

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

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

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

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

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

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

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

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

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

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

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

(c) Housing on which rehabilitation work has already started when the Agreement is executed is eligible for assistance as a Substantial Rehabilitation project under this part provided:

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

(2) At the date of application to HUD, the project cannot be completed and occupied by eligible families without assistance under this part; and

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

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

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

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

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

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

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

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

§ 883.306 Limitation on distributions.

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

(b) For the life of the Contract, project funds may only be distributed

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

(1) For projects for elderly families, the first year's distribution will be limited to 6 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 6 percent return on the value, in subsequent years, as determined in accordance with HUD guidelines, of the approved initial equity. Any such adjustments will be made in accordance with a Notice in the FEDERAL REGISTER. The HFA may approve a lesser increase or no increase in subsequent years' distributions.

(2) For projects for non-elderly families the first year's distribution will be limited to 10 percent on equity. The Assistant Secretary may provide for increases in subsequent years' distributions on an annual or other basis so that the permitted return reflects a 10 percent return on the value, in subsequent years, as determined in accordance with HUD guidelines, of the approved initial equity. Any such adjustments will be made in accordance with a Notice in the FEDERAL REGISTER. The HFA may approve a lesser increase or no increase in subsequent years' distributions.

(c) For the purpose of determining the allowable distribution, an owner's equity investment in a project is deemed to be 10 percent of the replacement cost of the part of the project attributable to dwelling use accepted by the HFA at cost certification (See §883.411), or as specified in the Proposal where cost certification is not required, unless the owner justifies a higher equity contribution through cost certification documentation accepted by the HFA.

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

(e) If the HFA determines at any time that surplus project funds are more than the amount needed for project operations, reserve requirements and permitted distributions, the HFA may require the excess to be placed in a separate account to be used to reduce housing assistance payments or for other project purposes. Upon termination of the Contract, any excess project funds must be remitted to HUD.

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

(g) HUD may permit increased distributions of surplus, in excess of the amounts otherwise permitted, to profit-motivated owners who participate in a HUD-approved initiative or program to preserve below-market housing stock. The increased distributions will be limited to a maximum amount based on market rents and calculated according to HUD instructions. Funds that the owner is authorized to retain under section 236(g)(2) of the National Housing Act are not considered distributions to the owner.

(h) Any State or local law or regulation that restricts distributions to an amount lower than permitted by this section or permitted by the Commissioner under this paragraph (h) is preempted as provided by section 524(f) of the Multifamily Assisted Housing Reform and Affordability Act of 1997.

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

§ 883.307 Financing.

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