

maintaining the assisted units which have resulted from substantial general increases in real property taxes, assessments, utility rates, and utilities not covered by regulated rates, and which are not adequately compensated for by annual adjustments under paragraph (a) of this section. The owner must submit to the contract administrator required supporting data, financial statements and certifications.

(c) *Overall limitation.* Any adjustments of contract rents for a unit after Contract execution or cost certification, where applicable, must not result in material differences between the rents charged for assisted units and comparable unassisted units except to the extent that the differences existed with respect to the contract rents set at Contract execution or cost certification, where applicable.

[44 FR 59410, Oct. 15, 1979, as amended at 59 FR 22755, May 3, 1994; 61 FR 13591, Mar. 27, 1996]

**§ 880.610 Adjustment of utility allowances.**

In connection with annual and special adjustments of contract rents, the owner must submit an analysis of the project's Utility Allowances. Such data as changes in utility rates and other facts affecting utility consumption should be provided as part of this analysis to permit appropriate adjustments in the Utility Allowances. In addition, when approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved Utility Allowances, the project owner must advise the contract administrator and request approval of new Utility Allowances. Whenever a Utility Allowance for a unit is adjusted, the owner will promptly notify affected families and make a corresponding adjustment of the tenant rent and the amount of the housing assistance payment for the unit.

(Approved by the Office of Management and Budget under control number 2502-0161)

[50 FR 39097, Sept. 27, 1985]

**§ 880.611 Conditions for receipt of vacancy payments.**

(a) *General.* Vacancy payments under the Contract will not be made unless the conditions for receipt of these housing assistance payments set forth in this section are fulfilled.

(b) *Vacancies during Rent-up.* For each assisted unit that is not leased as of the effective date of the Contract, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Conducted marketing in accordance with § 880.601(a) and otherwise complied with § 880.601;

(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 contract administrator.

(c) *Vacancies after Rent-Up.* If an eligible family vacates a unit, the owner is entitled to vacancy payments in the amount of 80 percent of the contract rent for the first 60 days of vacancy if the owner:

(1) Certifies that he did not cause the vacancy by violating the lease, the Contract or any applicable law;

(2) Notified the contract administrator of the vacancy or prospective vacancy and the reasons for the vacancy immediately upon learning of the vacancy or prospective vacancy;

(3) Has fulfilled and continues to fulfill the requirements specified in § 880.601(a) (2) and (3) and paragraph (b) (2) and (3) of this section; and

(4) For any vacancy resulting from the owner's eviction of an eligible family, certifies that he has complied with § 880.607.

(d) *Vacancies for longer than 60 days.* If an assisted unit continues to be vacant after the 60-day period specified in paragraph (b) or (c) of this section, the owner may apply to receive additional vacancy payments in an amount equal to the principal and interest payments required to amortize that portion of the debt service attributable to the vacant unit for up to 12 additional months for the unit if:

(1) The unit was in decent, safe and sanitary condition during the vacancy period for which payments are claimed;

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(2) The owner has fulfilled and continues to fulfill the requirements specified in paragraph (b) or (c) of this section, as appropriate; and

(3) The owner has (for 24 CFR part 883 projects, the owner and the Agency have) demonstrated to the satisfaction of HUD that:

(i) For the period of vacancy, the project is not providing the owner with revenues at least equal to project expenses (exclusive of depreciation), and the amount of payments requested is not more than the portion of the deficiency attributable to the vacant unit, and

(ii) The project can achieve financial soundness within a reasonable time.

(e) *Prohibition of double compensation for vacancies.* The owner is not entitled to vacancy payments for vacant units to the extent he can collect for the vacancy from other sources (such as security deposits, payments under § 880.608(f), and governmental payments under other programs).

[44 FR 59410, Oct. 15, 1979, as amended at 61 FR 13591, Mar. 27, 1996]

**§ 880.612 Reviews during management period.**

(a) After the effective date of the Contract, the contract administrator will inspect the project and review its operation at least annually to determine whether the owner is in compliance with the Contract and the assisted units are in decent, safe and sanitary condition.

(b) In addition:

(1)(i) For this part 880 and 24 CFR part 881 private-owner/PHA projects, HUD will review the PHA's administration of the Contract at least annually to determine whether the PHA is in compliance with the ACC; and

(ii) For 24 CFR part 883 projects, HUD will periodically review the Agency's administration of the Contract to determine whether it is in compliance with the Contract.

(2) HUD may independently inspect project operations and units at any time.

(c) Equal Opportunity reviews may be conducted by HUD at any time.

[44 FR 59410, Oct. 15, 1979, as amended at 61 FR 13591, Mar. 27, 1996]

**24 CFR Ch. VIII (4-1-04 Edition)**

**§ 880.612a Preference for occupancy by elderly families.**

(a) *Election of preference for occupancy by elderly families—(1) Election by owners of eligible projects.* (i) An owner of a project assisted under this part (including a partially assisted project) that was originally designed primarily for occupancy by elderly families (an “eligible project”) may, at any time, elect to give preference to elderly families in selecting tenants for assisted, vacant units in the project, subject to the requirements of this section.

(ii) For purposes of this section, a project eligible for the preference provided by this section, and for which the owner makes an election to give preference in occupancy to elderly families is referred to as an “elderly project.” “Elderly families” refers to families whose heads of household, their spouses or sole members are 62 years or older.

(iii) An owner who elects to provide a preference to elderly families in accordance with this section is required to notify families on the waiting list who are not elderly that the election has been made and how the election may affect them if:

(A) The percentage of disabled families currently residing in the project who are neither elderly nor near-elderly (hereafter, collectively referred to as “non-elderly disabled families”) is equal to or exceeds the minimum required percentage of units established for the elderly project in accordance with paragraph (c)(1) of this section, and therefore non-elderly families on the waiting list (including non-elderly disabled families) may be passed over for covered section 8 units; or

(B) The project, after making the calculation set forth in paragraph (c)(1) of this section, will have no units set aside for non-elderly disabled families.

(iv) An owner who elects to give a preference for elderly families in accordance with this section shall not remove an applicant from the project's waiting list on the basis of having made the election.

(2) *HUD approval of election not required.* (i) An owner is not required to solicit or obtain the approval of HUD