

§ 882.411

24 CFR Ch. VIII (4-1-03 Edition)

variable rate or are otherwise renegotiable, Contract Rents may be adjusted in accordance with other procedures as prescribed by HUD, and specified in the Contract, provided that the adjusted Contract Rents cannot exceed the rents established by multiplying the Annual Adjustment Factor by the Contract Rents. Adjusted Contract Rents must then be examined in accordance with paragraph (b) of this section and may be adjusted accordingly. Contract Rents may be adjusted upward or downward, as may be appropriate.

(2) *Special Adjustments.* (i) A special adjustment, to the extent determined by HUD to reflect increases in the actual and necessary expenses of owning and maintaining the unit which have resulted from substantial general increases in real property taxes, assessments, utility rates and utilities not covered by regulated rates, may be recommended by the PHA for approval by HUD. Subject to appropriations, a special adjustment may also be recommended by the PHA for approval by HUD when HUD determines that a project is located in a community where drug-related criminal activity is generally prevalent, and not specific to a particular project, and the project's operating, maintenance, and capital repair expenses have substantially increased primarily as a result of the prevalence of such drug-related activity. HUD may, on a project-by-project basis, provide adjustments to the maximum monthly rents, to a level no greater than 120 percent of the current gross rents for each unit size under a Housing Assistance Payments Contract, to cover the costs of maintenance, security, capital repairs and reserves required for the Owner to carry out a strategy acceptable to HUD for addressing the problem of drug-related criminal activity. Prior to approval of a special adjustment to cover the cost of physical improvements, HUD will perform an environmental review to the extent required by HUD's environmental regulations at 24 CFR part 50, including the applicable related authorities at 24 CFR 50.4.

(ii) The aforementioned special rent adjustments will only be approved if and to the extent the Owner clearly demonstrates that these general in-

creases have caused increases in the owners operating costs which are not adequately compensated for by annual adjustments.

(iii) The Owner must submit financial information to the PHA which clearly supports the increase. For Contracts of more than twenty units, the Owner must submit audited financial information.

(b) *Overall limitation.* Notwithstanding any other provisions of this part, adjustments as provided in this section must not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph (a)(2) of this section). However, unless the rents have been adjusted in accordance with § 882.409, this limitation should not be construed to prohibit differences in rents between assisted and comparable unassisted units to the extent that differences existed with respect to the initial Contract Rents.

(Approved by the Office of Management and Budget under OMB approval number 2577-0196)

[47 FR 34379, Aug. 9, 1982, as amended at 59 FR 47773, Sept. 16, 1994]

§ 882.411 Payments for vacancies.

(a) *Vacancies from execution of Contract to initial occupancy.* If a Contract unit which has been rehabilitated in accordance with this Program is not leased within 15 days of the effective date of the Contract, the Owner will be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract, provided that the Owner (1) has complied with §§ 882.506(d) and 882.508(c); (2) has taken and continues to take all feasible actions to fill the vacancy; and (3) has not rejected any eligible applicant except for good cause acceptable to the PHA.

(b) *Vacancies after initial occupancy.* (1) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner may receive the housing assistance payments due under

the Contract for so much of the month in which the Family vacates the unit as the unit remains vacant. Should the unit continue to remain vacant, the Owner may receive from the PHA a housing assistance payment in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding an additional month. However, if the Owner collects any of the Family's share of the rent for this period, the payment must be reduced to an amount which, when added to the Family's payment, does not exceed 80 percent of the Contract Rent. Any such excess must be reimbursed by the Owner to the PHA. The Owner will not be entitled to any payment under this paragraph (b)(1) of this section unless the Owner:

(i) Immediately upon learning of the vacancy, has notified the PHA of the vacancy or prospective vacancy, and

(ii) has taken and continues to take all feasible actions specified in paragraphs (a) (2) and (3) of this section.

(2) If the Owner evicts an Eligible Family, the Owner will not be entitled to any payment under paragraph (b)(1) of this section unless the PHA determines that the Owner complied with all requirements of the Contract.

(c) *Prohibition of double compensation for vacancies.* The Owner will not be entitled to housing assistance payments with respect to vacant units under this section if the Owner is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the HCD Act of 1974 or payments for unpaid rent under § 882.414 (Security and Utility Deposits)).

[47 FR 34379, Aug. 9, 1982, as amended at 63 FR 23855, Apr. 30, 1998]

§ 882.412 Subcontracting of owner services.

(a) *General.* Any Owner may contract with any private or public entity to perform for a fee the services required by the Agreement, Contract or Lease, provided that such contract may not shift any of the Owner's responsibilities or obligations.

(b) *PHA management.* If the Owner and a PHA wish to enter into a man-

agement contract, they may do so provided that:

(1) The Housing Assistance Payments Contract with respect to the housing involved is administered by another PHA, or

(2) Should another PHA not be available and willing to administer the Housing Assistance Payments Contract and no other management alternative exists, the HUD Field Office may authorize PHA management of units administered by the PHA in accordance with specified criteria.

(3) Notwithstanding the provisions of § 882.408 (b) and (c), a PHA may not approve, without prior HUD approval, rents which exceed the appropriate Moderate Rehabilitation Fair Market Rent for a unit for which it provides the management functions under this section.

§ 882.413 Responsibility of the Family.

(a) A family receiving housing assistance under this Program must fulfill all of its obligations under the Lease and Statement of Family Responsibility.

(b) No family member may engage in drug-related criminal activity or violent criminal activity. Failure of the Family to meet its responsibilities under the Lease, the Statement of Family Responsibility, or this section shall constitute grounds for termination of assistance by the PHA. Should the PHA determine to terminate assistance to the Family, the provisions of § 882.514(f) must be followed.

[55 FR 28546, July 11, 1990, as amended at 63 FR 23855, Apr. 30, 1998]

§ 882.414 Security and utility deposits.

(a) If at the time of the initial execution of the Lease the Owner wishes to collect a security deposit, the maximum amount shall be the greater of one month's Total Tenant Payment or \$50. However, this amount shall not exceed the maximum amount allowable under State or local law. For units leased in place, security deposits collected prior to the execution of a Contract which are in excess of this maximum amount do not have to be refunded until the Family vacates the unit subject to the lease terms. The