

§ 882.809

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

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

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

§ 882.809 Waivers.

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

§ 882.810 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* (1) Consistent with the other goals and objectives of this part, owners must assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, non-profit organizations, and farms) as a result of a project assisted under this part. To the extent feasible, residential tenants must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the project upon its completion.

(2) Whenever a building/complex is rehabilitated, and some but not all of the rehabilitated units will be assisted upon completion of the rehabilitation, the relocation requirements described in this section apply to the occupants of each rehabilitated unit, whether or not Section 8 assistance will be provided for the unit.

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

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation;

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the project upon completion; and

(iv) The assistance required under paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A “displaced person” (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601-4655) and implementing regulations in 49 CFR part 24. A displaced person must be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601-19) and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority is located in an area of minority concentration, such person also must be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the HA’s determination concerning whether the person qualifies as

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

(f) *Responsibility of HA.* (1) The HA must certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations in 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the HA to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs may be paid for with local public funds or funds available from other sources. The cost of HA advisory services for temporary relocation of tenants to be assisted under the program also may be paid from preliminary administrative funds.

(3) The HA must maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The HA must maintain data on the racial, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term *displaced person* includes, but may not be limited to:

(i) A person who moves permanently from the real property after receiving notice requiring such move, if the move occurs on or after the date the owner submits to the HA the owner proposal that is later approved;

(ii) A person, including a person who moves from the property before the date the owner submits the proposal to the HA, if the HA or HUD determines that the displacement resulted directly

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

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex permanently after the execution of the Agreement between the owner and the HA (or, for projects assisted under subpart H of this part, after the "initiation of negotiations" (see paragraph (h) of this section)), if the move occurs before the tenant is provided a written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon its completion. Such reasonable terms and conditions must include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before the execution of the agreement and estimated average monthly utility costs; or

(B) Thirty percent of gross household income.

(C) For projects assisted under subpart H of this part, the amount cannot exceed the greater of the tenant's monthly rent before the "initiation of negotiations" and estimated average monthly utility costs; or (if the tenant is low-income) the total tenant payment, as determined under 24 CFR 5.613, or (if the tenant is not low-income) 30 percent of gross household income; or

(iv) A tenant-occupant of a dwelling, who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation; or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the building/complex, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

Pt. 883

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

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a displaced person (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State, or local law, or other good cause, and the HA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the preliminary proposal (or application, if there is no preliminary proposal), and before signing a lease and commencing occupancy, received written notice of the project and its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a displaced person (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The HA may request, at any time, HUD's determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of private-owner rehabilitation or demolition of the real property, the term *initiation of negotiations* means the execution of the Agreement between the owner and the HA.

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PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

Subpart A—Summary and Guide

Sec.

883.101 General.

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

883.106 Applicability and relationships between HUD and State agencies.

Subpart B [Reserved]

Subpart C—Definitions and Other Requirements

883.301 Applicability.

883.302 Definitions.

883.306 Limitation on distributions.

883.307 Financing.

883.308 Adjustments to reflect changes in terms of financing.

883.310 Property standards.

883.313 Audit.

Subparts D-E [Reserved]

Subpart F—Housing Assistance Payments Contract

883.601 Applicability.

883.602 The contract.

883.603 Term of contract.

883.604 Maximum annual commitment and project account.

883.605 Leasing to eligible families.

883.606 Administration fee.

883.607 Default by owner and/or agency.

883.608 Notice upon contract expiration.

Subpart G—Management

883.701 Cross-reference.

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

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

Subpart A—Summary and Guide

§ 883.101 General.

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