventory of units and determine when the next vacant unit may be available; and

(2) Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

(d) Each year, covered housing providers must submit to HUD data on all emergency transfers requested under 24 CFR 5.2005(e), including data on the outcomes of such requests.

[81 FR 80814, Nov. 16, 2016]

§ 886.340 Broadband infrastructure.

Any new construction or substantial rehabilitation, as substantial rehabilitation is defined by 24 CFR 5.100, of a building with more than 4 rental units and that is subject to a Housing Assistance Payments contract executed or renewed after January 19, 2017 must include installation of broadband infrastructure, as this term is also defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

(a) The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;

(b) The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or

(c) The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

[81 FR 92638, Dec. 20, 2016]

PART 887—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAMS—FAMILY SELF-SUFFICIENCY PROGRAM

Sec.

887.101 Purpose, scope, and applicability.

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

SOURCE: 87 FR 30046, May 17, 2022, unless otherwise noted.

§ 887.101 Purpose, scope, and applicability.

(a) *Purpose.* (1) The purpose of the Family Self-Sufficiency (FSS) program is to promote the development of local strategies to coordinate the use of Department of Housing and Urban Development (HUD) assistance with public and private resources, to enable fami-

lies eligible to receive HUD assistance to achieve economic independence and self-sufficiency.

(2) The purpose of this part is to implement the policies and procedures applicable to operation of an FSS program under HUD's Section 8 Housing assistance payments programs, as established under section 23 of the 1937 Act (42 U.S.C. 1437u).

(b) *Scope.* Each owner may implement an FSS program independently or by way of a Cooperative Agreement with a Public Housing Agency (PHA) or another owner. Each owner that administers an FSS program must do so in accordance with the requirements of this part.

(c) *Applicability.* This part applies to owners of multifamily rental housing properties assisted by Section 8 Housing assistance payments programs. See part 984 of this title for program regulations applicable to PHAs.

(d) *Non-participation.* Tenant participation in an FSS program is voluntary. Assistance under Section 8 Housing assistance payments programs for a family that elects not to participate in an FSS program shall not be refused, delayed or terminated by reason of such election.

§ 887.103 Definitions.

The definitions in §984.103 of this title apply to this part, except that *eligible families* means tenant families living in multifamily assisted housing.

§ 887.105 Basic requirements of FSS programs.

(a) An FSS program that is voluntarily established under this part by an owner must comply with the following requirements:

(1) Shall be operated in conformity with the regulations of this part and other Section 8 regulations, codified in 24 CFR parts 5, 402, 880, 881, 883, and 884, respectively, and with FSS program objectives, as described in §984.102 of this title;

(2) Shall coordinate supportive services as defined in §984.103 of this title;

(3) Shall have an Action Plan approved by HUD, as described in §984.201 of this title, before operating an FSS program;