

## § 884.101

### Subpart B—Project Development and Operation

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

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### Subpart A—Applicability, Scope and Basic Policies

#### § 884.101 Applicability and scope.

(a) The policies and procedures in subparts A and B of this part apply to the making of Housing Assistance Payments on behalf of Eligible Families leasing newly constructed housing pursuant to the provisions of section 8 of the 1937 Act. They are applicable only to proposals submitted by the Department of Agriculture/Farmers Home Administration (now the Department of Agriculture/Rural Housing and Community Development Service) that have been charged against the set-aside of section 8 contract authority specifically established for projects to be funded under section 515 of title V of the Housing Act of 1949 (42 U.S.C. 1485).

(b) For the purpose of these subparts A and B, “new construction” shall mean newly constructed housing for which, prior to the start of construction, an Agreement to Enter into Housing Assistance Payments Contract is ex-

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cuted between the Owner and HUD or a Public Housing Agency.

[41 FR 47168, Oct. 27, 1976, as amended at 61 FR 13593, Mar. 27, 1996]

#### § 884.102 Definitions.

The terms *Fair Market Rent (FMR)*, *HUD*, *Public housing agency (PHA)*, and *Secretary* are defined in 24 CFR part 5.

*Agreement to enter into housing assistance payments contract (“agreement”).* (a) In the case of a Private-Owner Project or a PHA-Owner Project, a written agreement between the Owner and HUD that, upon satisfactory completion of the housing in accordance with the HUD-approved Proposal and submission by RHCDS of the required certifications, HUD will enter into a Housing Assistance Payments Contract with the Owner.

(b) In the case of a Private-Owner/PHA Project, a written agreement between the private owner and the PHA, approved by HUD, that, upon satisfactory completion of the housing in accordance with the HUD-approved Proposal and submission by RHCDS of the required certifications, the PHA will enter into a Housing Assistance Payments Contract with the Private Owner.

*Annual contributions contract (“ACC”).* In the case of a Private-Owner/PHA Project, a written agreement between HUD and the PHA to provide annual contributions to the PHA with respect to the project.

*Annual income.* As defined in part 5 of this title.

*Contract.* See definition of Housing Assistance Payments Contract.

*Contract rent.* The rent payable to the Owner under his Contract including the portion of the rent payable by the Family. In the case of a cooperative, the term “Contract Rent” means charges under the occupancy agreements between the members and the cooperative.

*Decent, safe, and sanitary.* Housing is decent, safe, and sanitary if it meets the physical condition requirements in 24 CFR part 5, subpart G.

*Drug-related criminal activity.* The illegal manufacture, sale, distribution, use or possession with the intent to manufacture, sell, distribute, or use, of a

controlled substance as defined in section 102 of the Controlled Substances Act, 21 U.S.C. 802.

*Family.* As defined in part 5 of this title.

*HCD Act.* The Housing and Community Development Act of 1974.

*Housing Assistance Payment.* The payment made by the contract administrator to the Owner of an assisted unit as provided in the Contract. Where the unit is leased to an eligible Family, the payment is the difference between the Contract Rent and Tenant Rent. An additional Housing Assistance Payment is made to the Family when the Utility Allowance is greater than the Total Tenant Payment. A Housing Assistance Payment may be made to the Owner when a unit becomes vacant, in accordance with the terms of the Contract.

*Housing assistance payments contract ("Contract").* (a) In the case of a Private-Owner Project or a PHA-Owner Project, a written contract between the Owner and HUD for the purpose of providing housing assistance payments to the Owner on behalf of Eligible Families.

(b) In the case of a Private-Owner/PHA Project, a written contract between the private Owner, and the PHA, approved by HUD, for the purpose of providing housing assistance payments to the Owner on behalf of Eligible Families.

*Income.* Income from all sources of each member of the household as determined in accordance with criteria established by HUD.

*Lease.* A written agreement between an Owner and an Eligible Family for the leasing of a Decent, Safe, and Sanitary dwelling unit in accordance with the applicable Contract, which agreement is in compliance with the provisions of this part.

*Local housing assistance plan.* A housing assistance plan submitted by a unit of general local government and approved by HUD under Section 104 of the HCD Act or, in the case of a unit of general local government not participating under Title I of the HCD Act, a housing plan which contains the elements set forth in Section 104(a)(4) of the HCD Act and which is approved by

the Secretary as meeting the requirements of Section 213 of that Act.

*Low-income family.* As defined in part 5 of this title.

*Owner.* Any private person or entity, including a cooperative or a PHA, having the legal right to lease or sublease newly constructed dwelling units.

*PHA-owner proposal and PHA-owner project.* A proposal for a project under this part (and the resulting project) to be owned by a PHA throughout the term of the Agreement and Contract where such Agreement and Contract are to be entered into between the PHA and HUD.

*Private-owner/PHA proposal and private-owner/PHA project.* A proposal for a project under this part (and the resulting project) to be owned by a private Owner throughout the term of the Agreement and Contract where such Agreement and Contract are to be entered into between the private Owner and the PHA pursuant to an ACC between the PHA and HUD. The term also covers the situation where the ACC is with one PHA and the Owner is another PHA.

*Private-owner proposal and private-owner project.* A proposal for a project under this part (and the resulting project) to be owned by a private Owner throughout the term of the Agreement and Contract where such Agreement and Contract are to be entered into between the private Owner and HUD.

*Project account.* The account established and maintained in accordance with § 884.104 or § 884.105.

*Proposal.* A proposal for a Private-Owner or PHA-Owner/PHA Project to provide newly constructed housing submitted to HUD by RHCDS on the prescribed RHCDS form.

*RHCDS.* The Rural Housing and Community Development Service.

*Tenant rent.* As defined in part 5 of this title.

*Total tenant payment.* As defined in part 5 of this title.

*Utility allowance.* As defined in part 5 of this title.

*Utility reimbursement.* As defined in part 5 of this title.

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*Very low-income family.* As defined in part 5 of this title.

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**§ 884.104 Maximum total annual contract commitment and project account (private-owner or PHA-owner projects).**

(a) *Maximum total annual contract commitment.* The maximum total annual housing assistance payments that may be committed under the Contract shall be the total of the Gross Rents for all the Contract units in the project.

(b) *Project account.* In order to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family Incomes:

(1) A Project Account shall be established and maintained in an amount as determined by the Secretary consistent with his responsibilities under Section 8(c)(6) of the Act, out of amounts by which the maximum annual Contract commitment per year exceeds amounts paid under the Contract for any year. This account shall be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the purposes of (i) housing assistance payments, and (ii) other costs specifically authorized or approved by the Secretary.

(2) Whenever a HUD-approved estimate of required housing assistance payments for a fiscal year exceeds the maximum annual Contract commitment, and would cause the amount in the Project Account to be less than an amount equal to 40 percent of such maximum annual Contract commitment, HUD shall, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) “the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the al-

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location of a portion of new authorizations for the purpose of amending housing assistance contracts.”

**§ 884.105 Maximum total ACC commitment and project account (private-owner/PHA projects).**

(a) *Maximum total ACC commitment.* The maximum total annual contribution that may be contracted for in the ACC for a project shall be the total of the Contract Rents plus any utility allowances for all the Contract units in the project, plus a fee for the regular costs of PHA administration. HUD-approved preliminary costs for administration (including administrative costs in connection with PHA activities related to relocation of occupants) shall be payable out of this total.

(b) *Project account.* In order to assure that housing assistance payments will be increased on a timely basis to cover increases in Contract Rents or decreases in Family Incomes:

(1) A Project Account shall be established and maintained, in an amount as determined by the Secretary consistent with his responsibilities under Section 8(c)(6) of the 1937 Act, out of amounts by which the maximum ACC commitment per year exceeds amounts paid under the ACC for any year. This account shall be established and maintained by HUD as a specifically identified and segregated account, and payment shall be made therefrom only for the purposes of (i) housing assistance payments and (ii) other costs specifically authorized or approved by the Secretary.

(2) Whenever a HUD-approved estimate of required Annual Contribution exceeds the maximum ACC commitment then in effect, and would cause the amount in the Project Account to be less than an amount equal to 40 percent of such maximum ACC commitment, HUD shall, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the 1937 Act as may be necessary to carry out this assurance, including (as provided in that section of the Act) “the reservation of annual contributions authority for the purpose of amending housing assistance contracts or the allocation of a portion of new authorizations for the purpose of