

*disabled families.* If the owner of an elderly project determines, in accordance with paragraph (f) of this section, that there are an insufficient number of non-elderly disabled families to fill all the vacant units in the elderly project reserved for non-elderly disabled families as provided in paragraph (c) of this section, the owner may give preference for occupancy of these units to disabled families who are near-elderly families.

(e) *Availability of units to families without regard to preference.* An owner shall make vacant units in an elderly project generally available to otherwise eligible families who apply for housing, without regard to the preferences and reservation of units provided in this section if either:

(1) The owner has adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, reserve preference, and secondary preference has been given, to fill all the vacant units; or

(2) The owner has *not* adopted the secondary preferences and there are an insufficient number of families for whom elderly preference, and reserve preference has been given to fill all the vacant units.

(f) *Determination of insufficient number of applicants qualifying for preference.* To make a determination that there are an insufficient number of applicants who qualify for the preferences, including secondary preferences, provided by this section, the owner must:

(1) Conduct marketing in accordance with §880.601(a) to attract applicants qualifying for the preferences and reservation of units set forth in this section; and

(2) Make a good faith effort to lease to applicants who qualify for the preferences provided in this section, including taking all feasible actions to fill vacancies by renting to such families.

(g) *Federal preferences.* An owner that gives preferences to elderly families and reserves units for non-elderly disabled families in accordance with this section also shall select applicants among each respective group in accordance with the Federal preferences contained in 24 CFR part 5. Projects under National Housing Act programs and re-

ceiving section 8 assistance may be subject to preferences in addition to those contained in 24 CFR part 5 which also must be applied in selecting applicants among each respective group.

(h) *Prohibition of evictions.* An owner may not evict a tenant without good cause, or require that a tenant vacate a unit, in whole or in part because of any reservation or preference provided in this section, or because of any action taken by the Secretary pursuant to subtitle D (sections 651 through 661) of title VI of the Housing and Community Development Act of 1992 (42 U.S.C. 13611 through 13620).

[59 FR 65850, Dec. 21, 1994, as amended at 61 FR 9046, Mar. 6, 1996]

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

### Subpart A—Summary and Applicability

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

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

### Subpart A—Summary and Applicability

#### § 881.101 General.

(a) The purpose of the Section 8 program is to provide low-income families with decent, safe and sanitary rental housing through the use of a system of housing assistance payments. This part contains the policies and procedures applicable to the Section 8 substantial rehabilitation program. The assistance may be provided to public housing agency owners or to private owners either directly from HUD or through public housing agencies.

(b) This part does not apply to projects developed under other Section 8 program regulations, including 24 CFR parts 880, 882, 883, 884, and 885, except to the extent specifically stated in those parts.

[61 FR 13591, Mar. 27, 1996]

#### § 881.104 Applicability of part 881 in effect as of February 20, 1980.

(a) Part 881, in effect as of February 20, 1980, applies to all proposals for which a notification of selection was not issued before the February 20, 1980 effective date of part 881. (See 24 CFR part 881, revised as of April 1, 1980). Where a notification of selection was issued for a proposal before the February 20, 1980, effective date, part 881 in effect as of February 20, 1980 applies if the owner notified HUD within 60 calendar days that the owner wished the provisions of part 881, effective February 20, 1980, to apply and promptly brought the proposal into conformance.

(b) Subparts E (Housing Assistance Payments Contract) and F (Management) of this part apply to all projects for which an Agreement was not executed before the February 20, 1980, effective date of part 881. Where an Agreement was so executed:

(1) The owner and HUD may agree to make the revised subpart E of this part applicable and to execute appropriate amendments to the Agreement and/or Contract.

(2) The owner and HUD may agree to make the revised subpart F of this part applicable (with or without the limitation on distributions) and to execute

appropriate amendments to the Agreement and/or Contract.

(c) Section 880.607 of this chapter, Termination of Tenancy and Modification of Leases, applies to new families who begin occupancy or execute a lease on or after 30 days after the February 20, 1980, effective date of part 881. This section also applies to families not covered by the preceding sentence, including existing families under lease, with respect to all leases in which a renewal becomes effective on or after the 60th day following the February 20, 1980 effective date of part 881. A lease is considered to be renewed where both the landlord and the family fail to terminate a tenancy under a lease permitting either party to terminate.

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

[61 FR 13591, Mar. 27, 1996]

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

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

### Subpart B—Definitions and Other Requirements

#### § 881.201 Definitions.

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

*ACC*. (Annual Contributions Contract) For a private-owner/PHA project, for which the Contract is administered by a PHA, the ACC is the contract between the PHA (as contract administrator) and HUD. Under the ACC, HUD commits to provide the PHA with the funds needed to make housing assistance payments to the owner and to pay the PHA for HUD-approved administrative fees, and the PHA agrees to perform the duties of a contract administrator.

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

*Annual income.* As defined in part 813 of this chapter.

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

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

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

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

*Decent, safe and sanitary.* Housing is decent, safe and sanitary at project completion if the dwelling units and related facilities are accepted by HUD as meeting the requirements of the Agreement. Housing continues to be decent, safe and sanitary if it is maintained in a condition substantially the same as at the time of acceptance.

*Elderly Family.* As defined in parts 812 and 813 of this chapter.

*Family (eligible family).* As defined in part 812 of this chapter.

*Final proposal.* The detailed description of a proposed project to be assisted under this part, which an owner submits after selection of the preliminary

proposal, except where a preliminary proposal is not required under § 881.303(c). The final proposal becomes an exhibit to the Agreement and is the standard by which HUD judges acceptable construction of the project.

*Gross rent.* As defined in part 813 of this chapter.

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

*Housing Assistance Payment.* The payment made by the PHA to the Owner of a unit as provided in the Contract. The payment is the difference between the Contract Rent and the Tenant Rent. An additional payment is made to the Family when the Utility Allowance is greater than the Total Tenant Payment. In the case of a Family renting only a manufactured home space, as provided in § 881.202(i), the Housing Assistance Payment is the difference between the Gross Rent and the Total Tenant Payment, but such payment may not exceed the Contract Rent for the space. A Housing Assistance Payment, known as a "vacancy payment", may be made to the Owner when an assisted unit is vacant, in accordance with the terms of the Contract.

*Housing Assistance Plan.* A housing plan which is submitted by a unit of general local government and approved by HUD as being acceptable under the standards of 24 CFR part 570.

*Housing type.* The three housing types are new construction, rehabilitation, and existing housing.

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

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

*Owner.* Any private person or entity (including a cooperative) or a public

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

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

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

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

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

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

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

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

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

*Single Room Occupancy (SRO) Housing.* A unit for occupancy by a single eligible individual capable of independent living, which does not contain food

preparation and/or sanitary facilities and is located within a multifamily structure consisting of more than 12 units.

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

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

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

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

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

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

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

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

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

[45 FR 7085, Jan. 31, 1980, as amended at 48 FR 12705, Mar. 28, 1983; 49 FR 17449, Apr. 24, 1984; 49 FR 19944, May 10, 1984; 61 FR 5212, Feb. 9, 1996; 61 FR 13591, Mar. 27, 1996]

#### **§ 881.205 Limitation on distributions.**

(a) Non-profit owners are not entitled to distributions of project funds.

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

(1) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 6 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the FEDERAL REGISTER.

(2) For projects for non-elderly families, the first year's distribution will be limited to 10 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 10 percent return on the value in subsequent years, as determined by HUD, of the approved initial equity. Any such adjustment will be made by Notice in the FEDERAL REGISTER.

(c) For the purpose of determining the allowable distribution, an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by HUD at cost certification (see § 881.405), unless the owner justifies a higher equity contribution by cost certification documentation in accordance with HUD mortgage insurance procedures.

(d) Any short-fall in return may be made up from surplus project funds in future years.

(e) If HUD determines at any time that project funds are more than the amount needed for project operations, reserve requirements and permitted distribution, HUD may require the excess to be placed in an account to be used to reduce housing assistance payments or for other project purposes.

Upon termination of the Contract, any excess funds must be remitted to HUD.

(f) Owners of small projects or partially-assisted projects are exempt from the limitation on distributions contained in paragraphs (b) through (d) of this section.

(g) In the case of HUD-insured projects, the provisions of this section will apply instead of the otherwise applicable mortgage insurance program provisions.

#### § 881.207 Property standards.

Projects must comply with:

(a) HUD Minimum Design Standards for Rehabilitation for Residential Properties (HUD Handbook 4940.4);

(b) In the case of congregate or single room occupant housing, the appropriate HUD guidelines and standards;

(c) HUD requirements pursuant to section 209 of the Housing and Community Development Act of 1974 for projects for the elderly or handicapped;

(d) HUD requirements pertaining to noise abatement and control;

(e) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), 24 CFR part 35 and 24 CFR part 200, subpart O; and

(f) Applicable State and local laws, codes, ordinances and regulations.

(g) *Smoke detectors.* (1) *Performance requirement.* After October 30, 1992, each dwelling unit must include at least one battery-operated or hard-wired smoke detector, in proper working condition, on each level of the unit. If the unit is occupied by hearing-impaired persons, smoke detectors must have an alarm system, designed for hearing-impaired persons, in each bedroom occupied by a hearing-impaired person.

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

[45 FR 7085, Jan. 31, 1980, as amended at 52 FR 1893, Jan. 15, 1987; 57 FR 33851, July 30, 1992]

**§ 881.208 Financing.**

(a) *Types of financing.* Any type of construction financing and long-term financing may be used, including:

(1) Conventional loans from commercial banks, savings banks, savings and loan associations, pension funds, insurance companies or other financial institutions;

(2) Mortgage insurance programs under the National Housing Act; and

(3) Financing by tax-exempt bonds or other obligations.

(b) *HUD approval.* HUD must approve the terms and conditions of the financing to determine consistency with these regulations and to assure they do not purport to pledge or give greater rights or funds to any party than are provided under the Agreement, Contract, and/or ACC. Where the project is financed with tax-exempt obligations, the terms and conditions will be approved in accordance with the following:

(1) An issuer of obligations that are tax-exempt under any provision of Federal law or regulation, the proceeds of the sale of which are to be used to purchase GNMA mortgage-backed securities issued by the mortgagee of the Section 8 project, will be subject to 24 CFR part 811, subpart B.

(2) Issuers of obligations that are tax-exempt under Section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR part 811, subpart A if paragraph (b)(1) of this section is not applicable.

(3) Issuers of obligations that are tax-exempt under any provision of Federal law or regulation other than Section 11(b) of the U.S. Housing Act of 1937 will be subject to 24 CFR 811, subpart A if paragraph (b)(1) of this section is not applicable, except that such issuers that are State Agencies qualified under 24 CFR part 883 are not subject to 24 CFR part 811, subpart A and are subject solely to the requirements of 24 CFR part 883 with regard to the approval of tax-exempt financing.

(c) *Pledge of contracts.* An owner may pledge, or offer as security for any loan or obligation, an Agreement, Contract or ACC entered into pursuant to this part: *Provided, however,* That such fi-

ancing is in connection with a project constructed pursuant to this part and approved by HUD. Any pledge of the Agreement, Contract, or ACC, or payments thereunder, will be limited to the amounts payable under the Contract or ACC in accordance with its terms. If the pledge or other document provides that all payments will be paid directly to the mortgagee or the trustee or bondholders, the mortgagee or trustee will make all payments or deposits required under the mortgage, trust indenture of HUD regulations and remit any excess to the owner.

(d) *Foreclosure and other transfers.* In the event of foreclosure, assignment or sale approved by HUD in lieu of foreclosure, or other assignment or sale approved by HUD:

(1) The Agreement, the Contract and the ACC, if applicable, will continue in effect, and

(2) Housing assistance payments will continue in accordance with the terms of the Contract.

(e) *Financing of manufactured home parks.* In the case of a substantially rehabilitated manufactured home park, the principal amount of any mortgage attributable to the rental spaces in the park may not exceed an amount per space determined in accordance with § 207.33(b) of this Title.

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

**§ 881.211 Audit.**

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

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

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

## Subparts C–D [Reserved]

Subpart E—Housing Assistance  
Payments Contract**§ 881.501 The contract.**

(a) *Contract.* The Housing Assistance Payments Contract sets forth rights and duties of the owner and the contract administrator with respect to the project and the housing assistance payments. The owner and contract administrator execute the Contract in the form prescribed by HUD upon satisfactory completion of the project.

(b) [Reserved]

(c) *Housing assistance payments to owners under the contract.* The housing assistance payments made under the Contract are:

(1) Payments to the owner to assist eligible families leasing assisted units, and

(2) Payments to the owner for vacant assisted units (“vacancy payments”) if the conditions specified in § 881.611 are satisfied.

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

(d) *Amount of housing assistance payments to owner.* (1) The amount of the housing assistance payment made to the owner of a unit being leased by an eligible family is the difference between the contract rent for the unit and the tenant rent payable by the family.

(2) A housing assistance payment will be made to the owner for a vacant assisted unit in an amount equal to 80 percent of the contract rent for the first 60 days of vacancy, subject to the conditions in § 881.611. If the owner collects any tenant rent or other amount for this period which, when added to this vacancy payment, exceeds the contract rent, the excess must be repaid as HUD directs.

(3) For a vacancy that exceeds 60 days, a housing assistance payment for the vacant unit will be made, subject to the conditions in § 881.611, in an amount equal to the principal and in-

terest payments required to amortize that portion of the debt attributable to the vacant unit for up to 12 additional months.

(e) *Payment of utility reimbursement.* Where applicable, the Utility Reimbursement will be paid to the Family as an additional Housing Assistance Payment. The Contract will provide that the Owner will make this payment on behalf of the contract administrator. Funds for this purpose will be paid to the Owner in trust solely for the purpose of making the additional payment. If the Family and the utility company consent, the Owner may pay the Utility Reimbursement jointly to the Family and the utility company or directly to the utility company.

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

**§ 881.502 Term of contract.**

(a) *Term (except for Manufactured Home Parks).* The term of the Contract will be as follows:

(1) Where the estimated cost of the rehabilitation is less than 25 percent of the estimated value of the project after completion of the rehabilitation, the contract will be for a term of 20 years for any dwelling unit.

(2) Where the estimated cost of rehabilitation is 25 percent or more of the estimated value of the project after completion of rehabilitation, the contract may be for a term which:

(i) Will cover the longest term, but not less than 20 years, of a single credit instrument covering:

(A) The cost of rehabilitation, or  
(B) The existing indebtedness, or  
(C) The cost of rehabilitation and the refinancing of the existing indebtedness, or

(D) The cost of rehabilitation and the acquisition of the property; and

(ii) For assisted units in a project financed with the aid of a loan insured or co-insured by the Federal government or a loan made, guaranteed or intended for purchase by the Federal government, will be 20 years for any dwelling unit; or

(iii) For units in a project financed other than as described in paragraph (a)(2)(ii) of this section will not exceed 30 years for any dwelling unit except

§ 881.503

that this limit will be 40 years if (A) the project is owned or financed by a loan or loan guarantee from a state or local agency, (B) the project is intended for occupancy by non-elderly families and (C) the project is located in an area designated by HUD as one requiring special financing assistance.

(b) *Term for manufactured home parks.* For manufactured home units or spaces in substantially rehabilitated manufactured home parks, the term of the Contract will be 20 years.

(c) *Staged projects.* If the project is completed in stages, the term of the Contract must relate separately to the units in each stage. The total Contract term for the units in all stages, beginning with the effective date of the Contract for the first stage, may not exceed the overall maximum term allowable for any one unit under this section, plus two years.

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

§ 881.503 Cross-reference.

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

[61 FR 13592, Mar. 27, 1996]

Subpart F—Management

§ 881.601 Cross-reference.

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

[61 FR 13592, Mar. 27, 1996]

PART 882—SECTION 8 CERTIFICATE AND MODERATE REHABILITATION PROGRAMS

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