5. Paragraph (a) of § 232.251 is revised to read as follows:

§ 232.251 Cross-reference.

(a) All of the provisions, except § 207.258b, of Part 207, Subpart B of this chapter relating to mortgages insured under section 207 of the National Housing Act, apply to mortgages insured under section 232 of the Act.

* * * * *

PART 234—CONDOMINIUM OWNERSHIP MORTGAGE INSURANCE

6. The authority citation for 24 CFR Part 234 is revised to read as set forth below, and any authority citation following any section in Part 234 is removed:

Authority: Secs. 211 and 234, National Housing Act (12 U.S.C. 1715b and 1715y); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

7. Section 234.751(a) is revised to read as follows:

§ 234.751 Cross-reference.

(a) All of the provisions, except § 207.258(b), of Part 207, Subpart B of this Chapter covering mortgages insured under section 207 of the National Housing Act shall apply to mortgages insured under section 234(d) of such Act.

* * * * *

PART 242—MORTGAGE INSURANCE FOR HOSPITALS

8. The authority citation for 24 CFR Part 242 is revised to read as set forth below, and any authority citation following any section is Part 242 is removed:

Authority: Secs. 211 and 242, National Housing Act (12 U.S.C. 1715b and 1715z-7); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

9. Section 242.251 is revised to read as follows:

§ 242.251 Cross-reference.

All of the provisions of Subpart B, Part 207 of this chapter relating to mortgages insured under section 207 of the National Housing Act, apply to mortgages on hospitals insured under section 242 of the National Housing Act, except the following:

Section 207.258b—Partial payment of claims
Section 207.259—Insurance benefits

PART 244—MORTGAGE INSURANCE FOR GROUP PRACTICE FACILITIES [TITLE XI]

10. The authority citation for 24 CFR Part 244 is revised to read as set forth below, and any authority citation following any section of Part 244 is removed:

Authority: Secs. 211 and 1104, National Housing Act (12 U.S.C. 1715b and 1749aaa-5); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

11. Paragraph (a) of 244.251 is revised to read as follows:

§ 244.251 Cross-reference.

(a) All of the provisions, except § 207.258b, of Part 207, Subpart B of this chapter relating to mortgages insured under section 207 of the National Housing Act apply to a mortgage covering a group practice facility insured under Title XI of the National Housing Act.

* * * * *

Dated: September 18, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-22904 Filed 9-24-85; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Part 247

[Docket No. R-85-1076; FR-1661]

Evictions From Certain Subsidized and HUD-Owned Projects

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule makes final the interim rule which clarified the Department's intent that evictions of tenants from certain subsidized and HUD-owned projects be effected solely by judicial action. This rule requires the landlord to advise the tenant, in a termination notice, that the tenant is entitled to a court proceeding under State or local law at which he or she may present a defense to the eviction. The landlord is prohibited from resorting to "self-help" evictions or any non-judicial process, even where these actions are authorized by State or local law. This rule is procedural only, and does not alter in any way the grounds for which the landlord may terminate a tenancy.

EFFECTIVE DATE: October 30, 1985.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Program Planning Division, Office of Multifamily Housing Management and Occupancy, Department of Housing and Urban Development, Washington, D.C. 20410, (202) 426-3970. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department issued an interim rule on May 23, 1983 (48 FR 22913) in compliance with a court order in *Love* v. *HUD*, Civ. No. 80-1041 B (W.D. Pa.). The interim rule amended 24 CFR Part 450 (since redesignated as Part 247), which sets forth procedures for the termination of occupancy of tenants residing in multifamily housing projects subsidized under section 221(d)(3) (BMIR) or section 236 of the National Housing Act, the Rent Supplement Program under section 101 of the Housing and Urban Development Act of 1965, or the Additional Assistance Program for Projects with HUD-Insured and HUD-Held Mortgages under Subpart A of 24 CFR Part 886. These procedures also apply to the direct loan program providing Housing for the Elderly or Handicapped under section 202 of the Housing Act of 1959, and to all multifamily projects currently owned by HUD, regardless of whether they were subsidized before HUD acquisition. The procedures do not apply where the termination of occupancy is a result of the proposed substantial rehabilitation or demolition of a project.

Background

On November 4, 1981, the U.S. District Court for the Western District of Pennsylvania (*Love* v. *HUD*, *supra*) directed the Secretary to promulgate interim or final regulations assuring that unreasonable provisions are not contained in leases with tenants included in the class represented by plaintiffs. An interim rule in conformity with this order was published on September 23, 1983 (48 FR 43310), corrected November 10, 1983 (48 FR 51619).

The District Court entered a second order on December 22, 1981, directing the Secretary to amend 24 CFR 450.4(a)(3) to require that the landlord's notice of termination advise the tenant that the landlord may seek to enforce the termination and evict the tenant only through a judicial proceeding at which the tenant may present a defense. In compliance with the District Court's second order and to further clarify the Department's policy, the Department promulgated an interim rule on May 23, 1983 (48 FR 22913), effective July 12, 1983 (48 FR 32006). In addition to amending 24 CFR 450.4 (*Termination notice*) to satisfy the order discussed above, the interim rule also amended § 450.1 (*Applicability*) and §450.6 (*Eviction*).

Changes made by the interim rule are explained below in the discussion of the public comments received on the interim

rule and the Department's response to those comments.

Public Comments

The Department received eight comments on the published interim rule. Five of these were from real estate management firms, including a national association; and three were from legal services corporations.

In general, the management firms were concerned with the financial impact of the rule in terms of legal expenses associated with judicial proceedings and the negative effect that the usual backlog of court proceedings will have on the operation of projects. The legal services corporations were concerned with clarifications and technical application of the rule.

Prohibition Against Self-Help Evictions

Because of the order of the Federal District Court directing the Secretary to amend the regulations to require that the landlord's notice of termination advise the tenant that the landlord may seek to enforce the termination and evict the tenant only through a judicial proceeding, the Department must amend the regulations in the manner ordered by the Court. Concerns raised by the public comments regarding operational problems are outweighed by the necessity to inform tenants of the opportunity to be heard in court.

One commenter suggested that clarification be provided to the effect that the rule applies to *all* evictions, and that self-help is prohibited, because the State of Rhode Island has two types of eviction actions. (Arkansas, New York, and possibly others have a similar choice of remedies.) Section 247.1 of the interim rule states (subject to certain exceptions not related to the commenter's concern) that the provisions apply to "*all* decisions by a landlord to terminate the occupancy of a tenant" (emphasis added), and § 247.4(a) states that "the landlord's determination to terminate the tenancy shall be in writing and shall . . . advise the tenant that if he or she remains in the leased unit on the date specified for termination, the landlord may seek to enforce the termination only by bringing a judicial action, at which time the tenant may present a defense . . . ." Section 247.6 prohibits eviction "except by judicial action . . . ."

The Department believes it is amply clear that the landlord may evict only by judicial action in which the tenant has an opportunity to present a defense. The landlord may not, therefore, use any remedies or procedures, otherwise available under State law, which would result in eviction before a judicial action that provides the tenant a chance to be heard.

One commenter suggested that tenants be advised that they should seek legal counsel and that the notice should state that the burden of proof is on the landlord. The Department believes that tenants should not be led to believe that representation by counsel is mandatory. Tenants *may* seek legal counsel to represent them. In addition, the local and state laws, not HUD, set the project owner's burden of proof.

Contents of Termination Notice

Under the language of the rule, the grounds for termination must be adequately set forth in the notice so that the notice frames the issues for trial at the eviction hearing. The interim rule clarifies that the landlord must rely on grounds that were set forth in the termination notice and may not rely on any other grounds, unless he or she had no knowledge of them when the notice was sent (§ 247.6(b), previously § 450.4(g)), and also clarifies that the tenant may rely on State or local law where that State or local law provides procedural rights which are in addition to those provided by the regulations (§ 247.6(c)).

A commenter stated that the rule should require that the landlord serve additional termination notices stating any additional grounds for termination of tenancy occurring after the original notice is served. This comment has not been accepted. The Department does not believe that it is necessary to regulate on this matter. Beyond the controls on additional grounds set out in § 247.6(b), HUD believes the issue regarding additional notices should be governed by State law. Landlords participating in the programs covered by this rule should not be held to a more demanding Federally issued regulation, but should follow the State law.

On a closely related issue, another comment stated that the second sentence in § 247.6(b) that "the landlord shall not . . . be precluded from relying on grounds about which he or she had no knowledge at the time the termination notice was sent" encourages fraudulent claims by landlords. The commenter envisions that a landlord may seek termination for one reason, then, at trial, seek eviction for a reason not stated in the notice and claim that he or she had no knowledge at the time the notice was issued. The Department has not acted on this comment. The extent of an owner's knowledge at the time of the notice is a factual question to be determined, like other factual questions, by the State court in the eviction proceeding.

Service of Termination Notice

Section 450.4 required originally that the landlord send a tenant notice of termination by first class mail and serve a copy of the notice on any adult answering the door of the leased unit, or if no adult responds, place the notice under or through the door. However, building codes in some localities require that doors be effectively sealed, making service as prescribed above impossible. Therefore, § 450.4(b) was amended by the interim rule to permit affixing the notice to the door of the leased unit in the event the notice cannot be placed under or through the door.

The interim rule required the landlord to serve the termination notice on the tenant at the tenant's address at the project, as well as by mail (§ 450.4(b)). One commenter states that it is redundant and unnecessary to mail a copy of the notice if the tenant has been served personnally, while another commenter states that delivery of notice should be by certified or registered mail, because tenants do not always receive their mail, and such service would provide a record of attempts and a signed receipt upon delivery. In answer to the latter comment, if a tenant is aware of what is contained in the certified or registered letter, he or she might prefer to not accept it or pick it up at the post office. It is not clear to the Department that service by registered or certified mail would be superior in this instance. With respect to the former comment, the cost to the landlord of mailing the notice by regular mail to the tenant is minimal, but it does offer a little more assurance that the tenant will be notified.

In this connection, a commenter states that the rule should provide that the notice be placed under, through, or *on* the door, because certain State laws require that the notice be placed *on* the door. The interim rule requires the landlord to place the termination notice under or through the door, if possible, or else to affix the notice to the door. Service under or through the door is preferable, if possible. In addition, the landlord will have to satisfy any State law requirements governing notice to a tenant, including requirements concerning service of the State-required notice.

Miscellaneous

The interim rule made a number of technical changes to Part 450. Section 450.1 was amended to delete outdated and superfluous language and to cross-reference (for the reader's convenience) 24 CFR 882.215—the termination of

tenancy procedures for tenants assisted under the Section 8 Existing Housing Program. The final rule further clarifies this cross-reference by stating that termination of tenancy of a tenant asssisted under the Section 8 Existing Housing Certificate Program is not subject to the Part 247 requirements. On March 29, 1984, HUD issued a final rule that added a new § 882.215(f), making Part 247 inapplicable in this instance (see 49 FR 12236). This is so even if the tenant is living in a project otherwise covered by Part 247.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Room 10278, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a "major rule" as the term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President of February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule was listed as item number 102 at 50 FR 17313 in the Department's Semiannual Agenda of Regulations published on April 29, 1985, under Executive Order 12291 and the Regulatory Flexibility Act.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. It is intended only as clarification of existing departmental policy regarding tenant evictions, and thus should have no significant economic impact.

The Catalogue of Federal Domestic Assistance Programs numbers and titles are 14.137, Mortgage Insurance-Rental and Cooperative Housing for Low and Moderate Income Families, Market Interest Rate; 14.103, Interest Reduction Payments-Rental and Cooperative Housing for Lower Income Families; 14.149, Rent Supplements-Rental Housing for Lower Income Families; 14.157, Housing for the Elderly or Handicapped; and 14.146, Low Income Housing-Assistance Program.

List of Subjects in 24 CFR Part 247

Low and moderate income housing, Tenant eviction.

Accordingly the interim rule published on May 23, 1983, at 48 FR 22913, is adopted as final with the following changes:

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

* * * * *

1. The authority citation for Part 247 continues to read as follows:

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

2. Section 247.1 is revised to read as follows:

§ 247.1 Applicability.

Except as provided in §§ 247.5 and 247.6(c), the provisions of this subpart shall apply to all decisions by a landlord to terminate the occupancy of a tenant in a subsidized project as defined in § 247.2(e). (Termination of tenancy of a family assisted under the Section 8 Existing Housing Certificate Program is not subject to this part—See 24 CFR 882.215.)

Dated: September 18, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 85-22902 Filed 9-24-85; 8:45 am]

BILLING CODE 4210-27-M

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24 CFR Part 510

[Docket No. R-85-1190; FR-1977]

Section 312 Rehabilitation Loan Program; Risk Premiums, and Application Fees

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: The regulation establishes the Department's policies and procedures governing premiums to be charged to offset loan default risks and fees charged for applications approved under the Department's Section 312 Rehabilitation Loan Program. This action gives effect, by regulation, to significant components of Section 312 of the Housing Act of 1964. The Department's decision to assess risk premiums and application fees will help to offset losses and administrative costs related to the implementation of the program.

EFFECTIVE DATE: October 30, 1985.

FOR FURTHER INFORMATION CONTACT: Michael Ehrmann, Deputy Director, Office of Urban Rehabilitation, Room 7170, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, (202) 755-5685. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

1. HUD's Proposal

On February 20, 1985, HUD published a notice of proposed rule making related to the establishment of a loan risk premium and application fee for Section 312 rehabilitation loans. See 50 FR 7069. The Department's statutory authority to make such loans is found at 42 U.S.C. 1452b (section 312 of the Housing Act of 1964), and its authority to impose related risk premiums and application fees is found at 42 U.S.C. 1452b(c)(3).

HUD proposed to establish a loan risk premium of one percent to offset losses from loan defaults. This premium would be added to the borrower's loan interest rate. The rule would also require borrowers to pay an application fee for approved applications to offset administrative costs incurred by HUD under the program. The fee would be $200 for a single-family loan and $300 for any other kind of loan, in view of the generally more staff intensive processing associated with other kinds of applications. A borrower would have the option of paying the application fee in full at loan settlement, or having the fee added to the loan amount and amortized over the term of the loan.

2. Comments and Discussion

Seventeen comments were received by the Department in response to its notice of proposed rule making. Generally, the commenters consisted of municipal housing or community development agencies, a majority of which opposed adoption of the rule. Opponents argued that the rule would discourage participation in the Section 312 program, particularly by lower income borrowers. This, in turn, would result in the loss of the program's benefits to neighborhoods that are in the greatest need of upgrading. Syracuse, NY and Allegheny County, PA asserted that Section 312 loans are becoming less attractive than loans available from more conventional sources. Minneapolis, MN alleged that HUD is responsible for monetary losses sustained under this program because it

has not employed adequate underwriting and collection procedures, and that it is unfair to now penalize future borrowers by imposing the proposed fees. Pinellas County, FL asserted that inadequate information is available to establish an appropriate risk fee, and until valid data become available, a risk fee should not be imposed.

Tacoma, WA indicated support for the proposed rule, as did Oxnard, CA. Oxnard views fees related to loan processing as "an idea whose time has come."

A few commenters indicated limited support for the proposed rule, suggesting, for example, that the fees be imposed only on borrowers with family incomes that exceed 80 percent of median family income for the area, or that fees collected be retained by local public bodies rather than HUD.

Risk fee—The principal argument against imposition of a risk fee is that it would create an undue burden upon lower income borrowers. Adding a one-percent risk premium to a three percent interest rate would result in a substantial increase in the borrower's payment. For example, Minneapolis states that, for a $27,000 loan, a lower income borrower would pay an additional $3,329 to HUD over a 20-year loan term (a 37.24 percent increase in the borrower's expense). Pinellas County suggested that HUD distinguish between single- and multifamily loan applicants in examining the need for and size of any risk premium.

HUD recognizes that the charges imposed will constitute an added expense for borrowers, including lower income borrowers. However, HUD does not agree that the added expense will constitute an "undue" financial burden, since the loan rate for lower income borrowers, including the premium add-on, will still be substantially below market rates. The additional expense for all borrowers is warranted in light of the Department's losses sustained in the past under this program. Moreover, a substantial portion of the Department's past losses have been sustained as a consequence of loan defaults by lower income borrowers. Insofar as the risk premiums will offset future losses, it will strengthen the future viability of the loan program.

The Department recently conducted an analysis of losses sustained under the program, and, in the preamble to its February 20, 1985 proposal, published loss data sufficient to demonstrate the need for the immediate establishment of the loan risk premium. The overwhelming majority of loans processed are single-family loans (about 97 percent) and distinctions between single- and multi-family loans related to losses are not sufficiently large to warrant disparate treatment under the rule.

The data included (a) losses on loans that have been written off over the life of the program, (b) anticipated losses on loans that are now in litigation (including pending charge-offs, bankruptcies, judgments, foreclosures, and properties held in decedent estates), (c) losses from sales of acquired properties, and (d) loans that are more than 30 days delinquent. HUD concluded that the rate of loss actually exceeded two percent of loan obligations under the program. HUD compared total losses to total loan amounts obligated to October 1983, and also considered more recent loans that were more than 30 days delinquent. Total losses exceeded $20 million, compared to more than $1.1 billion obligated. Of the more recent loans approximately 10 percent of $62 million were more than 30 days delinquent. Adding the two categories together produces a loss rate greater than two percent ($26.5 million of losses compared to about $1.2 billion obligated).

HUD's past experience under the program and estimation of future losses is sufficient to warrant imposing the one percent risk premium. The Department has already indicated that it will monitor the future loss rate under the program and adjust this premium if warranted.

Application fee—The principal argument against the proposed application fee is that it will create an undue burden on lower income borrowers. Henderson, NV and Portland, OR each assert that, based on economies of scale, lower income borrowers would be subjected to a disproportionate hardship. Duluth, MN opposes any requirement that an application fee be paid in full at settlement. (This, however, is optional to the borrower under the proposed rule). On the other hand, Tacoma, which favors the proposed rule, argues, that allowing borrowers to amortize the application fee over the loan term defeats the purpose of an application fee and should not be permitted.

Minneapolis, Portland, and NAHRO each indicate that insofar as an application fee is appropriate to offset administrative costs, local public bodies should collect and retain these fees. Minneapolis requests that the regulations state that a local public agency can change processing fees. Conversely, Ogden City argues that, consistent with the objectives of the section 312 program, HUD should continue to absorb administrative costs, just as do local public agencies.

The Department does not believe that the $200 application fee will create an undue burden on single-family borrowers. Again, this fee, which will strengthen the program by helping to offset administrative costs, is not likely to change the fundamental nature of a loan (*i.e.*, from one that contains generally more desirable terms than those offered in the private sector). Moreover, the fee is charged only on approved applications, and the rule permits a borrower to elect to have the fee added onto the loan principal amount and amortized over the loan term. These aspects of the rule are specifically designed to minimize any potential adverse impact based on an upfront fee assessment.

The application fee will produce revenues that should approximate, if not meet completely, HUD's administrative costs under the program. The Department does not intend to permit local public bodies to either collect or share in the proceeds derived from these fees. It is not clear that section 312 of the Act, which specifically authorizes HUD to collect fees, would permit local authorities to receive any fee proceeds to offset administrative costs that they incur under the program. Additionally, the Department is not inclined to create an employer-employee or agency type of relationship with local bodies that function as independent contractors under the program.

The risk premium and application fee shall be imposed on all loans approved by HUD on or after the effective date of this regulation.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implements section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, D.C. 20410.

This rule does not constitute a major rule as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3)

have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterpises in domestic or export markets.

Under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601), HUD certifies that this rule does not have a significant economic impact on a substantial number of small entities, because the rule, while increasing costs to borrowers in the Section 312 program, will not affect a significant number of small entities as defined by the Act.

This rule was listed as item number 170 in the Department's Semiannual Agenda of Regulations published on April 29, 1985, (50 FR 17286, 17325) under Executive Order 12291 and the Regulatory Flexibility Act.

The Section 312 Rehabilitation Loan Program is listed in the Catalog of Federal Domestic Assistance as program number 14.220.

List of Subjects in 24 CFR Part 510

Loan programs—housing and community development, Relocation assistance, Urban renewal.

PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

Accordingly, the Department amends 24 CFR Part 510 as follows:

1. The authority citation for 24 CFR Part 510 is revised to read as set forth below and any authority citation following any section in Part 510 is removed.

Authority: Sec. 312, United States Housing Act of 1964 (42 U.S.C. 1452b); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. By adding a new § 510.34, to read as follows:

§ 510.34 Loan risk premiums.

For any loan issued under this part, a risk premium of one percent shall be added to the loan contract interest rate. The premium will constitute a part of each of the borrower's monthly payments over the loan term.

2. By adding a new § 510.36, to read as follows:

§ 510.36 Application fee.

(a) Each approved application filed for a loan under this part shall be subject to an application fee. The fee for a property containing four or fewer dwelling units shall be $200. The fee for all other applications shall be $300.

(b) A borrower may, at his or her option, either (1) submit the application fee in full at the time of loan settlement, or (2) have the amount of the application fee added to the loan amount and amortized over the term of the loan.

Dated: September 18, 1985.

Alfred C. Moran,

Assistant Secretary for Community Planning and Development.

[FR Doc. 85-22903 Filed 9-24-85; 8:45 am]

BILLING CODE 4210-29-M

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24 CFR Parts 880, 881, 882, 883, 884, 886 and 888

[Docket No. R-85-1248; FR-2005]

Section 8 Housing Assistance Payments Program: Procedure for Issuing Fair Market Rents; Single Room Occupancy Housing for the Existing Housing Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule codifies the methodology for establishing Fair Market Rents and announces a new procedure for promulgating Fair Market Rent Schedules for use in the various section 8 Housing Assistance Payments Programs. The methodology employed by HUD in the past in establishing Fair Market Rents is not changed by this rule. However, the new publication procedure will allow the Department to publish proposed and final Fair Market Rent Schedules by notice in the **Federal Register**, as is done in the case of contract rent annual adjustment factors. This change in procedure will assist the Department in meeting its statutory obligation to publish Fair Market Rents at least annually, while preserving the opportunity for public comment before Fair Market Rents are published in final form. In addition, this rule adopts a standard for determining Fair Market Rents for single room occupancy units for the section 8 Existing Housing Certificate Program..

EFFECTIVE DATE: October 30, 1985. FMRs for Single Room Occupancy Units in the section 8 Existing Housing Program will be effective upon the effective date of the next schedule of Fair Market Rents.

FOR FURTHER INFORMATION CONTACT: Cecelia D. Livingston, Existing Housing Division, Office of Elderly and Assisted Housing, (202) 755-5720; James Tahash, Program Planning Division, Office of Multifamily Housing Management, (202) 426-3970; for technical information regarding the development of the schedules for specific areas for existing housing FMRs, contact Ellis V. St. Clair, Economic and Market Analysis Division, Office of Policy Development and Research, (202) 755-5590; for technical information regarding the development of the schedules for specific areas for new construction and substantial rehabilitation FMRs, contact Edward M. Winiarski, Technical Support Division, Office of Multifamily Housing Development, (202) 426-7625. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the Act) authorizes a system of housing assistance payments to aid lower income families in renting decent, safe and sanitary housing. These programs, known as the Section 8 Housing Assistance Payments Programs, provide assistance payments for lower income families for a variety of housing options, including new construction, substantial rehabilitation and moderate rehabilitation of units and existing housing certificates and housing vouchers.

Under these programs, HUD or Public Housing Agencies (PHAs) make rental assistance payments on behalf of eligible families to owners. For all Section 8 program components except the Housing Voucher program, the assistance payments are equal to the difference between the contract rent (rent payable to the owner) and the gross family contribution (the amount paid by the tenant to the owner). Initial contract rents plus any allowances for utilities generally may not exceed area-wide Fair Market Rents (FMRs) established at least annually by the Department. Under the Housing Voucher Program, initial payments on behalf of assisted Families are generally equal to the difference between the applicable payment standard and 30 percent of the Family's monthly adjusted income. The payment standard is based on the published existing housing FMR for each size unit (number of bedrooms).

In the past, the Department has issued FMRs in rulemaking documents. The Department has determined that publication by rulemaking is not necessary and has delayed timely annual publication of the FMRs. All rules issued by the Department are subject to Congressional review as provided for in section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C., 3535(o)).

Under section 7(o), any rule published for comment that is not on the Department's Semiannual Agenda of Regulations, or that is on the Agenda but requested by either of HUD's authorizing committees to be submitted for review, must be submitted both to the House Committee on Banking, Finance, and Urban Affairs and the Senate Committee on Banking, Housing, and Urban Affairs for at least 15 calendar days of continuous session of Congress before the rule may be published for comment. In addition, no rule may become effective until a period of 30 calendar days of continuous session of Congress has elapsed after publication of the rule for effect.

This Rule

Publication of FMRs by **Federal Register** *Notice.* Today's document changes the current procedure for adopting FMRs by amending applicable regulations in Part 888, Subpart A, to provide that FMRs will be issued by notice. The Department believes that publishing FMRs on a more timely basis will benefit participants in the section 8 program as well as the Department.

Such a change benefits the Department by enabling it to comply in a more timely manner with the requirements of the Act. Section 8(c)(1) of the Act states that the Secretary shall periodically, but not less than annually, establish fair market rents. Section 8(c)(1) further states that the Department shall publish FMRs in the **Federal Register,** with reasonable time for public comment, and that the FMRs shall become effective upon publication in final form in the **Federal Register.** Under this rule, FMRs will be published initially in proposed form with a minimum of 30 days for comment, and then will be published in final form by Notice for immediate effect. This procedure will increase the flexibility of the Department in responding to changed circumstances in particular market areas. In addition, when the rents are published in final form by Notice in the **Federal Register** they can be made effective the same day.

FMRs for the various Section 8 Housing Assistance Payments Programs will be published as Notices, but carried in the Proposed Rules or Rules and Regulations section of the **Federal Register.** This procedure is used when a document is related to the Department's rules, but is not a rule and is not codified in the Code of Federal Regulations. Documents published in the Proposed Rules or Rules and Regulations section are carried in all of the **Federal Register** indices, which should make it easier for the public to have quick access to the information on an ongoing basis.

Methodology Used to Develop FMRs. Today's rule also amends Part 888, Subpart A, by adding an explanation of how FMRs are developed. This rule does not make any substantive change in the methodology previously used to develop FMRs, but the rule incorporates in the Department's regulations for the first time a complete description of these procedures. Any future change in the methodology used to develop FMRs would be the subject of new rulemaking.

FMRs for New Construction and Substantial Rehabilitation. The FMRs for new construction and substantial rehabilitation are based primarily on the level of rentals paid for recently constructed dwelling units of modest design within each market area. Generally, recently constructed units include units constructed within six years of the market survey. In market areas with insufficient projects built within six years, alternative procedures will be used to develop appropriate rent levels. The FMRs are estimates of rents that prospective tenants who are not receiving Federal rent subsidies would be willing to pay for recently constructed dwelling units of modest design.

FMRs for Existing Housing. The FMRs established for Existing Housing also are used to determine FMRs for the Moderate Rehabilitation Program and the Payment Standard for the Housing Voucher Program. The Department has adopted criteria (HUD's measure of modest housing) to be used in developing the existing housing FMRs. They are: (1) The 45th percentile rent of standard quality rental housing unit (that is, the rent below which 45 percent of the standard quality rental housing units are distributed); (2) rents based on units occupied by recent movers (households who moved in the two years preceding the date of the survey data used in the calculations); and (3) exclusion from the data base of all public housing units and recently completed housing (units built in the two years preceding the survey dates.) The criterion used to calculate the FMRs for manufactured home spaces is based on the 45th percentile rent for manufactured home spaces.

HUD uses the most recent Census and American Housing Survey (AHS) data to develop base rents that correspond to the designated 45th percentile, standard quality, recent-mover FMR standard for each market area. These base rents are updated to the most recent possible date through the use of available Consumer Price Index (CPI) data for rents, and for fuel and utilities. The updated rent estimates then are trended forward to a designated "as of" date by using rent inflation factors based on the CPI data for the most recent available twelve-month period. Base rents for manufactured home spaces are developed by using HUD Field Office surveys and updating them with the rent component data of the CPI.

This rule also contains technical amendments to several of the Section 8 program regulations to include a cross-reference to Part 888 for information on the determination of Fair Market's Rents.

Single Room Occupancy FMRs for Existing Housing. In addition to Fair Market Rent amendments, this rule makes several miscellaneous amendments to Parts 882 and 888, to implement section 210 of the Housing and Urban-Rural Recovery Act of 1983 (the 1983 Act) (Pub. L. 98–181, November 30, 1983). Section 210 authorizes the use, under certain conditions, of Single Room Occupancy (SRO) units in the Section 8 Existing Housing Program. (Single Room Occupancy housing means a unit which contains no sanitary facilities or food preparation facilities, or which contains one, but not both, types of facilities, and which is suitable for occupancy by a single eligible individual capable of independent living.) It is not intended that SRO housing substitute for efficiency and one-bedroom units or compensate for tight markets. Rather, local demand for this type of housing must be demonstrated for SRO units to qualify.

These authorizing amendments for SROs are consistent with SRO provisions already in place for the Section 8 Moderate Rehabilitation program, except for the few differences cited below. Two statutory provisions that apply to the Moderate Rehabilitation program also apply to the Existing Housing program. These include:

(1) The use of SROs will be approved only when the Department determines that there is a significant demand among individuals in the locality for SRO-type housing, rather than traditional housing units; and

(2) The unit of general local government in which the property is located and the local PHA approve of the units being used as single room occupancy housing.

A third statutory requirement (applicable only to the Existing Housing program) was added by the 1983 Act. This requires that the unit of local government and local PHA certify to

HUD that the property meets applicable local health and safety standards.

This rule also incorporates into the Existing Housing regulations the current Moderate Rehabilitation housing quality standards for single room occupancy (see § 882.109). This includes a requirement that local codes on sanitary facilities, space and security be met. The regulation contains a reference to the American Public Health Association's Recommended Housing Maintenance and Occupancy ordinance for use in the absence of local code standards.

The definition for Single Room Occupancy housing differs slightly from the Moderate Rehabilitation definition by not stating the minimum number of units that must be in a building as a prerequisite for any unit to qualify as SRO housing. The definitions differ to reflect the different nature implicit in the two programs. (*i.e.*, project-based assistance in the case of the Moderate Rehabilitation Program versus use of individual, eligible units wherever they are located for the Existing Program).

To permit use of SROs in both Programs, the Secretary may waive, in appropriate cases, the statutory limitation on the number of Section 8 units in a particular community occupied by single individuals who are not elderly, displaced or handicapped, and may waive the requirement that elderly, displaced or handicapped single persons be given priority over all other types of single persons for admission to Section 8 housing. Field Office Directors may direct requests for waivers of 24 CFR Part 812 concerning limitations and preferences regarding occupancy by single persons to the Assistant Secretary for Housing.

If it is determined that SROs will be used in a jurisdiction, the PHA must amend its administrative plan to include the criteria for selecting families for single room occupancy units.

The Department has determined that, since SRO units will lack private bathroom or kitchen facilities (or both), the regulations should specify that the maximum gross rents for units under the Section 8 Existing Housing Program shall not exceed 75 percent of the Section 8 Existing Housing Fair Market Rent for 0-bedroom units, unless an exception rent has been approved by HUD for a designated municipality, county or similar locality under 24 CFR 882.106(a)(3). If an exception rent is approved by HUD for 0-bedroom units, the FMR for SROs will be 75 percent of the 0-bedroom unit exception rent. A PHA may request and receive an exception rent for the single room occupancy unit size itself. However, in no case may the maximum gross rent for a single room occupancy unit exceed 120 percent of the originally determined FMR for single room occupancy units (that is, 75 percent of the published 0-bedroom Fair Market Rent and not the HUD approved exception rent for a 0-bedroom unit). Note that any comments submitted on 0-bedroom units during the Fair Market Rent development process, as described elsewhere in this rulemaking, will directly affect the FMR levels for SRO units.

Other Matters

Part 10 of the Department's regulations sets out the policies and procedures that HUD generally follows in the development of its rules. As a general policy, the Department provides for prior opportunity for comment for most classes of rules. However, Part 10 indicates that the Department may omit notice and public procedures when the rulemaking is (among other things) a rule of agency procedure, or if prior opportunity for comment is unnecessary, impracticable or contrary to the public interest. This final rule codifies a change in the way Fair Market Rents are published; it makes no substantive change in the way the FMRs are developed. Accordingly, the Department has determined that this rule is one of agency procedure, and that it is unnecessary to provide for prior opportunity for comment. As a practical matter, we also note that the manner in which FMRs are developed is not changing and the methodology used has been subject to public comment in previous years' rulemakings. Accordingly, the Department finds that prior opportunity for comment is unnecessary with reference to the methodology.

With regard to the SRO amendments, the Department has determined that the changes will benefit persons who may not otherwise be able to participate in the program, because the rule authorizes an additional housing source. While these amendments have not been the subject of public comment, the Department does have the benefit of the public comments received on its SRO implementation rule published in 1982 in connection with the Section 8 Moderate Rehabilitation Program (47 FR 34376). That interim rule also sets FMRs for SRO units at 75 percent of the 0-bedroom Fair Market Rent, and, like this rule, implemented statutorily based requirements associated with determination of demand for SRO units and the securing of PHA and local government approval of particular properties being used for SRO purposes.

The Department received limited comments on the SRO provisions of the 1982 rule. While comments were generally favorable, two commenters, (both from New York City) objected to FMRs for SROs being set at 75 percent of 0-bedroom rents. These commenters were concerned that repair and replacement costs, maintenance, and financing costs for moderate rehabilitation projects containing SROs would all be high, and urged that FMRs be set at the same level as the 0-bedroom rent for an area.

Thus, while there has been some concern expressed about the established FMR level for SRO units, it appears to be limited in scope and connected, in part, to characteristics of the moderate rehabilitation program that are not shared in the Section 8 existing program—for example, financing costs associated with moderate rehabilitation should not similarly be a factor driving up rents in existing housing.

The Department has examined the public comments received on the interim rule pertaining to SROs for moderate rehabilitation units, and will publish soon a final rule treating that subject matter in greater detail. One of the judgments that has been made in response to those comments, however, is that FMR levels for SROs should not be raised beyond the level set out in the interim rule. Accordingly, this rule also adopts 75 percent of 0-bedroom FMRs as the appropriate level for Section 8 Existing SRO rents.

A Finding of No Significant Impact with respect to the environment, required by section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332), has been made in accordance with HUD regulations in 24 CFR Part 50. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-

based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities because it merely changes the procedure used to issue FMRs. It makes no change in the methodology used to arrive at the FMR levels.

This rule was listed as item 124 in the Department's Semiannual Agenda of Regulations published on April 29, 1985 (50 FR 17286, 17317) under Executive Order 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance Programs number is 14.156, Lower-Income Housing Assistance Programs (Section 8).

List of Subjects

24 CFR Parts 880 and 881

Grant programs: housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs: housing and community development, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs: housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs: housing and community development, Rent subsidies, Rural areas.

24 CFR Parts 886 and 888

Grant programs: housing and community development, Rent subsidies.

Accordingly, 24 CFR is amended as follows:

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

1. The authority citations following the sections in Part 880 are removed and the authority citation for Part 880 is revised to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

2. In § 880.203, paragraph (d) is revised to read as follows:

§ 880.203 Fair market rents.

* * * * *

(d) Fair Market Rents will be established by HUD and will be published in the **Federal Register** in accordance with Part 888 of this chapter. Revisions for one or more market areas may be initiated by HUD at any time and may be published as market conditions dictate.

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

3. The authority citations following the sections in Part 881 are removed and the authority citation for Part 881 is revised to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

4. In § 881.203, paragraph (d) is revised to read as follows:

§ 881.203 Fair market rents.

* * * * *

(d) Fair Market Rents will be established by HUD and will be published in the **Federal Register** in accordance with Part 888 of this chapter. Revisions for one or more market areas may be initiated by HUD at any time and may be published as market conditions dictate.

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

5. The authority citations following the sections in Part 882 are removed and the authority citation for Part 882 is revised to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

6. In § 882.102, the definitions of "Fair Market Rent" and "Unit" are revised and a definition of "Single Room Occupancy" is added in alphabetical order, as set forth below:

§ 882.102 Definitions.

* * * * *

Fair Market Rent. The rent, including utilities (except telephone), ranges and refrigerators, and all maintenance, management, and other services, which 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 will be established by HUD for dwelling units of varying sizes (number of bedrooms) and will be published in the **Federal Register** in accordance with Part 888 of this chapter.

* * * * *

Single Room Occupancy (SRO) Housing. A unit which contains no sanitary facilities or food preparation facilities, or which contains one but not both types of facilities (as those facilities are defined in §§ 882.109 (a) and (b)), and which is suitable for occupancy by a single eligible individual capable of independent living.

Unit. Residential space for the private use of a Family (including individuals who comprise a Family in accordance with 24 CFR Part 812), such as an apartment, house, or Independent Group Residence, which contains a living room, kitchen area, bathroom(s) and bedroom(s). However, a congregate housing unit need not contain a kitchen area since central dining facilities are available with the building or housing complex, a Single Room Occupancy unit need not contain sanitary and kitchen facilities, and a 0-bedroom unit may have a combined living/bedroom area. The size of a unit is based on the number of bedrooms contained within the unit and generally ranges from 0-bedroom to 6-bedrooms.

* * * * *

7. In § 882.106, a new paragraph (d) is added, to read as follows:

§ 882.106 Contract rents.

* * * * *

(d) *Single Room Occupancy Units.* (1) The Fair Market Rent for each SRO unit shall be equal to 75 percent of the 0-bedroom Fair Market Rent.

(2) In areas where HUD has approved the use of exception rents for 0-bedroom units under paragraph (a)(3) or (a)(4) of this section, the SRO exception rent will be 75 percent of the exception rent which applies to the Existing Housing 0-bedroom unit. Further, a SRO unit may be granted an exception rent for its own specified unit size. In no case may the authorized rent for the SRO unit exceed 75 percent of 120 percent of the 0-bedroom unit FMR.

(3) In determining the reasonableness of the rents, consideration will be given to the presence or absence of sanitary or kitchen facilities.

8. In § 882.109, a new paragraph (p) is added, to read as follows:

§ 882.109 Housing quality standards.

* * * * *

(p) *Single Room Occupancy (SRO) Unit—Performance Requirements.* (1) The foregoing standards shall apply except for paragraphs (a), (b), (c), (m), (n), and (o).

(2) Each SRO unit shall be occupied by no more than one person.

(3) Exterior doors and windows accessible from outside the SRO unit must be able to be locked.

(4) Sanitary facilities, space and security shall meet local code standards for single room occupancy housing. In the absence of applicable local code standards, the requirements for habitable rooms used for living and sleeping purposes contained in the American Public Health Association's Recommended Housing Maintenance and Occupancy Ordinance shall be used.

9. In § 882.110, paragraphs (c), (d), and (e) are redesignated as paragraphs (d), (e), and (f), respectively, and a new paragraph (c) is added, to read as follows:

§ 882.110 Types of housing.

* * * * *

(c) SRO Housing may be utilized if:

(1) The property is located in an area in which there is a significant demand for SRO units, as determined by the HUD Field Office;

(2) The PHA and the unit of general local government in which the property is located approve the use of SRO units for such purpose; and

(3) The unit of general local government and local PHA certify to HUD that the property meets applicable local health and safety standards.

* * * * *

§ 882.116 [Amended]

10. In § 882.116(j), the reference to "§ 882.110(c)" is removed and a reference to "§ 882.110(d)" is added in its place.

§ 882.204 [Amended]

11. Section 882.204(b)(3)(ii) is amended by removing the clause "(including any selection preferences)" and adding in its place "(including any selection preferences or use of single room occupancy units)".

§ 882.404 [Amended]

12. In § 882.404, paragraph (c) is removed.

13. In § 882.602, the definition of "Fair Market Rent" is revised to read as follows:

§ 882.602 Definitions for this subpart.

* * * * *

Fair Market Rent. The rent which would be required to be paid in order to obtain a privately owned, decent, safe and sanitary Manufactured Home Space of a modest nature. This rent includes maintenance and management services described in the definition of Manufactured Home Space for single-wide and double-wide Manufactured Home Spaces. Rents for double-wide spaces will be permitted for Assisted Families of five or more persons so long as the Manufactured Home meets the minimum occupancy standards for families in accordance with § 882.209(b)(2). Fair Market Rents will be established by HUD and will be published in the **Federal Register** in accordance with Part 888 of this chapter.

* * * * *

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

14. The authority citations following the sections in Part 883 are removed and the authority citation for Part 883 is revised as set forth below:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

15. In § 883.304, paragraph (d) is revised to read as follows:

§ 883.304 Fair market rents.

* * * * *

(d) Fair Market Rents will be established by HUD and will be published in the **Federal Register** in accordance with Part 888 of this chapter. Revisions for one or more market areas will be initiated by HUD at any time and may be published as market conditions dictate.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

16. The authority citations following the sections in Part 884 are removed and the authority citation for Part 884 is revised to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

17. In § 884.102, paragraphs (a) and (c) of the definition of "Fair Market Rent" are revised to read as follows:

§ 884.102 Definitions.

* * * * *

Fair Market Rent. (a) HUD's determination of the rents, including utilities (except telephone), ranges and refrigerators, parking, and all maintenance, management and other essential housing services, which would be required to obtain, in a particular market area, privately developed and owned, recently constructed rental housing of modest (non-luxury) design with suitable amenities.

* * * * *

(c) The Fair Market Rents will be established by HUD and will be published in the **Federal Register** in accordance with Part 888 of this chapter. To allow for the period of construction, computation of the Fair Market Rents will include HUD's estimate of anticipated rent increases during an appropriate future period as stated in the publication. Accordingly, for any given project for which the scheduled construction time will be less than such future period, an appropriate reduction will be made in determining the approvable Contract Rent.

* * * * *

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

18. The authority citations following the sections in Part 886 are removed and the authority citation for Part 886 is revised to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

19. In § 886.102, paragraph (a) of the definition of "Fair Market Rent" is revised to read as follows:

§ 886.102 Definitions.

* * * * *

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, and all maintenance, management and other services, which 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 will be established by HUD for dwelling units of varying sizes (number of bedrooms) and types and will be published in the **Federal Register** in accordance with Part 888 of this chapter.

* * * * *

20. In § 886.302, the introductory language in the definition of "Fair market rent" is revised to read as follows:

§ 886.302 Definitions.

* * * * *

Fair market rent. The rent, including utilities (except telephone), ranges and refrigerators, and all maintenance,

management, and other services required to be paid to lease a unit in the appropriate Section 8 program. Specific types of projects are described in the following paragraphs. All Fair Market Rents will be established by HUD and published in the **Federal Register** in accordance with Part 888 of this chapter.

* * * * *

PART 888—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—FAIR MARKET RENTS AND CONTRACT RENT AUTOMATIC ANNUAL ADJUSTMENT FACTORS

In Part 888 the authority citations for Subparts A and B are removed; a new authority citation to Part 888 is added, and

21. The Table of Contents for Part 888 is revised to read as follows:

Subpart A—Fair Market Rents

Sec.

888.101 Fair market rents for new construction and substantial rehabilitation: Applicability.

888.103 Fair market rents for new construction and substantial rehabilitation: Methodology.

888.105 Fair market rents for new construction and substantial rehabilitation: Manner of publication.

888.111 Fair market rents for existing housing and moderate rehabilitation: Applicability.

888.113 Fair market rents for existing housing and moderate rehabilitation: Methodology.

888.115 Fair market rents for existing housing and moderate rehabilitation: Manner of publication.

Subpart B—Contract Rent Automatic Annual Adjustment Factors

888.201 Purpose.

888.202 Manner of publication.

888.203 Use of contract rent automatic annual adjustment factors.

888.204 Revision to the automatic annual adjustment factors.

Authority: Secs. 5 and 8, United States Housing Act of 1937 (42 U.S.C. 1437c and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

22. Part 888, Subpart A is revised to read as follows:

Subpart A—Fair Market Rents

§ 888.101 Fair market rents for new construction and substantial rehabilitation; Applicability.

The Fair Market Rents (FMRs) for New Construction (see definition in § 880.201 of this chapter) and Substantial Rehabilitation (see definition in § 881.201 of this chapter) are determined by the Department of Housing and Urban Development (HUD) and apply to section 8 New Construction and Substantial Rehabilitation under Part 880 (New Construction), Part 881 (Substantial Rehabilitation), Part 883 (Housing Finance and Development Agencies), Part 884 (New Construction Set-Aside for section 515 Rural Rental Housing Projects), and Part 885 (Loans for Housing for the Elderly or Handicapped) and for Substantial Rehabilitation under Part 886, Subpart C (Section 8 Housing Assistance Program for the Disposition of HUD-owned Projects).

§ 888.103 Fair market rents for new construction and substantial rehabilitation: Methodology.

(a) *General.* Fair Market Rents (FMRs) for New Construction and Substantial Rehabilitation are based on the levels of rent paid, as determined by HUD, for recently constructed dwelling units of modest design within each market area. FMRs include a trend adjustment to allow time for processing and construction. FMRs are estimates of the rents that prospective tenants who do not receive Federal rent subsidies would be willing and able to pay for recently constructed living units of modest design, with suitable amenities. They do not necessarily represent rents needed to support construction and operating costs.

(b) *Geographic area.* The Fair Market Rents for New Construction and Substantial Rehabilitation are established for different market areas throughout the country. These market areas are the same as those used for the public housing prototype costs issued under Part 941 of this title. The market areas for the FMRs for New Construction/Substantial Rehabilitation are the same as the prototype cost areas that are in effect at the time the FMRs are published in final form.

(c) *Basic categories.* (1) FMRs are developed for five unit sizes (0, 1, 2, 3, and 4 or more bedrooms), as well a for five structural categories (detached, semi-detached/row homes, walk-up, 2–4 story elevator, and 5-plus story elevator buildings).

(2) FMRs may be established by financing type (for example, conventional loans, loans from the proceeds of tax-exempt obligations, loans secured by mortgages purchased under the Government National Mortgage Association Tandem Program for Section 8 projects, and direct loans under section 202 of the Housing Act of 1959 or section 515 of the Housing Act of 1949). If FMRs are being established by financing type, special note will be made in the annual publication of the FMRs.

(d) *Data Base.* (1) Estimates of FMRs by unit size, structural type, and market area are prepared by the HUD Field Office. Market surveys are conducted by appraisers within each market area to obtain representative samples of rents paid for comparable unsubsidized recently constructed or substantially rehabilitated dwelling units of modest design with suitable amentities. Adjustments are made for differences between the rental comparables and a hypothetical unit, such as adjustments for unit area, number of baths, utilities, services, and age of structure.

(2) Adjusted FMRs are trended ahead two years to allow time for anticipated changes in rent levels during the processing and construction phases of project development. The list of adjusted, trended unit rent is arrayed in ascending order. The FMRs for each combination of structural type and bedroom count are selected based upon the 75th percentile level of the array of sample rental comparables for that type of unit surveyed for each market area. Schedules of FMRs are then prepared that reflect a progression from bedroom size to bedroom size, and from one structural type to another that is both logical and reasonably consistent. Alternatively, in those instances where a sufficient number of market rental comparables are not available, FMRs may be developed by an interpolation procedure, which is more fully discussed in the Department's handbooks on the New Construction and Substantial Rehabilitation programs.

(e) *Special categories—computations.* In addition to the basic categories described in paragraph (c) of this section, FMRs for certain specialized housing types are computed as described in the following paragraphs. All rents computed in accordance with this paragraph (e) shall be rounded down to the nearest whole dollar.

(1) FMRs for dwelling units designed for the elderly or handicapped are those for appropriate size units, not to exceed 2 bedrooms for the elderly, multiplied by 1.05;

(2) Congregate housing dwelling unit FMRs are the same as for non-congregate units;

(3) Single room occupancy dwelling unit FMRs (applicable only for Substantial Rehabilitation projects) are 75 percent of those for zero-bedroom units of the same structural type;

(4) FMRs for living units in a group home developed with a direct loan under section 202 of the Housing Act of 1959 are those for zero-bedroom or one one-bedroom units of the walk-up structural type (or, if the group home

contains an elevator, of the elevator 2–4 story structural type). Each living unit in a group home is composed of a bedroom plus a proportionate part of common living space ordinarily included in a living unit. One-bedroom FMRs may be applied only when the bedroom space plus the proportionate part of the common space totals at least 450 square feet;

(5) Manufactured home (unit and space) FMRs shall be 95 percent of the rents for detached units of the appropriate bedroom size (except that where a manufactured home FMR is specified on the schedule for an area, the amount on the schedule shall be the FMR);

(6) FMRs for manufactured home spaces in newly constructed or substantially rehabilitated manufactured home parks shall be determined by multiplying the FMR for spaces published for the Existing Housing Program by 1.25.

§ 888.105 Fair market rents for new construction and substantial rehabilitation: Manner of publication.

Fair market rents will be developed in two steps and will be published at least annually in the **Federal Register**. The Department will propose FMRs and provide a comment period of at least 30 days. Once the comments are considered, the Department will publish a final notice announcing FMRs. These FMRs will be effective on publication.

§ 888.111 Fair market rents for existing housing and moderate rehabilitation: Applicability.

The Fair Market Rents (FMRs) for Existing Housing (see definition in § 882.102 of this chapter) are determined by the Department of Housing and Urban Development (HUD) and apply to the Section 8 Existing program under Part 882, Subparts A, B, and F, the Moderate Rehabilitation program under Part 882, Subparts D and E, the Assistance Program for Projects with HUD-insured or HUD-held Mortgages under Part 886, Subpart A, as well as for existing housing under the Section 8 Housing Assistance Program for the Disposition without substantial rehabilitation of HUD-owned projects under Part 886, Subpart C.

§ 888.113 Fair market rents for existing housing and moderate rehabilitation: Methodology.

(a) *General.* The criteria used to determine the Existing Housing FMRs are as follows: (1) The 45th percentile rent of standard quality rental housing units (*i.e.*, the rent below which 45 percent of the standard quality rental housing units within each market area is distributed); (2) rents for units occupied by recent movers (households who moved in the two years preceding the date of the survey data used in the calculations); and (3) exclusion from the data base of all public housing units and recently completed housing (units built in the two years preceding the survey date). The criterion used to calculate FMRs for manufactured home spaces is based on the 45th percentile rent for manufactured home spaces.

(b) *Geographic area.* (1) The Fair Market Rents for existing housing are established for all Metropolitan Statistical Areas (MSAs) Primary Metropolitan Statistical Areas (PMSAs), nonmetropolitan counties, and county equivalents in the United States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam. FMRs also are established for nonmetropolitan parts of counties in the New England States.

(2) FMRs for manufactured home spaces are established for all MSAs, PMSAs, selected nonmetropolitan counties, and the residual nonmetropolitan portion of each State.

(c) *Categories.* Existing housing FMRs are established by unit size (*i.e.*, number of bedrooms). Base rents are established for two-bedroom units, and percentage relationships developed from Census or American Housing Survey (AHS) data are used to establish 45th percentile rents for efficiencies and one-bedroom units. Higher percentage relationships are provided for units that contain three or more bedrooms. Manufactured home space FMRs are established for single-wide and double-wide spaces.

(d) *Data base.* HUD uses the most recent Census and American Housing Survey (AHS) data to develop base rents that correspond to the designated 45th percentile, standard quality, recent-mover FMR standard for each market area. These base rents are updated to the most recent possible date through use of available Consumer Price Index (CPI) data for rents, and for fuel and utilities. The updated rent estimates then are trended forward to a designated "as of" date by using rent inflation factors based on the CPI data for the most recent available 12-month period. In establishing FMRs each year, HUD will use the most accurate data available, which may include such things as new census data or additional data developed in response to sudden changes in market conditions. Any additional data used will be described in the **Federal Register** publication of the proposed FMRs for comment.

(e) *Specific categories—computation.* (1) The FMRs for the Moderate Rehabilitation Program are 120 percent of the FMRs published for the regular Existing Housing Program.

(2) Fair Market Rents for manufactured home spaces are derived from the use of a single rent inflation factor developed from the CPI in a manner similar to that used for the regular Existing Housing Program, but excluding data pertaining to fuel and utilities.

(3) The Fair Market Rent for each Single Room Occupancy unit is 75 percent of the zero-bedroom Fair Market Rent.

(4) The Fair Market Rent for each Congregate Housing unit is the same as for zero-bedroom units, except that if the unit consists of two or more private rooms, the Fair Market Rent is the same as for a one-bedroom unit.

(5) The Fair Market Rent for an Independent Group Residence is the Fair Market Rent applicable to the unit size being leased, for example, a four-bedroom unit if the residence contains four bedrooms.

§ 888.115 Fair market rents for existing housing and moderate rehabilitation: Manner of publication.

Fair market rents will be published at least annually in the **Federal Register**. The Department will propose FMRs and provide a comment period of at least 30 days. Once the comments are considered, the Department will publish a final notice announcing FMRs. These FMRs will be effective on publication in the **Federal Register**.

Dated: September 18, 1985.

Janet Hale,

Acting General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

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Office of Assistant Secretary For Housing—Federal Housing Commissioner

24 CFR Part 885

[Docket No. R-85-1014; FR-1543]

Loans for Housing for the Elderly or Handicapped; Eligibility of Acquired Existing Housing for the Nonelderly Handicapped

AGENCY: Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule permits HUD to make loans to nonprofit organizations to acquire existing housing and related facilities, including those requiring