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PART VIII



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

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SECTION 8 HOUSING ASSISTANCE PROGRAMS— SPECIAL ALLOCATIONS

**Projects With HUD-Insured and
HUD-Held Mortgages**

Title 24—Housing and Urban Development
CHAPTER VIII—LOW-INCOME HOUSING,
DEPARTMENT OF HOUSING AND UR-
BAN DEVELOPMENT

[Docket No. R-77-378]

PART 886—SECTION 8 HOUSING ASSIST-
ANCE PAYMENTS PROGRAM—SPECIAL
ALLOCATIONS

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

FINAL RULE

The Department, at 41 FR 12170 (March 23, 1976) published interim regulations to amend Title 24 of the Code of Federal Regulations by adding a new Part 886, Subpart A, to Chapter VIII authorizing use of Section 8 assistance in existing multifamily projects with HUD-Insured or HUD-Held mortgages, including projects sold by HUD subject to purchase money mortgages and Section 202 projects. The name of Part 886 is being changed from "Section 8 Housing Assistance Payments Program—Additional Assistance Program for Projects Insured or Formerly Insured by HUD" to "Section 8 Housing Assistance Payments Program—Special Allocations."

The Department received comments from eleven persons and institutions during the 15-day review period, and after having carefully considered these comments, is publishing these regulations in final form.

The majority of the comments proposed amendments to the interim rule which would have been inconsistent with the other elements of the Section 8 program, or which are not possible under the law. For example, several persons suggested that the maximum term of the Section 8 contract be extended to be coterminous with the project mortgage; however, Section 8(d)(2) of the U.S. Housing Act of 1937 specifically limits contract terms on existing housing to 15 years. Where comments on the interim regulation call for changes in policy positions common throughout the Section 8 program, the Department has noted the proposals and will consider them in the context of the Section 8 programs generally.

Several comments were made on the process for inviting and selecting among applications. The Department reviewed these comments carefully, and concluded that the criteria for choosing among potentially eligible projects are reasonably consistent with the program goals as stated in the preamble to the interim regulations. In the same context, the Department is unwilling to forego the selection criterion which requires a demonstration that the infusion of Section 8 assistance can reasonably be expected to solve an identifiable problem and provide a reasonable assurance of long-term project viability; projects which are not likely to remain viable over the long term, even with the increased level of assistance available under Section 8, are not considered an advantageous use of limited Section 8 contract authority.

Four respondents specifically requested that non-insured projects, especially state-financed Section 236 subsidized projects, be made eligible for assistance under this part. Non-insured projects do not fall under the regulations covering insured projects, and, therefore, this issue is not relevant.

In another instance it was recommended that the regulations be modified to apply to Section 236 projects not yet finally endorsed, with the justification that this will assure the continued availability of units to families for whom they were intended. Because the program is available to projects not yet finally endorsed, with certain conditions, no further comment is necessary.

Three comments suggested that this Department is proposing to bypass the Public Housing Agency with the new regulations. This program is not designed to reduce the functions already performed by the PHA. However, to meet the additional housing needs and goals the program is being administered as a part of the HUD Loan Management activity, thereby limiting the involvement of the PHA. The PHA is invited to participate in the supervision of eviction proceedings because of their expertise in this function.

One respondent specifically discussed the objective of achieving economic integration which he felt would be undermined by the steering of prospective tenants to HUD-insured projects under this program. The purpose of this program is to assist families presently in occupancy in a HUD-insured or HUD-assisted project to more easily carry their rental burden. The program is not intended to be a method by which a large turnover in project occupancy is effected, and, therefore, an adverse impact upon a neighborhood or community in which the project is located should not occur.

In response to the comments and review of the interim rule within the Department, the final rule incorporates the following changes:

1. The name of the part has been changed to Part 886—Section 8 Housing Assistance Payments Program—Special Allocations, to broaden the scope of the part and provide greater flexibility in the organization of Chapter VIII.

2. Language has now been inserted in § 886.101(c) to make clear that the primary goal of the Program is to reduce claims on the insurance fund by adding those FHA-insured or Secretary-held projects which are in serious financial difficulties. To the extent resources remain available after taking care of these priority projects, assistance may also be provided to projects with potentially serious financial problems and which have a high probability of producing claims on the insurance fund with the succeeding five years.

3. A number of revisions have been made to conform this regulation to the revised Section 8 Existing Housing Regulations (Part 882), as published for effect on May 13, 1976. These changes are:

a. The definition of "Allowance for Utilities and Other Services" has been revised by deleting the second sentence.

b. The definition of "Eligible Family" has been revised.

c. Section 886.110 (a) and (b) have been revised to authorize the Regional Administrator, rather than the Assistant Secretary, to approve Gross Rents up to 20 percent above Fair Market Rents in certain circumstances.

d. "Housing Quality Standards", § 886.113(b)(2), has been revised in part to conform to the Existing Housing Regulations.

e. Section 886.112 has been revised to clarify that when special additional adjustments are approved by HUD, they "shall", rather than "may" be granted.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A finding that this regulation is not subject to inflation impact statement requirements has also been made in accordance with HUD procedures. A copy of these findings will be available for public inspection during regular business hours in the office of the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C.

Accordingly, 24 CFR Chapter VIII is amended by revising Part 886, Subpart A, to read as follows:

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

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 886.128 Evictions.
 886.129 Reduction of number of contract units for failure to lease to eligible families.
 886.130 HUD Review of contract compliance.

AUTHORITY: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3536(d)); sec. 5(b) of the United States Housing Act of 1937 (42 U.S.C. 1437c (b)); sec. 3 of the United States Housing Act of 1937 (42 U.S.C. 1437f)

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

§ 886.101 Applicability.

(a) The policies and procedures contained herein are applicable to the making of Housing Assistance Payments on Behalf of Eligible Families in eligible projects under Section 8 Project commitments pursuant to provisions of section 8 of the U.S. Housing Act of 1937 ("Act"). As used in this Part, "Project" or "Eligible Project" means any existing subsidized or unsubsidized multifamily residential project which is subject to a mortgage insured pursuant to any section of the National Housing Act, any such project the mortgage for which 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.

(b) Since HUD, as part of its loan management activities, is responsible for most of the activities assigned to a PHA in the Section 8 Existing Housing program, duplicative PHA activities are not required. However, because of the PHAs' expertise in connection with evictions, the PHA will be invited to perform the function of authorization of evictions, for an agreed fee. In addition, the PHA may be invited to perform inspections of dwelling units, on a fee basis, if HUD determines that such inspections will be performed more efficiently and economically by the PHA. The Contract will be directly between HUD and the Owner, with the PHA as a party for the purpose of supervising evictions and for such other purposes as may be negotiated.

(c) 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.

§ 886.102 Definitions.

Act. The United States Housing Act of 1937.

Allowance for Utilities and Other Services ("Allowance"). An amount determined or approved by HUD as an allowance for the cost of utilities (except telephone) and charges for other services payable directly by the Family.

Contract (See Section 8 Contract).

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

Decent, Safe and Sanitary. Housing is Decent, Safe and Sanitary if the requirements of § 886.113 are met.

Eligible Family ("Family"). A Family which qualifies as a Lower-Income Family and which meets the other requirements of the Act and this part. The term Family includes an elderly, mentally or physically handicapped, disabled, or displaced person and the remaining member of a tenant family as defined in Section 3(2) of the Act.

Eligible Project. See § 885.101.

Fair Market Rent. (a) The rent which is determined by HUD as the Fair Market Rent for Existing Housing under Section 8. This Fair Market Rent is the rent, including utilities (except telephone), ranges and refrigerators, parking, and all maintenance, management and other services, which, as determined at least annually by HUD, would be required to be paid in order to obtain privately owned, existing, Decent, Safe and Sanitary rental housing of modest (non-luxury) nature with suitable amenities. Separate Fair Market Rents shall be established for dwelling units by various sizes (number of bedrooms) and types (e.g., elevator and non-elevator).

(b) The Fair Market Rent, minus the amount of any applicable Allowance for Utilities and Other Services payable directly by the Family, shall be the maximum amount that can be approved as the Contract Rent, except that the maximum approvable amount may be higher or lower as provided in § 886.110 or § 886.112.

Gross Family Contribution. The portion of the Gross Rent payable by an Eligible Family, i.e., the difference between the amount of the housing assistance payment payable on behalf of the Family and the Gross Rent.

Gross Rent. The Contract Rent plus any Allowance for Utilities and Other Services.

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

Housing Assistance Payment on Behalf of Eligible Family. The amount of housing assistance payment on behalf of an Eligible Family determined in accordance with schedules and criteria established by HUD (see also 24 CFR Part 889).

HUD. The Department of Housing and Urban Development or its designee.

Income. Income from all sources of each member of the household as deter-

mined in accordance with criteria established by HUD.

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

Lower-Income Family. A Family whose Income does not exceed 80 percent of the median income for the area as determined by HUD with adjustments, for smaller or larger families, except that HUD may establish Income limits higher or lower than 80 percent on the basis of its findings that such variations are necessary because of the prevailing levels of construction costs, unusually high or low incomes, or other factors.

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.

Public Housing Agency ("PHA"). Any state, county, municipality, or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of housing for low-income Families:

Secretary. The Secretary of Housing and Urban Development.

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.

Very Low-Income Family. A Family whose Income does not exceed 50 percent of the median Income for the area, as determined by HUD, with adjustments for smaller or larger families.

§ 886.103 Allocation of Section 8 contract authority.

HUD will allocate to field offices contract authority for Section 8 project commitments for metropolitan and non-metropolitan 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.

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.

§ 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.

(c) Simultaneously with the issuance of a notice of approval, HUD shall send a letter to the PHA advising it of HUD's intention to enter into a Contract, and inviting the PHA to become a party to the Contract, as provided in § 886.101 (b).

§ 886.107 Approval of applications.

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

(a) The Owner's Affirmative Fair Housing Marketing Plan is approvable.

(b) The HUD-approved unit rents are approvable within the Fair Market Rent limitations contained in § 886.110.

(c) The residential units meet the housing quality standards set forth in § 886.113, except for such variations as HUD may approve. Local climatic or geological conditions or local codes are examples which may justify such variations.

(d) A significant number of residents, or potential residents, in the case of projects having a vacancy rate over 10 percent, are eligible for and in need of Section 8 assistance.

(e) The infusion of Section 8 assistance into the subject project should not affect other HUD-related multifamily housing within the same neighborhood in a substantially adverse manner. Examples of such adverse effects are (1) substantial move-outs from nearby HUD-related projects precipitated by

much lower rents in the subject project, or (2) substantial diversion of prospective applicants from such projects to the subject project.

(f) A first priority is given to HUD-Insured or Secretary-Held projects with presently serious financial problems, which are likely to result in a claim on the insurance fund in the near future. To the extent resources remain available, assistance also may be provided to projects with potentially serious financial problems which, on the basis of financial and/or management analysis, appear to have a high probability of producing a claim on the insurance funds within approximately the next five years.

(g) The infusion of Section 8 assistance into the subject project solves an identifiable problem, e.g., high vacancies and/or turnover, and provides a reasonable assurance of long-term project viability. A determination of long-term viability shall be based upon the following considerations:

(1) The project is not subject to any serious problems that are non-economic in nature. Examples of such problems are poor location, structural deficiencies or disinterested ownership.

(2) The Owner is in substantial compliance with the Regulatory Agreement. Owners are not diverting project funds for personal use. No dividends are being paid during any period of financial difficulty.

(3) The management agent is in substantial compliance with the management agreement. The current management agreement has been approved by HUD. Financial records are adequately kept. Occupancy requirements are being met. Marketing and maintenance programs are being carried out in an adequate manner, based upon available financial resources.

(4) The project's problems are primarily the result of factors beyond the control of the present ownership and management.

(5) The major problems are traceable to an inadequate cash flow.

(6) The infusion of Section 8 assistance will solve the cash flow problem by:

(i) Making it possible to grant needed rent increases;

(ii) Reducing turnover, vacancies and collection losses.

(7) The Owner's plan for remedying any deferred maintenance, financial problems, or other problems is realistic and achievable. There is positive evidence that the Owner will carry out the plan. Examples of such evidence are the Owner's past performance in correcting problems and, in the case of profit-motivated Owners, any cash contributions made to correct project problems.

(h) Any plan submitted pursuant to § 886.105(d) is found by HUD to be adequate.

§ 886.108 Maximum annual contract commitment.

(a) Number of units assisted. Based on analysis of housing assistance needs of families residing or expected to reside in the project, HUD shall determine the

number of units to be assisted up to 100 percent of the units in the project. All units currently assisted under section 23 or Section 8 shall be converted and included under the Contract pursuant to this Subpart, unless the parties to the Lease or Contract object to such conversion. Units assisted under section 101 of the Housing and Urban Development Act of 1965 or under section 236(f)(2) of the National Housing Act shall not be included under the Contract pursuant to this Subpart unless the Owner proposes and HUD approves such conversion.

(b) Maximum Annual Contract Commitment. The maximum annual housing assistance payments that may be committed under the Contract shall be that amount which, when paid annually over the term of the Contract, is determined by HUD to be sufficient to provide for all housing assistance payments and fees under the Contract.

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

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

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

§ 886.109 Housing assistance payments to owners.

(a) 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 portion of said rent payable by the Family. If the Gross Family Contribution is less than the Allowance for Utilities and Other Services, the difference shall be payable to the Family.

(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 exceeding 60 days: *Provided, however*, That if the Owner collects any of the Family's share of the rent for this period, or applies security deposits for unpaid rent, in amounts which when added to the 80 percent payments, results in more than the Contract Rent, such excess shall be payable to HUD or as HUD may direct. (See also § 886.116.) The Owner shall not be entitled to any payment under this paragraph unless he: (1) Immediately upon learning of the vacancy, has notified HUD of the vacancy or prospective vacancy and the reasons for the vacancy, and (2) has taken and continues to take all feasible actions to fill the vacancy including, but not limited to, contacting applicants on his waiting list (if any), and advising them of the availability of the unit, and (3) has not rejected any eligible applicant except for good cause.

§ 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 date of the application for assistance under this part, contract rents plus any allowance for utilities and other services may be as high as 75 percent of the published Section 8 Fair Market Rents for New Construction, which limitation may be increased (1) by up to 10 percent if the field office director determines that special circumstances warrant such higher rents, or (2) by up to 20 percent where the Regional Administrator determines that special circumstances warrant such higher rents, and in either case, such higher rents meet the test of reasonableness in paragraph (c) of this section.

(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).

§ 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.

§ 886.112 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) *Automatic Annual Adjustments.* (1) Automatic Annual Adjustment Factors will be determined by HUD at least annually; interim revisions may be made as market conditions warrant. Such Factors and the basis for their determination will be published in the FEDERAL REGISTER. These published Factors will be reduced appropriately by HUD where utilities are paid directly by Families.

(2) On each anniversary date of the Contract, the Maximum Unit Rents shall be adjusted by applying the applicable Automatic Annual Adjustment Factor most recently published by HUD. Maximum Unit Rents may be adjusted upward or downward, as may be appropriate; however, in no case shall the adjusted rents be less than the Maximum Unit 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.

§ 886.113 Housing quality standards.

Housing used in this program shall meet the Performance Requirements set forth in this section. In addition, the housing shall meet the Acceptability Criteria set forth in this section except for such variations as are proposed and approved by HUD. Local climatic or geological conditions or local codes are examples which may justify such variations.

(a) *Sanitary Facilities—(1) Performance Requirement.* The dwelling unit shall include its own sanitary facilities which are in proper operating condition, can be used in privacy, and are adequate for personal cleanliness and the disposal of human waste.

(2) *Acceptability Criteria.* A flush toilet in a separate, private room, a fixed basin with hot and cold running water, and a shower or tub with hot and cold running water shall be present in the dwelling unit, all in proper operating condition. These facilities shall utilize an approved public or private disposal system.

(b) *Food Preparation and Refuse Disposal—(1) Performance Requirement.* The dwelling unit shall contain suitable space and equipment to store, prepare, and serve foods in a sanitary manner. There shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary.

(2) *Acceptability criteria.* The unit shall contain the following equipment in proper operating condition: A cooking stove or range and a refrigerator of appropriate size for the unit, and a kitchen sink with hot and cold running water. The sink shall drain into an approved public or private 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).

(c) *Space and Security—(1) Performance Requirement.* The dwelling unit shall afford the Family adequate space and security.

(2) *Acceptability Criteria.* A living room, kitchen area, and bathroom shall be present; and the dwelling unit shall contain at least one sleeping room or living/sleeping room of appropriate size for each two persons. Exterior doors and windows accessible from outside the unit shall be lockable.

(d) *Thermal Environment—(1) Performance Requirement.* The dwelling unit shall have and be capable of maintaining a thermal environment healthy for the human body.

(2) *Acceptability Criteria.* The dwelling unit shall contain safe heating and/or cooling facilities which are in proper operating condition and can provide adequate heat and/or cooling to each room in the dwelling unit appropriate for the climate to assure a healthy living environment. Unvented room heaters which burn gas, oil or kerosene are unacceptable.

(e) *Illumination and Electricity*—(1) *Performance Requirement.* Each room shall have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. Sufficient electrical sources shall be provided to permit use of essential electrical appliances while assuring safety from fire.

(2) *Acceptability Criteria.* Living and sleeping rooms shall include at least one window. A ceiling or wall type light fixture shall be present and working in the bathroom and kitchen area. At least two electric outlets, one of which may be an overhead light, shall be present and operable in the living area, kitchen area, and each bedroom area.

(f) *Structure and Materials*—(1) *Performance Requirement.* The dwelling unit shall be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the occupants from the environment.

(2) *Acceptability Criteria.* Ceilings, walls and floors shall not have any serious defects such as severe bulging or leaning, large holes, loose surface materials, severe buckling or noticeable movement under walking stress, missing parts or other serious damage. The roof structure shall be firm and the roof shall be weathertight. The exterior wall structure and exterior wall surface shall not have any serious defects such as serious leaning, buckling, sagging, cracks or holes, loose siding, or other serious damage. The condition and equipment of interior and exterior stairways, halls, porches, walkways, etc., shall be such as not to present a danger of tripping or falling. Elevators shall be maintained in safe and operating condition.

(g) *Interior Air Quality*—(1) *Performance Requirement.* The dwelling unit shall be free of pollutants in the air at levels which threaten the health of the occupants.

(2) *Acceptability Criteria.* The dwelling unit shall be free from dangerous levels of air pollution from carbon monoxide, sewer gas, fuel gas, dust, and other harmful air pollutants. Air circulation shall be adequate throughout the unit. Bathroom areas shall have at least one openable window or other adequate exhaust ventilation.

(h) *Water Supply*—(1) *Performance Requirement.* The water supply shall be free from contamination.

(2) *Acceptability Criteria.* The unit shall be served by an approved public or private sanitary water supply.

(i) *Lead Based Paint*—(1) *Performance Requirement.* (i) The dwelling unit shall be in compliance with HUD Lead Based Paint regulations, 24 CFR, Part 35, issued pursuant to the Lead Based Paint Poisoning Prevention Act, 42 U.S.C. 4801, and the Owner shall provide a certification that the dwelling is in accordance with such HUD Regulations.

(ii) If the property was constructed prior to 1950, the Family upon occupancy shall have been furnished the notice required by HUD Lead Based Paint regulations and procedures regarding the haz-

ards of lead based paint poisoning, the symptoms and treatment of lead poisoning and the precautions to be taken against lead poisoning.

(2) *Acceptability Criteria.* Same as Performance Requirement.

(j) *Access*—(1) *Performance Requirement.* The dwelling unit shall be useable and capable of being maintained without unauthorized use of other private properties, and the building shall provide an alternate means of egress in case of fire.

(2) *Acceptability Criteria.* The dwelling unit shall be useable and capable of being maintained without unauthorized use of other private properties. The building shall provide an alternate means of egress in case of fire (such as fire stairs or egress through windows).

(k) *Site and Neighborhood*—(1) *Performance Requirement.* The site and neighborhood shall be reasonably free from disturbing noises and reverberations and other hazards to the health, safety, and general welfare of the occupants.

(2) *Acceptability Criteria.* The site and neighborhood shall not be subject to serious adverse environmental conditions, natural or manmade, such as dangerous walks, steps, instability, flooding, poor drainage, septic tank back-ups, sewage hazards or mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

(l) *Sanitary Condition*—(1) *Performance Requirement.* The unit and its equipment shall be in sanitary condition.

(2) *Acceptability Criteria.* The unit and its equipment shall be free of vermin and rodent infestation.

(m) *Congregate Housing.* The foregoing standards shall apply except for paragraph (b) of this section, Food Preparation and Refuse Disposal. In addition, the following standards shall apply:

(1) The unit shall contain a refrigerator of appropriate size.

(2) The central dining facility (and kitchen facility, if any) shall contain suitable space and equipment to store, prepare and serve food in a sanitary manner, and there shall be adequate facilities and services for the sanitary disposal of food wastes and refuse, including facilities for temporary storage where necessary (e.g., garbage cans).

§ 886.114 Equal opportunity requirements.

Participation in the program authorized in this Subpart requires compliance with (a) Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Orders 11063 and 11246, and section 3 of the Housing and Urban Development Act of 1968; and (b) all rules, regulations, and requirements issued pursuant thereto.

§ 886.115 [Reserved]

§ 886.116 Security and utility deposits.

(a) An Owner may require Families to pay a security deposit in an amount up

to, but not more than, one month's Gross Family Contribution. If a Family vacates its unit, the Owner, subject to State and local laws, may utilize the deposit as reimbursement for any unpaid rent or other amount owed under the Lease. If the Family has provided a security deposit and it is insufficient for such reimbursement, the Owner may claim reimbursement from HUD, not to exceed an amount equal to the remainder of one month's Contract Rent. Any reimbursement under this section shall be applied first toward any unpaid rent. If a Family vacates the unit owing no rent or other amount under the Lease or if such amount is less than the amount of the security deposit, the Owner shall refund the full amount or the unused balance, as the case may be, to the Family.

(b) In those jurisdictions where interest is payable by the Owner on security deposits, the refunded amount shall include the amount of interest payable. All security deposit funds shall be deposited by the Owner in a segregated bank account, and the balance of this account, at all times, shall be equal to the total amount collected from tenants then in occupancy, plus any accrued interest. The Owner shall comply with all State and local laws regarding interest payments on security deposits.

(c) Families shall be expected to obtain the funds to pay security and utility deposits, if required, from their own resources and/or other private or public sources.

§ 886.117 Establishment of Income Limit Schedules; 30 Percent Occupancy by Very Low-Income Families.

(a) HUD will establish schedules of Income limits for determining whether Families qualify as Lower-Income Families and Very Low-Income Families.

(b) In filling vacancies, the Owner shall rent to Very-Low Income Families until at least 30 percent of the Contract units are occupied by such Families. Thereafter, the Owner shall exercise his best efforts to maintain at least 30 percent occupancy of Contract units by Very Low-Income Families.

§ 886.118 Establishment of amount of housing assistance payments.

(a) The amount of Housing Assistance Payment on Behalf of Eligible Family, to be determined in accordance with schedules and criteria established by HUD, will equal the difference between (1) no less than 15 percent nor more than 25 percent of the Family's Income, and (2) the Gross Rent taking into consideration the Income of the Family, the number of minor children in the household, and the extent of medical or other unusual expenses incurred by the Family except that, in the case of a large Very Low-Income Family or a very large Lower-Income Family or a Family with exceptional medical or other unusual expenses, the amount of the Housing Assistance Payment shall be the difference between 15 percent of the Family's Income and the Gross Rent. The term large Family means a Family which includes six or more minors (other than the head of

the Family or spouse). The term very large Family means a Family which includes eight or more minors (other than the head of the Family or spouse).

(b) 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).

(c) 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.

§ 886.119 Responsibilities of 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, selection of Families including verification of Income and other pertinent requirements, and determination of eligibility and amount of Family contribution in accordance with HUD-established schedules and criteria;

(4) Collection of Family rents;

(5) Termination of tenancies, including evictions; except that in cases where the PHA is a party to the Contract, the Owner must obtain the PHA's authorization for an eviction;

(6) Preparation and furnishing of information required under the Contract;

(7) Reexamination of Family Income, composition, and extent of exceptional medical or other unusual expenses, and redeterminations, as appropriate, of the amount of Family contribution and amount of Housing Assistance Payment in accordance with HUD-established schedules and criteria;

(8) Redeterminations of amount of Family contribution and amount of Housing Assistance Payment in accordance with HUD-established schedules and criteria as a result of an adjustment by HUD of any applicable Allowance for Utilities and Other Services; 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.

§ 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) In taking applications, selecting families, and all related determinations, the Owner shall comply with the applicable provisions of the Contract.

§ 886.122 Lease requirements.

The Lease shall contain all required provisions specified in paragraph (b) of this section and none of the prohibited provisions listed in paragraph (c) of this section and shall otherwise conform to the form of Lease approved by HUD.

(a) *Term of Lease.* The term of the Lease shall be for not less than one month, nor more than one year. The Lease may contain a provision permitting termination up to 30 days advance written notice by either party.

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

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

a. The total rent shall be \$_____ per month.

b. Of the total rent, \$_____ shall be payable by or at the direction of the Department of Housing and Urban Development ("HUD") as housing assistance payments on behalf of the Lessee and \$_____ shall be payable by the Lessee. These amounts shall be subject to change by reason of changes in the Lessee's family income, family composition, or extent of exceptional medical or other unusual expenses, in accordance with HUD-established schedules and criteria; or by reason of adjustment

by HUD of any applicable Allowance for Utilities and Other Services. Any such change shall be effective as of the date stated in a notification to the Lessee.

c. The Lessor shall not discriminate against the Lessee in the provision of services, or in any other manner, on the grounds of race, color, creed, religion, sex, or national origin.

d. The Lessor shall provide the following utilities, services, and maintenance:

e. The Lessor shall not evict the Lessee unless the Lessor complies with the requirements of local law, if any, and of this provision. The Lessor shall give the Lessee a written notice of the proposed eviction, stating the grounds and advising the Lessee that he has 10 days (or such greater number, if any, that may be required by local law) within which to respond to the Lessor.

f. (Include this provision only where a PHA is a party to the Contract between the Lessor and HUD.) Because the Lessor must obtain the PHA's authorization for an eviction, a copy of the notice shall be furnished simultaneously to the PHA, and the notice shall also state that the Lessee may, within the same time period, present his objections to the PHA in writing or in person. The PHA shall forthwith examine the grounds for eviction and shall authorize the eviction unless it finds the grounds to be insufficient under the Lease. The PHA shall notify the Lessor and the Lessee of its determination within 20 days of the date of the notice to the Lessee, whether or not the Lessee has presented objections to the PHA. If the Lessor has not received a response from the PHA within 20 days, he shall telephone the PHA and shall be informed by the PHA whether a notice of determination has been mailed. If the PHA informs the Lessor that no notice has been mailed within the 20-day period, the PHA shall be deemed to have authorized the eviction. The PHA shall be entitled to a fee as provided in the Contract for each proposed eviction action submitted by the Lessor and reviewed by the PHA.

Lessor _____
By _____
Date _____
Lessee _____
Date _____

(c) *Prohibited Provisions.* Lease clauses which fall within the classifications listed below shall not be included in any Lease.

(1) *Confession of Judgment.* Prior consent by tenant to any lawsuit the landlord may bring against him in connection with the Lease and to a judgment in favor of the landlord.

(2) *Distraint for Rent or Other Charges.* Authorization to the landlord to take property of the tenant and hold it as a pledge until the tenant performs any obligation which the landlord has determined the tenant has failed to perform.

(3) *Exculpatory Clause.* Agreement by tenant not to hold the landlord or landlord's agents liable for any acts or omissions whether intentional or negligent on the part of the landlord or the landlord's authorized representative or agents.

(4) *Waiver of Legal Notice by Tenant Prior to Actions for Eviction or Money Judgments.* Agreement by tenant that the landlord may institute suit without any notice to the tenant that the suit has been filed.

(5) *Waiver of Legal Proceedings.* Authorization to the landlord to evict the tenant or hold or sell the tenant's possessions whenever the landlord determines that a breach or default has occurred, without notice to the tenant or any determination by a court of the rights and liabilities of the parties.

(6) *Waiver of Jury Trial.* Authorization to the landlord's lawyer to appear in court for the tenant and to waive the tenant's right to a trial by jury.

(7) *Waiver of Right to Appeal Judicial Error in Legal Proceedings.* Authorization to the landlord's lawyer to waive the tenant's right to appeal on the ground of judicial error in any suit or the tenant's right to file a suit in equity to prevent the execution of a judgment.

(8) *Tenant Chargeable with Costs of Legal Actions Regardless of Outcome.* Agreement by the tenant to pay attorney's fees or other legal costs whenever the landlord decides to take action against the tenant even though the court finds in favor of the tenant. (Omission of such clause does not mean that the tenant as a party to a lawsuit may not be obligated to pay attorney's fees or other costs if he loses the suit.)

§ 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 each Contract unit and related facilities at least annually and at such other times as HUD may determine to be necessary to assure that the Owner is meeting his obligation to maintain the units in Decent, Safe and Sanitary condition and to provide the agreed upon utilities and other services. HUD 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.

§ 886.124 Reexamination of family income, composition, and extent of exceptional medical or other unusual expenses.

(a) Reexamination of Family Income, composition, and the extent of medical or other unusual expenses incurred by the Family shall be made by the Owner at least annually (except that such reviews may be made at intervals no longer than two years in the case of elderly Families), and appropriate redetermina-

tions shall be made by the Owner of the amount of the Gross Family Contribution and the amount of the housing assistance payment, all in accordance with schedules and criteria established by HUD.

(b) A Family's eligibility for housing assistance payments shall continue until the amount payable by the Family equals the Gross Rent for the dwelling unit it occupies. However, the termination of eligibility at such point shall not affect the Family's other rights under its Lease nor shall such termination preclude resumption of payments as a result of subsequent changes in income or rents or other relevant circumstances during the term of the Contract. A Family may at any time request a redetermination of its Gross Family Contribution on the basis of changes in Family Income or other relevant circumstances.

§ 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 allowance for utilities and other services.

HUD shall determine, as part of its annual inspection and at such other times as it deems appropriate, whether an adjustment is required in the Allowance for Utilities and Other Services applicable to the dwelling units in the project, on grounds of changes in utility rates or other change of general applicability to all units in the project. If HUD determines that an adjustment should be made, HUD shall prescribe the amount of the adjustment and direct the Owner to make promptly a corresponding adjustment in the amount of rent to be paid by the affected Families and the amount of housing assistance payment.

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

Model lease and grievance procedures established by HUD for PHA-owned low-rent public housing are not applicable to projects operating under section 8 project commitments pursuant to this subpart.

§ 886.128 Evictions.

(a) The Owner shall not evict the Family unless the Owner complies with the requirements of local law, if any, and of this section. The Owner shall give the Family a written notice of the proposed eviction, stating the grounds and advising the Family that it has 10 days

(or such greater number, if any, that may be required by local law) within which to respond to the Owner.

(b) Where a PHA is a party to the Contract between the Owner and HUD, the Owner must obtain the PHA's authorization for an eviction; accordingly, a copy of the notice shall be furnished simultaneously to the PHA, and the notice shall also state that the Family may, within the same time period, present its objections to the PHA in writing or in person. The PHA shall forthwith examine the grounds for eviction and shall authorize the eviction unless it finds the grounds to be insufficient under the Lease. The PHA shall notify the Owner and the Family of its determination within 20 days of the date of the notice to the Family, whether or not the Family has presented objections to the PHA. If the Owner has not received a response from the PHA within 20 days, he shall telephone the PHA and shall be informed by the PHA whether a notice of determination has been mailed. If the PHA informs the Owner that no notice has been mailed within the 20-day period, the PHA shall be deemed to have authorized the eviction. The PHA shall be entitled to a fee as provided in the Contract for each proposed eviction action submitted by the Owner and reviewed by the PHA.

§ 886.129 Reduction of number of contract units for failure to lease to eligible families.

(a) If at any time, beginning six months after the effective date of the Contract, the Owner fails for a continuous period of six months to have at least 80 percent of the Contract units leased or available for leasing by Eligible Families, HUD may on 30 days notice reduce the number of Contract units to not less than the number of units under lease or available for leasing by Eligible Families, plus 10 percent of such number if the number is 10 or more, rounded to the next highest number.

(b) At the end of the initial term of the Contract and of each renewal term, HUD may, by notice to the Owner, reduce the number of Contract units to not less than (1) the number of units under lease or available for leasing by Eligible Families at that time, or (2) the average number of units so leased or available for leasing during the last year, whichever is the greatest number, plus 10 percent of such number if the number is 10 or more, rounded to the next highest number.

(c) HUD will agree to an amendment of the Contract to provide for subsequent restoration of any reduction made pursuant to paragraph (a) or (b) of this section if HUD determines that the restoration is justified as a result of changes in demand and in the light of the Owner's record of compliance with his obligations under the Contract and if contract authority is available; and HUD will take such steps authorized by Section 8(c)(6) of the Act as may be necessary to carry out this assurance.

§ 836.130 HUD review of contract compliance.

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

Effective date: This final rule shall be effective on February 24, 1977.

NOTE.—It is hereby certified that the economic and inflationary impacts of this regulation has been carefully evaluated in accordance with OMB Circular A-107.

JOHN T. HOWLEY,
*Acting Assistant Secretary for
Housing — Federal Housing
Commissioner.*

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